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Vernon's Texas Statutes 1948
Volume 2

Penal Code
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VERNON'S
TEXAS STATUTES
1948

Containing

All Laws of a General and Permanent Nature
to the End of the 50th Legislature,
Regular Session, 1947

With

Texas Rules of Civil Procedure

COMPLETE INDEX and TABLES

Volume 2

Penal Code
Code of Criminal Procedure
Tables — Index

KANSAS CITY, MO.
VERNON LAW BOOK COMPANY

VERNON'S TEXAS STATUTES 1948

This revised and up-to-date Edition of Vernon's Texas Statutes includes the general and permanent laws in force and effect to date of publication.

The classification and arrangement of the laws is based upon the Revised Civil and Criminal Statutes of 1925 and is identical with that of Vernon's Annotated Texas Statutes which, for more than two decades, has promptly and dependably served every requirement of the Bench and Bar of Texas. The user of these convenient volumes, therefore, may trace any textual article in this Edition to the same article in Vernon's Annotated Texas Statutes, where a vast storehouse of historical data and judicial constructions and interpretations may be found.

The detailed Index and Tables make the text of the law quickly accessible.

Certification

The Secretary of State has caused his Certificate of Authenticity to be attached under the Seal of the State of Texas.

Rules of Civil Procedure

For the first time in any compilation of State laws, the text of the Rules of Civil Procedure as amended is included in conjunction with the Revised Civil Statutes. The judicial constructions and interpretations of the Rules and the interpretive advisory opinions, together with valuable historical data, appear under the same classification and arrangement as in Vernon's Texas Rules of Civil Procedure.

Acknowledgment

Grateful acknowledgment is made to the Hon. Paul H. Brown, Secretary of State, for his courtesy and cooperation in the course of verification of the text of the laws. Appreciative acknowledgment is, likewise, made to the many members of the Bench and Bar of Texas for their practical suggestions offered in the preparation of this Edition.

THE PUBLISHER

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TITLES OF

PENAL CODE

AND

VERNON'S TEXAS STATUTES 1948

A BILL to be entitled "*An Act to Adopt and Establish a 'PENAL CODE' and a 'CODE OF CRIMINAL PROCEDURE'* for the State of Texas."

Be It Enacted by the Legislature of the State of Texas:

Section 1. The following Titles, Chapters and Articles are hereby adopted and shall hereafter constitute and be known as the PENAL CODE of the State of Texas:

†

VERNON'S PENAL CODE OF THE STATE OF TEXAS

TITLE 1—GENERAL PROVISIONS

CHAPTER 1.—GENERAL OBJECTS, PRINCIPLES, AND RULES OF INTERPRETATION

Article 1. [1] Design of the Code.—The design of enacting this Code is to define in plain language every offense against the laws of this State, and affix to each offense its proper punishment.

Art. 2. [2] Object of punishment.—The object of punishment is to suppress crime and reform the offender.

Art. 3. [3] Penalties must be affixed by written law.—In order that the system of penal law in force in this State may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense, and a penalty is affixed thereto by the written law of this State.

Art. 4. [4] Common law rule of construction.—The principles of the common law shall be the rule of construction when not in conflict with this Code or the Code of Criminal Procedure, or with some other written statute of this State. [Act Feb. 12, 1884.]

Art. 5. [5] Special provisions control general.—Each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

Art. 6. [6] Unintelligible law not operative.—Whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction that it can not be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

Art. 7. [9] General rule of construction.—This Code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law.

Art. 8. [10] Words, how understood.—Words which have their meaning specially defined shall be understood in that sense, though it be contrary to their usual meaning; and all words used in this Code, except where a word, term or phrase is specially defined, are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

Art. 9. [11] Innocence presumed.—Every person accused of an offense shall be presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt.

Art. 10. [12] No offense against a law not in force.—No act or omission can be punished as an offense unless the law making it penal was in force at the time when such act or omission took place.

Art. 11. [13] When laws take effect.—No law defining an offense, or affixing a penalty thereto, shall take effect until after the expiration of ninety days from the day of the adjournment of the session at which such law was enacted, unless the Legislature shall otherwise determine.

Art. 12. [14] Ignorance no excuse.—After a law has taken effect, no person shall be excused for its violation upon the ground that he was ignorant of its provisions.

Art. 13. [15] Effect of modification by subsequent law.—When the penalty for an offense is prescribed by one law and altered by a subsequent

law, the penalty of such second law shall not be inflicted for an offense committed before the second shall have taken effect. In every case the accused shall be tried under the law in force when the offense was committed, and if convicted punished under that law; except that when by the provisions of the second law the punishment is ameliorated he shall be punished under the second unless he elect to receive the penalty prescribed by the law in force when the offense was committed.

Art. 14. [16] Repeal, effect of.—The repeal of a law where the repealing statute substitutes no other penalty will exempt from punishment all persons who may have violated such repealed law, unless it be otherwise declared in the repealing statute.

Art. 15. [17] When new penalty is substituted.—When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the law repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealing law while it was in force, but in such case the rule prescribed in article 13 shall govern.

Art. 16. [18] Change of definition.—If an offense be defined by one law and by a subsequent law the definition of the offense is changed, no such change shall take effect as to the offenses already committed; but one accused of violating the first law shall be tried under that law.

Art. 17. [19] Previous offenses not affected.—No offense committed and no fine, forfeiture or penalty incurred under existing laws previous to the time when this Code takes effect shall be effected [1] by the repeal herein of any such laws, but the punishment of such offense and the recovery of such fines and forfeitures shall take place as if the law repealed had remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by any provision of this Code, such provision shall control any judgment to be pronounced after this Code shall take effect for any offense committed before that time, unless the defendant elect to be punished under the repeal law.

[1] So in enrolled bill. Should probably read "affected."

Art. 18. [20] No cumulative penalties.—No penalty affixed to an offense by one law shall be cumulative of penalties under a former law, and where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

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Article 19. [21] Definition of terms.—The terms "whoever", "any person", "any one", and the pronouns "he" and "they" as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" imports a male person of any age, and "woman" a female person of any age.

Art. 20. [22] Masculine includes feminine.—The use of any word expressive of relationship, state, condition, office or trust of any person, as of "parent", "child", "ascendant", "descendant", "minor", "infant", "ward", "guardian", or the like, or of the pronouns "he" or "they" in reference thereto, includes both males and females. Words used in the masculine gender include the feminine also, unless it appears that such was not the intent.

Art. 21. [23] Singular includes plural.—The use of the singular number includes the plural and the plural the singular.

Art. 22. [24] "Person."—Whenever any property or interest is intended to be protected by this Code, and the term "person" or any other general term is used to designate the party whose property it is intended to protect, the protection given shall extend to the property of the State, and of all public or private corporations.

Art. 23. [25] "Accused" and "defendant."—The word "accused" is intended to refer to any person who, in a legal manner, is held to answer for an offense, at any stage of the proceeding, or against whom complaint in a lawful manner is made charging an offense, including all proceedings from the order for arrest to the final execution of the law. The word "defendant" is used in the same sense.

Art. 24. [26] "Criminal action."—A "criminal action" means the whole or any part of the procedure which the law provides for bringing offenders to justice; and the terms "prosecution" and "accusation" are used in the same sense.

Art. 25. [27] "Convict."—An accused is termed a "convict" after the judgment of conviction against him has become final.

Art. 26. [28] "Criminal process."—The term "criminal process" is intended to signify any capias, warrant, citation, attachment, or any other written order issued in a criminal proceeding, whether the same be to arrest, commit, collect money, or for whatever purpose used.

Art. 27. [30] "Writing" and "oath."—The word "writing" includes printing; the word "oath" includes affirmation.

Art. 28. [31] "Signature" defined.—The word "signature" includes the mark of a person unable to write his name.

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41. Mistake of fact.
42. Act done by mistake a felony.
43. Act done by mistake a misdemeanor.
44. Felony done by mistake.
45. Intention presumed.
46. Burden of proof on defendant.

Article 29. [32] Persons punishable.—With the exceptions stated in this chapter, all persons whether inhabitants of this State or the United States or aliens are amenable to punishment for offenses punishable under this Code.

Art. 30. [34] Children not punishable.—No person shall be convicted of any offense committed before he was nine years old except perjury, and for

that only when it shall appear by proof that he had sufficient discretion to understand the nature and obligation of an oath; nor of any other offense committed between the age of nine and thirteen, unless it shall appear by proof that he had discretion sufficient to understand the nature and illegality of the act constituting the offense.

Art. 31. [35] One under 17 not punishable capitally.—A person for an offense committed before he arrived at the age of seventeen years shall in no case be punished with death.

Art. 32. [36] Offenses by married women.—A married woman who commits an offense by the command or persuasion of her husband shall in no case be punished with death, but may be imprisoned for life or for a term of years, according to the nature of the crime; and in cases not capital she shall receive only one-half the punishment to which she would otherwise be liable.

Art. 33. [37] Instigated offense.—If it appears that a minor was instigated or aided in the commission of an offense by a relation in the ascending line or by his guardian, or an apprentice under age by his master, or a wife by her husband, such relation, guardian, master or husband shall, at the discretion of the jury, in capital cases be punished by death, and in other cases the punishment shall be doubled.

Art. 34. [39] Insanity.—No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished while in such condition.

Art. 35. [40] Proof of insanity.—The rules of evidence known to the common law as to the proof of insanity shall be observed in all trials where that question is an issue.

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. [Acts 1881, p. 9; Acts 1939, 46th Leg., p. 224, § 1.]

Art. 37. [42 and 43] Officer justified.—A person in the lawful execution of a written process or verbal order from a court or magistrate is justified for any act done in obedience thereto. A peace officer is in like manner justified for any act which he is bound by law to perform without warrant or verbal order.

Art. 38. [44] Duress.—A person forced by threats or actual violence to do an act is not liable to punishment for the same. Such threats, however, must be—

1. Loss of life or personal injury.
2. Such as are calculated to intimidate a person of ordinary firmness.
3. The act must be done when the person threatening is actually present.

The violence must be such actual force as restrains the person from escaping, or such ill-treatment as is calculated to render him incapable of resistance.

Art. 39. [45] Accident.—No act done by accident is an offense, except in certain cases specially provided for where there has been a degree of carelessness or negligence which the law regards as criminal.

Art. 40. [46] Mistake of law.—No mistake of law excuses one committing an offense.

Art. 41. [47] Mistake of fact.—If a person laboring under a mistake as to a particular fact shall do an act which would otherwise be criminal he is guilty of no offense, but the mistake of fact which will excuse must be such that the person so acting under a mistake would have been excusable had his conjecture as to the fact been correct, and it must also be such mistake as does not arise from a want of proper care on the part of the person so acting.

Art. 42. [48] Act done by mistake a felony.—One intending to commit a felony and who in the act of preparing for or executing the same shall through mistake or accident do another act which, if voluntarily done, would be a felony, shall receive the punishment affixed to the felony actually committed.

Art. 43. [49] Act done by mistake a misdemeanor.—One intending to commit a felony and who in the act of preparing for or executing the same shall through mistake or accident do another act which, if voluntarily done would be a misdemeanor, shall receive the highest punishment affixed to such misdemeanor.

Art. 44. [50] Felony done by mistake.—One intending to commit a misdemeanor and who in the act of preparing for or executing the same shall through mistake commit a felony shall receive the lowest punishment affixed to the felony.

Art. 45. [51] Intention presumed.—The intention to commit an offense is presumed whenever the means used is such as would ordinarily result in the commission of the forbidden act.

Art. 46. [52] Burden of proof on defendant.—When the facts have been proved which constitute the offense, it devolves upon the accused to establish the facts or circumstances on which he relies to excuse or justify the prohibited act or omission.

TITLE 2—OFFENSES AND PUNISHMENTS

CHAPTER 1.—DEFINITION AND DIVISION OF OFFENSES

Article 47. [53–58] Offenses.—An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this Code. An offense which may—not must—be punishable by death or by confinement in the penitentiary is a felony; every other offense is a misdemeanor. Felonies are either capital or not capital. An offense for which the highest penalty is death is a capital felony. Offenses are divided into felonies and misdemeanors.

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59. Exceptions to rules.
60. Officer to be removed.
61. Second and subsequent conviction for misdemeanor.
62. Subsequent conviction for felony.
63. Third conviction for felony.
64. Second conviction for capital offense.

Article 48. [59] Punishments.—The punishments incurred for offenses under this Code are—

1. Death.
2. Imprisonment in the penitentiary.
3. Imprisonment in jail. "Jail" means the county jail.
4. Pecuniary fines. "Not exceeding" means in any sum not to exceed the amount stated.
5. Forfeiture of civil or political rights.
6. Imprisonment in training schools and similar institutions.

Art. 49. [60] Continuous offense suppressed.—When an offense of which a person is convicted is in its nature continuous, there shall also be a judgment for its suppression.

Art. 50. [61] No forfeiture in capital case.—When a convict is executed or imprisoned for life, there shall be no forfeiture of any kind to the State, nor shall any cost of the prosecution be collected from his estate.

Art. 51. [62] No forfeiture in any case.—When a convict is imprisoned in the penitentiary, his property shall be controlled as directed by law; but there shall in no criminal case be a forfeiture of property of any kind to the State.

Art. 52. [63] "Political rights" defined.—When the penalty is deprivation of political rights, such rights are intended to include the rights of holding office, of serving on juries, and of suffrage.

Art. 53. [64] Doubling punishment.—When a minimum or maximum punishment is fixed, and by reason of any circumstance the law directs that the punishment be doubled, it shall be taken to mean that not less than double the smallest nor more than double the greatest punishment shall be inflicted.

Art. 54. [65] Doubling penalty in misdemeanor.—If fine and imprisonment are to be incurred, and punishment is doubled, then not less than double the smallest and not more than double the largest fine and not more than double the longest nor less than double the smallest period of imprisonment shall be given.

Art. 55. [66] Doubling alternative punishment.—When the punishment is either fine or imprisonment and the punishment is to be doubled, then the penalty is not less than double the smallest nor more than double the largest fine, or less than double the shortest nor more than double the longest period of imprisonment. This rule applies where there may be more than two kinds of punishment prescribed as alternatives.

Art. 56. [67] Increase of penalty one-half.—When the law directs that the punishment shall be increased one-half, it means that besides the ordinary penalty such additional punishment may be assessed as shall not be less than one-half the penalty in ordinary cases, and all the rules before prescribed as to alternative punishments are applicable where the penalty is to be so increased.

Art. 57. [68] Decrease of punishment one-half.—When it is provided that the punishment shall be diminished one-half, it means one-half of the penalty fixed under ordinary circumstances, and so with regard to any other proportion in which the penalty is to be diminished.

Art. 58. [69] Diminution of punishment.—In diminution of punishments, the same rule as to two or more penalties or as to alternative penalties shall apply as governs the increase of punishment.

Art. 59. [70] Exceptions to rules.—The rules as to increase or diminution of punishment have no application to capital cases, nor to any case where the penalty is total deprivation of civil or political rights.

Art. 60. [73] Officer to be removed.—When an offense is committed by an officer, and the same appears to the jury to be a wilful violation of duty, they shall so find, and such officer shall be removed from office.

Art. 61. [1618] [1014] [818] Second and subsequent conviction for misdemeanor.—If it be shown on the trial of a misdemeanor that the defendant has been once before convicted of the same offense, he shall on a second conviction receive double the punishment prescribed for such offense in ordinary cases, and upon a third or any subsequent conviction for the same offense, the punishment shall be increased so as not to exceed four times the penalty in ordinary cases.

Art. 62. [1619] [1015] [819] Subsequent conviction for felony.—If it be shown on the trial of a felony less than capital that the defendant has been before convicted of the same offense, or one of the same nature, the punishment on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offenses in ordinary cases.

Art. 63. [1620] [1016] [820] Third conviction for felony.—Whoever shall have been three times convicted of a felony less than capital shall on such third conviction be imprisoned for life in the penitentiary.

Art. 64. [1621] [1017] [821] Second conviction for capital offense.—A person convicted a second time of any offense to which the penalty of death is affixed as an alternate punishment shall not receive on such second conviction a less punishment than imprisonment for life in the penitentiary.

TITLE 3—PRINCIPALS, ACCOMPLICES AND ACCESSORIES

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Article 65. [74] Acting together.—All persons are principals who are guilty of acting together in the commission of an offense.

Art. 66. [75] Encouraging.—When an offense is actually committed by one or more persons, but others are present, and knowing the unlawful intent, aid by acts or encourage by words or gestures, those actually engaged in the commission of the unlawful act, or who, not being actually present, keep watch so as to prevent the interruption of those engaged in committing the offense, such persons so aiding, encouraging or keeping watch are principal offenders.

Art. 67. [76] Aiding.—All persons who shall engage in procuring aid, arms or means of any kind to assist in the commission of an offense, while others

are executing the unlawful act, and all persons who endeavor at the time of the commission of the offense to secure the safety or concealment of the offenders are principals.

Art. 68. [77] Indirect means.—If any one by employing a child or other person who cannot be punished to commit an offense, or by any means, such as laying poison where it may be taken and with intent that it shall be taken, or by preparing any other means by which a person may injure himself and with intent that such person shall thereby be injured, or by any other indirect means cause another to receive injury to his person or property, the offender by the use of such indirect means becomes a principal.

Art. 69. [78] Presence.—Any person who advises or agrees to the commission of an offense and who is present when the same is committed is a principal whether he aid or not in the illegal act.

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73. When different offense is committed.
74. When principal is under 17.
75. In instigated felony.
76. No accomplice in certain cases.

Article 70. [79] Who is an accomplice.—An accomplice is one who is not present at the commission of an offense, but who, before the act is done, advises, commands or encourages another to commit the offense; or

Who agrees with the principal offender to aid him in committing the offense, though he may not have given such aid; or,

Who promises any reward, favor or other inducement, or threatens any injury in order to procure the commission of the offense; or,

Who prepares arms or aid of any kind, prior to the commission of an offense, for the purpose of assisting the principal in the execution of the same.

Art. 71. [80] Precise offense need not be committed.—To render a person guilty as an accomplice, it is not necessary that the precise offense which he may have advised, or to the execution of which he may have given encouragement or promised assistance, should be committed; it is sufficient that the offense be of the same nature, though different in degree, as that which he so advised or encouraged.

Art. 72. [81] Punishment of accomplice.—Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender.

Art. 73. [82] When different offense is committed.—If in the attempt to commit one offense the principal shall by mistake or accident commit some other under the circumstances set out in articles 42, 43 and 44, the accomplice to the offense originally intended shall, if both offenses are felonies, receive the punishment affixed to the lower; but if the offense designed be a misdemeanor he shall receive the highest punishment affixed to such misdemeanor, whether the offense actually committed be a felony or a misdemeanor.

Art. 74. [83] When principal is under 17.—If the principal in an offense less than capital be under the age of seventeen, the punishment of an accomplice shall be increased so as not to exceed double the penalty affixed in ordinary cases.

Art. 75. [84] In instigated felony.—If the accomplice stands in the relation of parent, master, guardian or husband to the principal, he shall in all cases receive the highest punishment affixed to the offense, and the same may in felonies not capital be increased to double the highest penalty affixed to ordinary cases.

Art. 76. [85] No accomplice in certain cases.—There may be accomplices to all offenses except manslaughter and negligent homicide.

CHAPTER 3.—ACCESSORIES

Art.
77. Who is an accessory.
78. Who cannot be accessories.
79. Punishment of accessory.

Article 77. [86] Who is an accessory.—An accessory is one who, knowing that an offense has been committed, conceals the offender, or gives him any other aid in order that he may evade an arrest or trial or the execution of his sentence. One who aids an offender in making or preparing his defense at law, or procures him to be bailed though he afterwards escape, is not an accessory.

Art. 78. [87] Who cannot be accessories.—The following cannot be accessories; The husband or wife of the offender, his brothers and sisters, his relations in the ascending or descending line by consanguinity or affinity, or his domestic servants.

Art. 79. [88] Punishment of accessory.—Accessories shall be punished by the infliction of the lowest penalty to which the principal would be liable.

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81. When accessory may be tried.
82. Parties to offense as witnesses.

Article 80. [89] Accomplice may be tried before principal.—An accomplice may be tried and punished before the conviction of the principal, and the acquittal of the principal shall not bar the prosecution against the accomplice, but on the trial of an accomplice the evidence must be such as would have convicted the principal.

Art. 81. [90] When accessory may be tried.—An accessory may in like manner be tried and punished before the principal when the latter has escaped; but if the principal is arrested he shall be first tried, and if acquitted, the accessory shall be discharged.

Art. 82. [91] Parties to offense as witnesses.—Persons charged as principals, accomplices or accessories, whether in the same or by different indictments, can not be introduced as witnesses for one another, but they may claim a severance, and if one or more be acquitted they may testify in behalf of the others.

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Article 83. [92] "Treason" defined.—Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. [Const. Art. 1, Sec. 22, P. C. 231.]

Art. 84. [93] Punishment for treason.—If any citizen of this State shall be guilty of treason he shall suffer death or imprisonment in the penitentiary for life. [P. C. 232.]

Art. 85. [94] [95] "Misprision of treason" defined.—Whoever shall know that any person has committed treason or is intending to do so, and shall not within five days from the time of his having come to such knowledge give information of the same to the Governor or to some magistrate or peace officer of the State shall be confined in the penitentiary not less than two nor more than seven years. [P. C. 233, Acts 1858, p. 157.]

CHAPTER 2.—MISAPPLICATION OF PUBLIC MONEY

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Article 86. [96] Protection of public money.—If any officer of the government who is by law a receiver or depositary of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, misapply or convert to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it 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 nor more than ten years. [P. C. 235, Acts 1858, p. 158.]

Art. 87. [97] "Misapplication of public money."—Within the term "misapplication of public money" are included the following acts:

1. The use of any public money in the hands of any officer of the government for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government and its payment into the treasury;
2. The exchange of one character of public funds for those of another. The purchase of bank checks or post-office orders for transmission to the treasury is not included in this class;
3. The deposit by an officer of the government of public money at any other place than the treasury of the State when the treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place after the treasury is so open;
4. The purchase of State warrants or other evidence of State indebtedness by any officer of the government with public money in his hands;
5. The special enumeration above set forth shall not be understood to exclude any case which, by fair construction, comes within the meaning of the preceding language. This article shall not be construed to prevent collectors of taxes from paying warrants drawn by the Comptroller in favor of officers living in their district or county as may be provided by law. [Acts 1879, p. 165.]

Art. 88. [100] Exceptions.—Nothing in the two preceding articles shall apply to the sale or exchange of one kind of money for another by the financial officers of this State, when done in accordance with law.

Art. 89. Diversion of donated State taxes.—All money donated by law out of the taxes collected for the State on account of calamity or for protection to either of the cities of Galveston, Aransas Pass, Rockport, Port Lavaca, Freeport and Corpus Christi, are declared to be trust funds for the purpose of aiding each of said cities in paying the interest and sinking fund upon the issue of bonds authorized by the law donating such tax money, and the provisions of the Revised Civil Statutes making such donations are made a part of this article, and the use or diversion of such moneys for any purpose other than that provided for by law is hereby prohibited, provided that whenever the money in the hands of the city treasurer received from the State under the law donating such tax money, or under any law in effect, shall exceed the sum of one year's interest and two per cent sinking fund on the bonds herein referred to that have been issued and are outstanding, such excess shall be invested by each of said cities so situated in the purchase of said bonds, or bonds of the United States, the State of Texas, or the bonds of any county, city or town of this State, bearing interest at the rate of not less than four per cent per annum. The entire sinking fund, when received by the city treasurer shall be invested by the municipal authorities of said city as received, in the bonds herein referred to, or bonds of the United States, the State of Texas, or the bonds of any county, city or town of this State, bearing interest at a rate of not less than four per cent per annum. A violation of any provision of this article shall constitute a misapplication of public money, and the person so offending shall be punished as provided in article 86.

Art. 90. Diversion of seawall money.—All funds, revenues and moneys derived from the sale of the bonds authorized by law to pay the indebtedness incurred in establishing, locating, erecting, constructing, extending, strengthening, maintaining or keeping in repair or otherwise improving any seawall or breakwater, and to improve, maintain and beautify any boulevard erected in connection therewith, and all funds, revenues and moneys derived from the sale or rent of reclaimed or other lands acquired by law and from additional uses of such works as authorized by law, shall be deposited with the county or city treas-

urer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of such bonds, and the use or diversion of such moneys for any other purpose whatever is hereby prohibited and a violation of this article shall constitute a misapplication of public money, and the person so offending shall be punished as provided in article 86. [Acts 1901, p. 25, 1st C. S.]

Art. 91. [101] Receiving or concealing misapplied public money.—Whoever shall knowingly and with fraudulent intent receive or conceal any public money which has been taken, converted or misapplied by an officer or employé as set forth in articles 86 and 87, shall be confined in the penitentiary for not less than two nor more than five years. [P. C. 236, Acts 1875, p. 12.]

Art. 92. [102] "Officer of the Government" defined.—The term "officer of the Government," as used in this chapter, includes the State Treasurer and all other heads of departments who by law may receive or keep in their care public money of the State, tax collectors, and all other officers who by law are authorized to collect, receive or keep money due to the government.

Art. 93. [103] State Treasurer receiving private funds.—If the State Treasurer shall knowingly keep or receive into the building, safes or vaults of the treasury, any money or representative thereof belonging to any individual, except in cases expressly provided for by law, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1873, p. 61.]

Art. 94. [104] Diverting special funds.—Whoever shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund, or any part thereof, belonging to or under the control of the State, which has been set apart by law for a specific use, shall be confined in the penitentiary not less than two nor more than ten years.

Art. 95. [105] [103] Misapplication of county or city funds.—If any officer of any county, city or town, or any person employed by such officer, shall fraudulently take, misapply, or convert to his own use any money, property or other thing of value belonging to such county, city or town, that may have come into his custody or possession by virtue of his office or employment, or shall secret[1] the same with intent to take, misapply or convert it 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 nor more than ten years.

[1] So in enrolled bill. Should probably read "secrete."

Art. 96. [106] [104] Receiving or concealing.—Whoever shall knowingly and with fraudulent intent receive or conceal any money or property which has been taken, misapplied or converted by an officer or employé, as set forth in the preceding article, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1875, p. 12.]

Art. 97. Misapplication of school funds.—If any person who is by law a treasurer of any school district in this State, or if any officer, director, stockholder, agent or employé or any corporation that is by law the treasurer or depository of any school district in this State shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such district that may have come into his possession by virtue of his being treasurer of such district or that may have come into his possession by virtue of the corporation of which he is officer, director, stockholder, agent or employé being the treasurer or depository of such district, or shall secrete the same with intent to take, misapply or convert it 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 nor more than ten years. [Acts 1917, p. 340.]

Art. 98. Officer failing to pay over public money.—Any officer or appointee authorized to receive public moneys, other than a collector of taxes, who shall wilfully or negligently fail to account for all moneys in his hands belonging to the State, and pay the same over to the State Treasurer within ten days after the same came into his possession, shall be fined not less than three hundred nor more than one thousand dollars.

Art. 99. [108] Venue.—All prosecutions for failing or refusing to pay over money belonging to the State under this chapter shall be conducted in Travis County.

Art. 100. [97–107–109–144] Collector failing to pay.—The collector of taxes shall at the end of each month pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected; and such collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the State Comptroller on or before the first day of May of each year. If any collector of taxes shall have wilfully or negligently failed at the end of each month or within ten days thereof to remit to the State Treasurer the amount due by him to the State for the preceding month, he shall be fined not less than three hundred nor more than one thousand dollars. Every such failure to remit shall be a separate offense.

Art. 101. Collector failing to report.—At the end of each month the collector of taxes shall, on forms to be furnished by the Comptroller of Public Accounts, make an itemized report under oath to the Comptroller showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected. Said reports for December and January of each year may not be made for twenty-five days after the end of such months if same cannot be completed by the end of such respective months. Such collector shall present such report together with the tax receipt stubs, to the county clerk who shall within two days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, such clerk shall certify to its correctness, and such collector shall then immediately forward his report so certified to the State Comptroller, and upon the failure or refusal of such collector to comply with this article he shall be fined not less than three hundred nor more than one thousand dollars. Each such failure or refusal is a separate offense. [Acts 1893, p. 90.]

Art. 101a. Failure to report taxes collected and delinquent taxes.—Any officer of any unit of government within the county, who shall fail, neglect or refuse to furnish the information required to be furnished by him under the provisions of this Act, when requested as herein provided, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a period of not less than one (1) month, nor more than

twelve (12) months, or by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 500, ch. 279, § 5.]

Sections 1-4, 6, 7 of this Act are published as Rev.Civ. St. Art. 7264b.

Art. 102. [110–113] Remitting fees, etc.—Any county officer or any district attorney to whom fees or costs are allowed by law who shall fail to charge up the fees or costs that may be due under existing laws, or who shall remit any fee that may be due under the laws, or who shall fail to make the report required by law, or who shall pay his deputy, clerk or assistant a less sum than specified in his sworn statement, or receive back as a rebate any part of the compensation allowed such deputy, clerk or assistant, shall be fined not less than twenty-five nor more than five hundred dollars. Each act forbidden by this article is a separate offense. [Act June 16, 1897.]

Art. 103. [114–1577] Unlawfully issuing process.—Before the clerk or his deputy shall be required or permitted to issue a subpœna in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written sworn application to such clerk of each witness desired. Such application shall state the name of each witness desired, the location and avocation, if known, and that the testimony of said witness is believed to be material to the State or the defense. As far as practicable such clerk shall include in one subpœna the names of all witnesses for the State and the defendant and such process shall show that the witnesses are summoned for the State or defendant. If any such clerk or his deputy shall issue any subpœna for any witness in a felony case without complying with this article, or shall issue an attachment without an order of court, he shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1889, p. 145; Acts 1st C. S. 1897, p. 5; Acts 1913, p. 319.]

Art. 104. [115] Regulating fees of officers.—Each county and precinct officer who shall in his official capacity collect or receive any money or fees belonging to another person, shall inform such person of the collection of such money or fees, and promptly pay the same over on demand to the one entitled thereto, taking receipt therefor, which shall be entered or noted in his fee book. [Acts 1907, p. 120.]

Art. 105. [116] Report of fees collected.—On or before the second Mondays in March, June, September and December of each year, said officers shall make written sworn report to the commissioners court of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and style of each cause in which the same accrued and the name of the person entitled thereto, which report shall be filed with the county clerk and by him kept for future reference and examination. [Id. Acts 1923, p. 223.]

Art. 106. [117] Disposition of fees not called for.—Each officer collecting or having the custody of any money or fees embraced within the provisions of this law at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person entitled thereto, shall pay the same to the county treasurer of his county, accompanying the same by an itemized statement, as provided in Article 105, which shall be filed and kept by said treasurer, and said money or fees shall be by him placed to the credit of the road and bridge fund. The treasurer shall issue to said officer his receipt for said money or fees itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk. Any officer upon retiring from office having any money or fees in his hands embraced within these provisions and which are not due to be turned over to the treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same, taking receipt therefor, and his successor shall report and pay over the same to the county treasurer in accordance with the provisions hereof. [Id.]

Art. 107. [118] Penalty for three preceding articles.—Whoever violates any provision of the three preceding articles shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

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 appraisement and list of claims shall have been filed and approved by the County or Probate Court in the estate of any decedent, it shall be the duty of the executor or administrator of such estate, to file with the Clerk of said Court, a statement setting forth the name and address and relation to the decedent of each beneficiary who shall receive any portion of said estate, whether under a will or by the law of descent and distribution, and the approximate value of each such beneficiary's share.

Within twenty (20) days after such inventory and appraisement and list of claims shall have been filed and approved by the County or Probate Court, in the estate of any decedent, it shall be the duty of the Clerk of said Court to furnish the Comptroller of Public Accounts a written report setting forth the name of the decedent, his residence at the time of his death, the name and address of the executor, administrator or trustee, the name and address and relation to the decedent of each beneficiary who shall receive any portion of said decedent's estate, whether under a will or by the law of descent and distribution, and the approximate value of each such beneficiary's share; and said Clerk shall also give to the Comptroller of Public Accounts any other information which that official may call for in reference to any such estate, such information shall be furnished within ten (10) days after being called for; the Clerk shall be entitled to a fee of One Dollar ($1) for making the reports herein required on each such estate, which shall 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 Comptroller of Public Accounts to determine whether an inheritance tax is due and, if so, the amount thereof.

If any executor, administrator or 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 not less than Fifty Dollars ($50) nor more than Two Hundred and Fifty Dollars ($250). [Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b; Acts 1939, 46th Leg., p. 646, § 5; Acts 1943, 48th Leg., p. 374, ch. 250, § 1.]

Sections 1, 2, 2b (1–8, 10–12, 14–16, 17, 20) of Act of 1933, cited to the text, being civil provisions, are published as Rev.Civ.St. articles 7076, 7076a, 7144a, 7142, 7122.

Section 13 is published as article 107b, post; section 18 repealed Rev.Civ.St. article 7140; and section 19 amended Rev.Civ.St. article 7141.

Sections 1–4, 6 of the Act of 1939, being civil provisions are published as Rev.Civ.St. arts. 7177, 7125, 7130, 7131 and 7135.

Art. 107b. Filing inheritance tax reports with State Comptroller.—Sec. 13. If any person, whose duty it is under the law to file inheritance tax reports in this State, shall fail to file with the State Comptroller the report provided for by this Act, stating the value at which any estate has been assessed by the Federal Government, he shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Twenty-five ($25.00) Dollars nor more than Five Hundred ($500.00) Dollars; but it shall be a defense to said prosecution if the offending party

shows that his failure was not wilful and that he had good cause for failing in such duty. The State Comptroller is authorized and directed to confer quarterly with the Department of Internal Revenue of the United States to ascertain the value of estates in Texas which have been assessed or valued for taxes by the Federal Government, and he shall cooperate with said Department of Internal Revenue, furnishing to said Department all available information concerning estates of decedents in Texas which said Department may request. [Acts 1933, 43rd Leg., p. 581, ch. 192, § 2b.]

See note to article 107a, ante.

Arts. 107c, 107d. [Repealed by Acts 1934, 43rd Leg., 3d C.S., p. 59, ch. 34, § 39.]

Articles repealed were Acts 1933, 43rd Leg., 1st C.S., p. 118, ch. 37, §§ 20, 21, Acts 1934, 43rd Leg., 2nd C.S., p. 31, ch. 15, §§ 20, 21.

Art. 107e. Misappropriation or false reports concerning relief funds.

Felony; punishment

Section 34. Any person, or persons, charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the funds provided for in this Act, and who shall knowingly misappropriate any such funds, or who shall knowingly make a false report concerning, or who shall knowingly and/or unlawfully distribute or expend any of same, shall be deemed guilty of a felony, and shall, upon conviction thereof, be confined in the State Penitentiary for a term of not less than one (1) year and not more than five (5) years.

False statements to procure relief

Sec. 35. Any person or persons who shall knowingly make any false statement or misrepresentation in order to procure any sum or sums of money or other relief provided by this Act, or secure any relief or funds under any other than his true name, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00) or be confined in the county jail for a period of not exceeding three (3) months, or by both such fine and jail sentence.

False testimony before Board of Control or relief officers

Sec. 36. The Board of Control, as such members of the Texas Relief Commission, the Director appointed by them, and the Assistant Director by them appointed, shall have the power to administer oaths or affirmations relative to the discharge of their duties, and in an inquiry relative thereto, and any person testifying falsely before such Board of Control, or such Director, or Assistant Director, shall be subject to the pains and penalties prescribed in the Penal Code of the State for false swearing. No person or family shall receive any relief, either direct or work, unless and until such person or the head of such family shall have subscribed a statement under oath duly administered by some person authorized to administer oaths under the laws of this State or by any officer and/or case worker for the State Board of Control or any County Relief Board, and all such officers and case workers are hereby authorized to administer such oaths and are required and it is made their duty to administer such oaths free of charge, on such forms as may be prescribed by the State Board of Control, setting forth the conditions and circumstances which entitle such person and/or family to such direct relief or work relief, and any person knowingly making any false statement under oath, as above provided, shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the Penitentiary not less than two (2) years nor more than five (5) years. [Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34.]

Sections 1–33, 37–40, of this Act are published as Rev. Civ.St. art. 842d.

Art. 107f. Misappropriation of relief funds.

Felony; punishment

Section 19. Any person, or persons, charged with the duty or responsibility of administering, disbursing, auditing, or otherwise handling the funds provided for in this Act, and who shall knowingly misappropriate any such funds, or who shall knowingly and/or unlawfully distribute or expend any of same, shall be deemed guilty of a felony, and shall, upon conviction thereof, be confined in the State Penitentiary for a term of not less than one year and not more than five years.

Misrepresentations in procuring relief

Sec. 20. Any person, or persons, who shall knowingly make any false statement or misrepresentation in order to procure any sum or sums of money or other relief provided by this Act, or secure any relief or funds under any other than his true name, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00), or be confined in the county jail for a period of not exceeding three (3) months, or by both such fine and jail sentence. [Acts 1935, 44th Leg., p. 79, ch. 30.]

Sections 1–18, 21, 22 of this Act are published as Rev. Civ.St. Art. 842e.

CHAPTER 3.—ILLEGAL CONTRACTS AFFECTING THE STATE

Article 108. [106] Contracting without authority.—Whoever shall contract with any other person for his services or labor or for any property of any kind, with intent to charge the State of Texas with the same and without authority of law, shall be fined not less than one hundred nor more than two thousand dollars. [Act May 4, 1874, p. 221.]

Art. 108a. State contract printing not to be reproduced.—Except under contract or agreement with the State as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction or copy of same, or plate, type, mat, cut or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract. [Acts 1925, 39th Leg., ch. 78, p. 241, § 1.]

Art. 108b. Same; state printing defined.—Any printing done under contract for any department, the legislature or either branch thereof, any board, commission, court, officer or agent, of the State of Texas, as well as any such work done directly for the State, shall for the purposes of this Act be deemed to have been done for the State of Texas. [Acts 1925, 39th Leg., ch. 78, p. 241, § 2.]

Art. 108c. Same; printing and sale of extra copies.—Provided that with the consent of the State Board of Control and the Governor, any such person, firm, corporation or association may print extra copies and sell same at a price fixed by the State Board of Control, whenever in the opinion of the Board of Control and the Governor the printed matter should be

distributed in such manner for the benefit of the public. Provided that any such contract for the printing and sale of such extra copies shall be approved by the Attorney General. [Acts 1925, 39th Leg., ch. 78, p. 241, § 3.]

Art. 108d. Same; penalty for violations of act.—Any person, firm, corporation or association of persons violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars, and in the event the violation is by a natural person or the agent or employee of a person, corporation, firm or association the punishment may be by jail sentence not to exceed thirty days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also. [Acts 1925, 39th Leg., ch. 78, p. 241, § 4.]

Art. 109. [121] Storekeepers and accountants.—Any storekeeper or accountant of any institution placed by law under the control of the State Board of Control who shall sell to or in any way be concerned in the sale of any merchandise or other articles to any such institution, or who shall have any interest in any bid or contract therewith or with any other institution or department of the State Government, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 142; Acts 1915, p. 195.]

Art. 110. [122] Using State's merchandise.—No officer or employé created by the law governing this chapter shall ever use or receive for his own use any provisions, clothing, merchandise or other articles furnished by the State. Whoever violates the provisions of this article shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1899, p. 142.]

Art. 111. Institutions included.—The institutions contemplated in this chapter are those for the care of the insane, deaf and dumb, the blind, the orphans, the Confederate Home, and all other State institutions, educational or eleemosynary, now or hereafter established anywhere in Texas, excepting the penitentiary system and its management, and also excepting the Senate and House of Representatives and all departments in the State Capitol, including General Land Office. [Acts 1915, p. 198.]

Art. 112. Unlawfully creating deficiency.—Any regent, director, officer or member of any governing board of any educational or eleemosynary institution who shall contract or provide for the erection or repair of any building or other improvements or the purchase of equipment or supplies of any kind for any such institution, not authorized by specific legislative enactment, or by written direction of the Governor acting under and consistent with the authority of existing laws, or who shall contract or create any indebtedness or deficiency in the name of or against this State, not specifically authorized by legislative enactment, or who shall divert any part of any fund provided by law to any other fund or purpose than that specifically named and designated in the legislative enactment creating such fund, or provided for in any appropriation bill, shall be imprisoned in jail not less than ten days nor more than six months; the venue to be in the county in which may be located the institution affected by such acts of such offender. [Acts 1st C. S. 1913, p. 32.]

Art. 113. Sale of goods to inmates.—Any person appointed as manager, superintendent, clerk, or otherwise employed in or by any eleemosynary institution under the control or management of this State, or the wife of such appointee or employé, or any other person related within the third degree by affinity or consanguinity to the person so appointed or employed in such institution, who shall own, operate, manage, or in any way be pecuniarily interested in any store or other place of business where any merchandise is sold or offered for sale to inmates of such institution, shall be fined not less than twenty-five nor more than two hundred dollars. [Act November 15, 1921.]

CHAPTER 4.—COLLECTION OF TAXES AND OTHER PUBLIC MONEY

Article 114. [107] Extorting excessive taxes.—If any person authorized to collect or receive taxes or other money due the State shall extort or attempt to extort from any one a larger sum than is due, or shall receive any money or other reward as a consideration for granting any delay in the collection of such dues, or for doing any illegal act or omitting to do any legal act in relation to the collection of such money, he shall be fined not exceeding five hundred dollars. [P. C. 238.]

Art. 115. [124] [108] Tax officer exacting usury.—If any assessor or collector of taxes shall advance for a person owing taxes to the government

the amount of money so due, and shall charge therefor a rate of interest greater than ten per cent per annum, he shall be fined not exceeding five hundred dollars. [P. C. 239.]

Art. 116. [125] [109] Assuming taxes for reward.—Within the meaning of the preceding article is included the case of an assessor or collector who fails to collect taxes due and assumes to be responsible to the government therefor and receives for such act any compensation or reward. [P. C. 240.]

Art. 117. [126] [110] Collector failing to forward transcript.—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this article, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax under the law, and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the comptroller of public accounts a transcript or duplicate of the return and the amounts as shown by his record, this transcript and the record from which it is taken to show the amount of such quarterly returns, and the tax due thereon, from every person, firm or association of persons liable to such tax; and any collector failing to forward such transcript or duplicate, taken from the pages of such collector's record herein provided for, or who shall forward a false or pretended transcript of such account, shall be fined not less than fifty nor more than five hundred dollars. Nothing herein contained is intended to affect the liability which, in the absence of this statute, would be incurred under any penal enactment. [Acts 1879, p. 148.]

Art. 118. [127] [110a] Unlawfully issuing receipt.—Any tax collector who issues any occupation tax receipt without first taking or filing the affidavit required by law, shall be fined not less than ten nor more than one hundred dollars. [Acts 1895, p. 18.]

Art. 119. [128] [110b] Wrong license no protection.—No occupation tax receipt or license taken out by a merchant of a lower class than the one to which he properly belongs shall be any protection against a prosecution for knowingly pursuing that of a higher class and failing to pay the occupation tax due therefor. [Id.]

Art. 120. [129] [111] Obstruction of tax collections.—Whoever shall, by force or threats of force, prevent, or attempt to prevent the collection of taxes or other money due the State by an officer authorized to enforce such collection, shall be fined not less than one hundred nor more than five hundred dollars, and be imprisoned in jail not less than three months nor more than one year. When the means used to prevent the collection are such as to amount to a riot or unlawful assembly the punishment shall be that which is prescribed in article 456. [P. C. 241.]

Art. 121. [130] [112] [110] Pursuing occupation without license.—Whoever shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined not less than the amount of the taxes due and not more than double that sum.

Art. 122. [131] Plumbing without license.—Any person, whether as a master plumber, employing, or journeyman plumber, engaged in, working at, or conducting the business of plumbing without license as provided by law, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed One Hundred Dollars ($100). [Acts 1897, p. 237; Acts 1941, 47th Leg., p. 904, ch. 556, § 1.]

Art. 123. [132] [113] Penalty not exclusive.—The preceding articles shall not affect any civil remedy to enforce the collection of taxes.

Art. 124. [133] [114] Payment of tax bars prosecution.—Any person prosecuted under article 121 shall have the right at any time before conviction to have such prosecution dismissed upon payment of the tax and all costs of said prosecution and procuring the license on account of the failure to procure which, the prosecution was instituted, and no prosecution shall be commenced against any person after the procuring of said license, notwithstanding they may have followed such occupation, calling or profession before procuring said license; provided, said license shall cover the time said person has actually followed said occupation, calling or profession. [Acts 1881, p. 34.]

Art. 125. [134] [115] Refusal to render or swear to assessment.—Whoever shall refuse or neglect to make out and render a list of his taxable property when called upon in person by the assessor of taxes or his deputy, or shall fail or refuse to qualify to the truth of his statement of taxable property, or shall fail or refuse to subscribe to any oath required by law in the rendition of such property, shall be fined not less than twenty nor more than one thousand dollars. [Acts 1876, p. 196.]

Art. 126. [135] Assessment of national bank.—If any president, vice president, or cashier of any national bank shall fail or refuse to furnish the tax assessor or deputy tax assessor, when called upon to do so by such tax assessor or deputy tax assessor, a sworn statement, showing:

1. A list of the names of all the shareholders of the stock of such bank.
2. The number and amount of the shares owned and held by each shareholder in such bank.
3. The place of residence of each stockholder in such bank, if known. (If not known that fact shall be so stated.)
4. The amount of notes issued by such bank and circulating as money, or that is intended to circulate as money. (Stating such amount in dollars.)
5. The amount of money on hand or in transit, or in the hands of other banks, bankers, brokers or others, subject to draft, whether the same be in or out of the State.
6. The amount of indebtedness of such bank and how such indebtedness is evidenced.
7. The amount of paper evidencing indebtedness owned by such bank, which was acquired by such bank, either at par or at a discount.

They shall be fined not less than one hundred nor more than one thousand dollars, and be confined in jail not less than ten nor more than thirty days. [Acts 1897, p. 157.]

Art. 127. [136] Money and notes defined.—By the terms money and notes, mentioned in the preceding article, is meant all money owned and on hand by such bank, whether on deposit or otherwise. [Acts 1897, p. 157.]

Art. 128. [137] [116] Pretended transfer of coin, notes or bonds.—Any evasion by the means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books of gold or silver coin, bank notes or other notes or bonds, subject to taxation under the laws of this State, for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made

only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Sec. 1, Act March 23, 1891, Acts 1891, p. 39.]

Art. 129. [138] [116] Penalty for pretended transfer.—The president, cashier or secretary of any banking or other corporation, or any person that may be a party or privy to such fraudulent sale, exchange or transfer shall be fined not less than ten nor more than one hundred dollars, and in addition thereto shall be confined in jail not less than ten nor more than thirty days. [Sec. 2, Id.]

Art. 130. [139] [116] False affidavit.—All assessors of taxes shall require all tax payers when assessed by them, to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any have been made by them, and if it should be disclosed that any such pretended sale, exchange or transfer had been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State. [Sec. 3, Id.]

Art. 131. [140] [117] Failure to collect occupation taxes.—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaging in or pursuing any occupation on which, under the laws of this State, a tax is imposed, who fails or refuses to pay the same. Any collector of taxes who shall knowingly permit any person, firm or association of persons to engage in or pursue any occupation on which, by the laws of this State, a tax is imposed, without first paying all legal taxes assessed against such person, firm or association of persons, for such occupation, for State and county purposes, shall be fined not less than fifty nor more than five hundred dollars for every such offense. Evidence that such collector has made the affidavit herein required immediately against such person, firm or association of persons so pursuing an occupation in violation of law, shall be a defense against all prosecution under this article. [Acts 1887, p. 128.]

Art. 131a. False entries as to natural gas tax; destroying or secreting records.—Whoever shall, as a producer or purchaser or as agent or representative of a producer or purchaser, knowingly make any false entries or fail to make any proper entries in the books required by this Article with intent to defraud the State; or whoever, as such, shall knowingly make a false or incomplete report as required by the provisions of this Article; or whoever, as such, shall knowingly fail or refuse to make the report required to be made; or whoever, as such, shall destroy, mutilate, or secrete any of the records required to be kept by the provisions of this Article; or whoever shall, as such, hide or secrete with intent to defraud, any of the property upon which a lien is created hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum of not less than One Hundred Dollars ($100), nor more than One Thousand Dollars ($1,000), or be confined in the county jail not more than twelve (12) months, or by both such fine and imprisonment.

In addition thereto, such producer or purchaser or agent thereof shall forfeit to the State of Texas, for any said offense or the violation of any of the provisions hereof, or any rule or regulation, a penalty of One Thousand Dollars ($1,000) for each such offense to be recovered by the Attorney General in a civil suit in the name of the State of Texas; and the venue of such suit is hereby fixed in the county in which the offense occurs, and such suit may be brought separately or joined and made a part of any one civil suit provided for by this Article. The penalties prescribed in this Section, both Criminal and Civil, are in addition to any and all other penalties prescribed in this Article. [Acts 1931, 42nd Leg., p. 111, ch. 73, § 7; Acts 1941, 47th Leg., p. 269, ch. 184, Art. II, § 1.]

Sections 1–5, 8, 9 of this Act as amended by Acts 1941, 47th Leg., p. 269, ch. 184, art. II, § 1, are published as Rev.Civ.St. art. 7047b. Section 10 repealed in part article 6060, section 11 is published are article 7047c of the Rev. Civ.St., and sections 12 and 13, formerly published as article 7047c also, were repealed by Acts 1933, 43rd Leg., p. 383, ch. 153, § 22, as re-enacted by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1.

Art. 131b. [Repealed by Acts 1933, 43rd Leg., p. 383, ch. 153, § 22, as re-enacted and repealed by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1.]

Article repealed was Acts 1931, 42nd Leg., p. 111, ch. 73, §§ 14, 15.

Acts 1933, 43rd Leg., p. 383, ch. 153 as re-enacted and repealed by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, as amended by Acts 1933, 43rd Leg., 2nd C.S., p. 16, ch. 6, was repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31.

Art. 131c. [Re-enacted and repealed by Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1.]

Article repealed was Acts 1933, 43rd Leg., p. 383, ch. 153, §§ 11–21, 24, 25. Section 26 declared an emergency. Act as re-enacted was set out as article 131cc, post.

For repeal of Acts 1933, see note to article 131b, ante.

Art. 131cc. [Repealed by Acts 1935, 44th Leg., p. 575, ch. 241, § 31.]

Article repealed was Acts 1933, 43rd Leg., 1st C.S., p. 234, ch. 90, § 1 which re-enacted sections 11–21, 25, 26 of Acts 1933, 43rd Leg., p. 383, ch. 153, as amended by Acts 1933, 43rd Leg., 2nd C.S., p. 16, ch. 6.

Art. 131c—1. Cigarette tax; reports and information to Attorney General or Comptroller as confidential.

Information confidential; penalty for divulging

Section 16-a. All information derived or obtained by the Attorney General or the Comptroller from any such inspection of the books and records as is authorized in this Act,[1] and all information secured, derived or obtained by the Attorney General or the Comptroller from any record, report, instrument, or copy thereof, required to be furnished under the terms of this Act, shall be and shall remain confidential; and no record, report, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Act shall be open to public inspection, and all such information, records, reports, instruments and copies thereof shall be used by the Attorney General and the Comptroller solely for the purpose of enforcing the provisions of this Act.

Any employee of the Attorney General or of the Comptroller who (a) gives to any person, firm or corporation, any information secured, derived or obtained from the inspection or examination of books or records authorized under the terms of this Act or from the records, reports, instruments and/or copies thereof, required to be furnished under the terms of this Act, or (b) permits the inspection by any person, firm or corporation, of any of the reports, records, instruments, or copies thereof required to be furnished under the terms of this Act, or (c) gives a copy or copies of any such records, reports, instruments, or copy thereof required to be furnished under the terms of this Act to any person, firm or corporation, or (d) gives any information to any person, firm or corporation concerning the records of all or any parts of the reports, records, instruments, or copies thereof required to be furnished under the provisions of this Act, shall be guilty of a misdemeanor and shall be punished by confinement in the County Jail for not more than six (6)

months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), or by both such fine and imprisonment; provided, however, that it shall not be an offense under the terms of this Act for any employee of the Attorney General or of the Comptroller to furnish any such information as is hereinabove described to any other employee of the Attorney General or of the Comptroller where such information is furnished or given for use in the enforcement of this Act.

[1] This Article and Rev.Civ.St. Art. 7047c—1.

Unlawful acts enumerated

Sec. 19. Except as herein provided, it shall be unlawful for any person to have in his possession for sale, distribution or use, or for any other purpose, cigarettes upon which a tax is required to be paid by this Act,[1] without having affixed to each individual package of cigarettes the proper stamp evidencing the payment of such tax and the absence of said stamp on said individual package of cigarettes shall be notice to all persons that the tax has not been paid and shall be prima facie evidence of the nonpayment of said tax.

No person, other than a common carrier, shall transport within this State cigarettes, upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes or shall fail or refuse, upon demand of the Comptroller, to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

No person shall use, sell, offer for sale or possess for the purpose of use or sale, within this State, any previously used stamp or stamps or attach any such previously used stamp to an individual package of cigarettes.

No person shall, except as otherwise provided, purchase stamps from any person other than the Treasurer or sell stamps purchased from said Treasurer or sell or distribute cigarettes in this State without stamps affixed to each individual package regardless of whether such sale or distribution constitutes a first sale or otherwise.

No person shall knowingly use, consume or smoke, within this State, cigarettes upon which a tax is required to be paid without said tax having been paid.

No person shall use any artful device or deceptive practice to conceal any violation of this Act or mislead the Comptroller in the enforcement of this Act.

[1] This Article and Rev.Civ.St. art. 7047c—1.

Sale without affixing stamps

Sec. 25. (a) Whoever shall make a first sale of any cigarettes without a stamp being then and there affixed to each individual package, or (b) whoever shall sell, offer for sale, or present as a prize or gift any cigarettes without a stamp being then and there affixed to each individual package, or (c) whoever shall sell cigarettes in any quantities less than an individual package, or (d) whoever shall knowingly consume, use or smoke any cigarettes upon which a tax is required to be paid without a stamp being affixed upon each individual package, or (e) whoever possesses in violation of any provision of this Act [1] cigarettes, upon which a tax is required to be paid, in quantities of less than ten thousand (10,000) cigarettes, or (f) whoever shall knowingly cancel or mutilate any stamp affixed to an individual package of cigarettes for the purpose of concealing any violation of this Act, or with other fraudulent intent, or (g) whoever shall use any artful device or deceptive practice to conceal any violation of this Act, or (h) whoever shall mislead the Comptroller in the enforcement of this Act, or (i) whoever shall refuse to surrender to the Comptroller upon demand any cigarettes possessed in violation of any provision of this Act, or (j) whoever as distributor, or as agent, employee or representative of a distributor, shall make a first sale of any cigarettes without at the time of said first sale having a valid permit, or (k) make a first sale without at the time of said first sale having a permit posted so as to be easily seen by the public, or (l) whoever as distributor, wholesale dealer, or the agent, employee or representative of a distributor or wholesale dealer, shall fail to deliver an invoice required by law to be delivered to a purchaser of cigarettes, or (m) whoever as wholesale dealer or retail dealer or the agent, employee or representative of a wholesale dealer or retail dealer, shall sell cigarettes without at the time of said sale having a valid permit, or (n) sell cigarettes without at the time of said sale having a permit posted so as to be easily seen by the public, or (o) whoever as distributing agent shall store or distribute unstamped cigarettes without at the time of said storage or distribution having a valid distributing agent's permit 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).

[1] This Article and Rev.Civ.St. art. 7047c—1.

Unlawful transportation

Sec. 26. (a) Whoever shall knowingly transport any cigarettes in quantities of more than forty (40) cigarettes without a stamp being then and there affixed to each individual package, or (b) while transporting cigarettes shall wilfully refuse to stop the motor vehicle he is operating when called upon to do so by a person authorized to stop said motor vehicle, or (c) refuse to permit a full and complete inspection of his cargo by said authorized person, or (d) whoever shall refuse to permit a full and complete inspection by said authorized person of any premises where cigarettes are manufactured, produced, made, stored, transported, sold or offered for sale or exchange, or (e) whoever shall use, sell, offer for sale or possess for the purpose of use or sale, any previously used stamps, or (f) attach or cause to be attached to any individual package of cigarettes any previously used stamp, or (g) use or consent to the use of any previously used stamps in connection with the sale or offering for sale of any cigarettes, or (h) whoever shall purchase stamps from any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said purchase, or (i) whoever shall sell any lawfully issued stamps to any person other than the Treasurer without then and there having a requisition from the Comptroller authorizing said sale, or (j) whoever shall possess in violation of any provision of this Act [1] cigarettes upon which a tax is required to be paid in quantities of ten thousand (10,000) or more cigarettes, or (k) whoever as distributor or distributing agent, or as the agent, employee or representative of a distributor or a distributing agent shall knowingly make, deliver to and file with the Comptroller a false return or report, or an incomplete return or report, or (l) whoever shall knowingly fail to make and deliver to the Comptroller a return or report as required by the provisions of this Act to be made, or (m) whoever as distributor, wholesale dealer, retail dealer or distributing agent, or as the agent, employee, or representative of a distributor, wholesale dealer, retail dealer or distributing agent, shall destroy, mutilate or secrete any of the books and records required herein to be kept, or (n) shall refuse to permit the Comptroller, or the Attorney General to inspect, examine and audit any books and records required herein to be kept, or any other records incident to the conduct of the cigarette business that may be kept, or (o) shall knowingly make any false entry or fail to make entries in the books and records required by the provisions of this Act to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, or (p) shall fail to keep for a period of two (2) years in Texas any books and records required herein to be kept by a distributor, wholesale dealer, retail dealer or distributing agent, shall be guilty of a felony and shall be pun-

ished by confinement in the State Penitentiary for not more than two (2) years or by confinement in the County Jail for not less than one (1) month nor more than six (6) months, or by a fine of not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5,000) or by both such fine and imprisonment.

Provided that if any penalties prescribed in Section 25 of this Act overlap as to offenses which are also punishable under Section 26 of this Act, then the penalties prescribed by this Section shall apply and control all other penalties.

[1] This Article and Rev.Civ.St. art. 7047c—1.

Venue of prosecutions

Sec. 27. Venue of a prosecution under the preceding Section shall be in Travis County, Texas, or in the County in Texas where the offense occurred.

Counterfeiting stamps

Sec. 28. Any person who shall print, engrave, make, issue, sell or circulate, or who shall possess, or have in his possession, with intent to use, sell, circulate or pass, any counterfeit stamp, or who shall use, or consent to the use of, any counterfeit stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp, shall be guilty of a felony and upon conviction, shall be punished by confinement in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

Venue of prosecutions

Sec. 29. Venue of a prosecution under the preceding Section shall be in Travis County, Texas. [Acts 1935, 44th Leg., p. 575, ch. 241.]

Sections 1–16, 17, 18, 20, 24, 30–34, of this Act are civil provisions. See Rev.Civ.St. Art. 7047c—1.

This act imposing tax on first use or consumption of cigarettes within state held unconstitutional burden on interstate commerce by interference with ownership of cigarettes purchased in interstate commerce and restricting sales in interstate commerce. Sheppard v. Musser, Civ. App., 89 S.W.2d 222, modified 127 T. 193, 92 S.W.2d 219, appeal dismissed 57 S.Ct. 121, 299 U.S. 513, 81 L.Ed. 379.

Art. 132. [143] [119] [114c] Officer purchasing property sold for taxes.—If any sheriff, or collector of taxes, deputy sheriff, or deputy collector, or any employé of such sheriff or collector authorized by him to collect or receive taxes, or to assist in any way in making sales for the collection of taxes, shall in the county where he resides, bid for, purchase, or attempt to purchase, or be in any way interested in the purchase of any property, either real or personal, at any sale of such property, made or attempted to be, for the collection of State and county taxes, or either, he shall be fined not less than ten nor more than one thousand dollars, and any such officer so offending shall be guilty of official misconduct and upon conviction shall be removed from office. [Acts 1883, p. 7.]

Art. 133. [144] [119a] Tax collector fail to perform certain duties.—If at the end of any month the collector of taxes shall fail to make to the Commissioners Court his itemized monthly report of all tax collections for the county, or pay over to the county treasurer the amount due by him to the county, or if he shall fail to make out and post, between April 1 and 15 of each year, a list of delinquent or insolvent tax payers, he shall be fined not less than three hundred nor more than one thousand dollars. Each failure is a separate offense. [Acts 1893, p. 91.]

Art. 134. [145] [119b] Occupation tax receipt.—Any collector of taxes in this State, who shall issue an occupation tax receipt upon any blank paper, or blank of any kind whatever other than the blank occupation tax receipt furnished to him as required by law, shall be fined not less than one hundred nor more than five hundred dollars. Each receipt so unlawfully issued is a separate offense. [Id.]

Art. 135. Failure to make entry of payments.—The collector of taxes, or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year for which such tax was assessed; said receipt shall also show the number of acres in each separate tract, number, abstract and name of original grantee, and any city or town lot and name of city or town, and total value of all property assessed; said receipt shall have a duplicate to be retained by such collector. The collector of taxes shall provide himself with a seal as provided by law and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate. Such collector when any taxes are paid shall insert in the margin of the tax rolls the words and figures as follows:

"Taxes paid ——— day of ———" [1] No. of receipt ———" the date to be filled in and the receipt number to be given; and any tax collector, or his deputy, who shall fail to comply with any provision of this article imposing the duty to make such entry of taxes paid upon the tax roll, as above described, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1921, p. 136.]

[1] So in enrolled bill. The quotation marks should probably be omitted.

Art. 136. [146] [119c] Clerk failing to make certificate.—If the county clerk shall fail to examine the monthly reports of the collector of taxes, and within two days after the presentation to him of said reports by the collector, fail to certify to their correctness as regards names, dates and amounts, or shall fail to file with the reports intended for the Commissioners Court, together with the tax receipt stubs in his office for the next regular meeting of the Commissioners Court, he shall be fined not less than fifty nor more than two hundred dollars. Each failure is a separate offense. [Acts 1893, p. 92.]

Art. 137. [147] Refusal to make additional report of gross receipts.—If the Comptroller has reason to believe, that any individual, company, corporation, association, receiver or receivers subject to the provisions of the law providing for the levy of occupation taxes, has made a false return, or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of said law, he shall report the same in writing to the Governor, and the Governor shall immediately require the Comptroller to cause to be examined any books, papers or other records or evidence tending to show such unlawful act or omission. The person designated by the Comptroller shall check the report made with such books, papers, or other records or evidence, and make his report to the Comptroller, and if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this Act to make reports, has failed or omitted to make a full return, as required by law, then the Comptroller shall notify such individual, or the president, treasurer, or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional report, and if such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional report he shall be fined not less than two hundred nor more than five hundred dol-

lars. Venue of such prosecution is hereby fixed in Travis County. [Acts 1907, p. 488.]

Art. 138. Gross receipts tax.—Every person, whether as an individual or as a member of a company, firm, partnership or unincorporated company or association, or as an officer, agent, director or employé of a corporation, who wilfully transacts business in this State upon which a gross receipts tax is required by law to be paid, without obtaining a permit from the Secretary of State to do so, or who transacts such business after such permit has been legally suspended, or who wilfully aids a corporation or a person to so unlawfully transact business, shall be fined not less than fifty nor more than two hundred and fifty dollars for each day or part of a day that such person is engaged in violating this article. Each day shall be a separate offense. [Act April 4, 1918, Sec. 4, p. 177.]

Art. 139. [148] Failing to make franchise tax report.—Every person required by the law prescribing franchise taxes to be paid by corporations to make any annual report to the Secretary of State who shall for a longer period than five days, and every person who shall for more than ten days after the mailing by the Secretary of State demand upon him for another report, which the Secretary of State is by this law authorized to require, fail or refuse to make such report shall be fined in any sum not less than fifty nor more than two hundred dollars. Each day of such failure or refusal after the expiration of said five days or said ten days, as the case may be, is a separate offense. [Acts 1907, p. 505.]

Art. 140. Failure to file inheritance report.—Any administrator, executor or trustee of the estate of a decedent leaving property subject to taxation under the statutes relating to inheritance taxes who fails or refuses to file within the time prescribed by law a report in duplicate, one with the Comptroller and the other with the County Clerk of the county where such decedent resided at the time of his death or wherein the principal part of the estate is located, giving the information required by law as to such estate, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 2 C. S. 1923, p. 67.]

Art. 141. [149] Using name of defunct corporation.—In all cases in which the charter or right to do business of any private domestic corporation heretofore or hereafter chartered under the laws of this State or the permit of any foreign corporation or its right to do business within this State shall have been or shall hereafter be forfeited it shall be unlawful for any person or persons who were or shall be stockholders or officers of such corporation at the time of such forfeiture to do business within this State in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the sign or advertisements which were used by such corporation before such forfeiture. Whoever violates any provision of this article shall be fined not less than one hundred nor more than one thousand dollars. This article shall not apply where the right of such corporation to do business within this State has been revived in the manner provided by law and it is at the time in good standing. [Acts 1905, p. 335, Acts 1907, p. 507.]

Art. 141a. [Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17.]

The article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 17, as amended Acts 1931, 42nd Leg., p. 163, ch. 98, § 6.

Art. 141a—1. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 28.]

The article repealed was Acts 1933, 43rd Leg., p. 75, ch. 44, § 15, Acts 1935, 44th Leg., p. 558, ch. 240, § 13.

Art. 141a—2. [Repealed by Acts 1941, 47th Leg., p. 269, ch. 184, Art. XVII, § 28.]

The article repealed was Acts 1933, 43rd Leg., p. 75, ch. 44, § 15-a, added Acts 1935, 44th Leg., p. 558, ch. 240, § 14.

Arts. 141b—141d. [Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17.]

The articles repealed were Acts 1929, 41st Leg., 2nd C. S., p. 172, ch. 88, § 17, as amended Acts 1931, 42nd Leg., p. 163, ch. 98, § 6.

Art. 141e. Disclosing information as to franchise tax report.—If the Secretary of State or any other State officer or employee, or any other person, having access to any franchise tax report filed as provided by law, including any shareholder who is permitted to examine the report of any corporation as provided in Section 2 hereof, shall make known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particulars thereof, or any other information pertaining to the financial condition of the corporation set forth or disclosed in such report, he shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or confinement in jail for not exceeding one year, or both. [Acts 1931, 42nd Leg., p. 441, ch. 265, § 3.]

Section 1 of this Act is published as Rev.Civ.St. Art. 7084, and section 2 as Rev.Civ.St. Art. 7089. Section 3 repeals part of Article 7089a.

Arts. 141b—141d. [Repealed by Acts 1933, 43rd Leg., p. 75, ch. 44, § 17.]

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 Rev.Civ.St. art. 7164a.

CHAPTER 5.—DEALING IN PUBLIC LANDS BY OFFICERS

Article 142. [164] [123] [118] Officer dealing in public land.—If any person who is an officer or clerk in the general land office, or a district surveyor, or deputy district surveyor, or county surveyor, or his deputy, shall directly or indirectly be concerned in the purchase of any right, title or interest in any public land, in his own name or in the name of any other person, or shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office other than the fees allowed by law, he shall be fined not exceeding five hundred dollars. [P. C. 244, amended in revising 1879.]

Art. 142a. Lists of public lands for sale or lease; reproducing, preparing, selling or furnishing.—Section 1. It shall be unlawful for any person, firm, corporation or association of persons, to reproduce, print, or prepare or to sell or furnish any printed, multigraphed or mimeographed list or lists prepared by or under the direction of the Commissioner of the General Land Office of the State of Texas, offering for sale or lease any State or Public School Land; provided that nothing herein shall prohibit the Commissioner of the General Land Office or the School Land Board from advertising in newspapers or otherwise as is provided by law; and provided further, that newspapers and periodicals may publish such lists in their regular issues as news items.

Sec. 2. Any person, firm, corporation or association of persons violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than One Thousand ($1,000) Dollars. The conviction of an agent or employee shall not bar conviction of the principal also. [Acts 1943, 48th Leg., p. 356, ch. 235.]

Art. 143. [165] [124] [119] Misconduct of land office clerk.—Any clerk or other employee in the general land office, who shall accept or receive from any person money or other thing of value in consideration of services performed in the designation of vacant land, or in discovering or making known to such person any defects in any file or any paper or document in said office, or who shall perform any work out of office hours or receive extra compensation for any work performed in office hours, or who shall handle or interfere with the records and files of said office except in office hours, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1873, p. 182.]

Art. 144. [167] Furnishing advance information of survey.—The information obtained by any survey of the public school, university, asylum or state land made by the board of regents of the University of Texas shall not be communicated by said board or by the person making such survey to any person except the Commissioner of the General Land Office until said information is published for the benefit of the general public. Anyone violating this article shall be fined not exceeding one thousand dollars, or imprisoned not to exceed two years in jail. [Act 1903, p. 234.]

Art. 145. Surveyor discovering public land.—If a licensed land surveyor should discover an undisclosed tract of public land he shall not make known that fact to any one except to the person or persons as may have it enclosed, but he shall forward to the General Land Office a report of the existence of such tract and the acreage therein and its probable value, and on violation of these provisions by such surveyor he shall be fined not to exceed one thousand dollars. [Acts 2nd C. S. 1919, p. 173.]

CHAPTER 6.—PERSONAL PROPERTY OF THE STATE

Article 146. [173] Failure to make inventory.—Any officer or other person whose duty it is under the laws of this State to make an inventory of personal property belonging to the State, who fails to make such inventory as required by such laws, shall be fined not less than one hundred nor more than five hundred dollars. Each thirty days failure to comply is a separate offense. [Acts 1899, p. 309, Acts 4th C. S. 1918, p. 72.]

Art. 146a. Failure to make report as to use of State automobile or truck or making false report.

Report of use

Section 1. Whoever uses an automobile or truck owned by this State for any purpose shall make a written report of such use to the Head of the Department, Institution, Board, Commission, or other Agency of this State having charge of such automobile or truck, such reports to be made daily when such vehicles are in use, a separate report being made for each day, and such reports shall be made on forms prescribed by the State Auditor. Such reports shall show the purpose for which such vehicle was used, the mileage traveled, the amounts of gasoline and oil consumed, the passengers carried, and such other information as may be necessary to provide a proper record of the use of such vehicle. Said reports shall be official records of the State and shall be subject to inspection by any official of this State who shall be authorized to audit or inspect claims, accounts or records of any State Department, Institution, Board, Commission or Agency of the State.

Penalty for failure to make reports

Sec. 2. Whoever uses any automobile or truck owned by this State for any purpose and fails to make and file a report of such use as required by this Act within ten (10) days after the use of said automobile or truck shall be fined not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00).

Penalty for making false report

Sec. 3. Whoever uses any automobile or truck owned by this State for any purpose and makes a false or fraudulent report of such use shall be fined not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00). [Acts 1931, 42nd Leg., p. 374, ch. 220.]

Art. 147. [173a] Secreting or disposing of military property.—Whoever shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipments or other military property, issued under any provision of the law or of the military regulations of this State, and any person who shall wear any uniform, or part thereof, or device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of the State, or similar thereto, except members of the army of the United States or the active militia of this or any other State shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1905, p. 183, Acts 1st C. S. 1917, p. 20.]

Art. 147a. Preservation of archaeological matter.—Sec. 1. It shall hereafter be unlawful for any person in this State to remove, destroy, or mutilate any archaeological matters in caves, rock shelters, or in prehistoric burials, camp sites, kitchen middens, funeral mounds, prehistoric paintings, engravings, or inscriptions; west of the Pecos River; or to remove, destroy, or mutilate any prehistoric bones or relics in this State West of the Pecos River, except as herein provided, and if any person shall violate the provisions hereof, he shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than One ($1.00) Dollar or not more than Twenty-five ($25.00) Dollars.

Sec. 2. If any person shall desire to remove, mutilate or destroy any protected archaeological matters.

prehistoric bones and relics, unless the same be for the purpose of cleaning, clearing or removing of same from any waters or lands for the purpose of building any highway or making any improvement, when such clearing is reasonably necessary thereto, he shall, at the time of such removal, mutilation or destruction, have in his possession the consent of the owner of said land in writing, which said instrument shall clearly describe said land and clearly grant such authority, stating the name of the person to whom it is granted, and shall bear the address of the permitor and permitee. Provided, however, that if the owner of said land be a non-resident, of said county, then such consent must be acknowledged by a Notary Public or other authority, in the same manner as a conveyance; if said lands be State lands, or public lands, then the consent of the Commissioners' Court of said county, in writing shall be had. Every such person removing the above described property shall have in his possession at the time of said removal, and while the same is being removed, and while the same is at any other time in his possession, such written consent, and shall exhibit the same to any peace officer. But the Commissioners' Court in granting such permit shall take into consideration the limited supply of such matters in said county, and shall see that only such soil is taken as is actually necessary to preserve same in removing them, and that the same are not exhausted by such removal.

Sec. 3. The sections and parts of sections hereof are hereby declared independent of each other, and should the courts declare invalid any sections or parts of sections hereof, then it is hereby declared as the Legislative intent that the remaining sections or parts of sections would have been enacted without such invalid sections or parts thereof. [Acts 1931, 42nd Leg., 1st C.S., p. 71, ch. 32.]

Art. 147b. Forging archaeological objects.

Misdemeanor

Section 1. 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.

Indian paintings, carvings and hieroglyphics

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.

Permit to nonresidents to explore or excavate

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 archeological or paleontological investigations, explorations, or excavations. Provided, however, that exploration to determine the presence of said archeological 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.

Termination of permits

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.

Partial invalidity

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.

Violation a misdemeanor; forfeiture

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.]

Art. 147c. Insignia of Texas Defense Guard; unlawful wearing, purchase, or sale.—Section 1. It shall be unlawful for any person not an officer or enlisted man of the Texas Defense Guard to wear either one or more of the shoulder patch, the arm brassard and the collar ornaments, which are duly prescribed as parts of the uniform of the Texas Defense Guard, or any imitation of said articles; provided that the foregoing provision shall not be construed to forbid that any person wear such shoulder patch, arm brassard and collar ornaments in any playhouse or theatre or in moving-picture films while actually engaged in representing therein a character of said Defense Guard not tending to bring discredit or reproach upon the said Defense Guard.

Sec. 2. It shall be unlawful for any officer or enlisted man of the Texas Defense Guard to purchase, wear, or have in his possession any shoulder patch, arm brassard or collar ornaments which are duly prescribed as a part of the uniform of the Texas Defense Guard, or any imitation of said articles, unless such shoulder patch, arm brassard and collar ornaments have been purchased either through the office of the Adjutant General of Texas or on a purchase order therefor approved by the said Adjutant General or some person designated by such Adjutant General to approve such purchase order.

Sec. 3. It shall be unlawful for any person to sell or offer for sale, or dispose of, or purchase any shoulder patch, arm brassard, or collar ornaments which are duly prescribed as a part of the uniform of the Texas Defense Guard except when and as authorized under such regulations as may be prescribed by the Governor of Texas.

Sec. 4. Any person who offends against any one or more of the provisions of Sections 1 to 3 inclusive

of this Act shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine not exceeding Three Hundred Dollars ($300), or by imprisonment for not exceeding six (6) months, or by both such fine and imprisonment. Each occasion upon which one or more of the provisions of said Sections 1 to 3 inclusive are offended against shall be a separate offense and punishable as such. [Acts 1941, 47th Leg., p. 814, ch. 504.]

Art. 147d. Postage meters of state; imprint plates; private use prohibited.—Section 1. Each State Department, Board, Commission, or State Educational Institution which has installed a postage meter machine must place an imprint plate on such machine, showing: first, that the mail carried by such postage is official State of Texas mail; and second, that there is a penalty for the unlawful use of such postage meters for private purposes.

Sec. 2. Whoever shall make use of such postage meter machines to avoid the payment of postage or registry fee on his private letter, packet or package or other matter in the mail, shall be fined not more than Three Hundred ($300.00) Dollars.

Sec. 3. The installation and cost of such imprint plates shall be paid from appropriations for postage and contingent expenses made to the various State Departments, Boards, Commissions, or State Educational Institutions. [Acts 1943, 48th Leg., p. 231, ch. 147.]

CHAPTER 7.—THE FLAG AND LOYALTY

Art.
148. Protecting the flag.
149. Exceptions.
150. Using Texas flag to advertise.
151. Sale of article with flag thereon.
152. Insult to United States flag.
153. Disloyalty in writing.
154. Possessing flag of enemy.
155. Disloyal language.
156. Arrest without warrant. Venue.
157. Discrimination against uniform.

Article 148. Protecting the flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States of America, or State flag of this State, or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color, or ensign, upon which, after this Act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall after this Act takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this Act takes effect, shall have been printed, painted, attached or otherwise placed a representation of any such flag or flags, standard, color or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt either by words or act, upon any Texas flag, standard, color or ensign, shall be fined not exceeding one hundred dollars or be imprisoned in jail for not more than thirty days, or both. The words flag, standard, color or ensign as used in this article shall include any flag, standard, color, ensign or any picture or representation of either, made of or represented on any substance, and of any size purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and the stripes in any number of either or by which one seeing the same without deliberation may believe the same to represent the flag, colors standard or ensign of the United States of America. The possession by one other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this article, or of any article or substance or thing on which shall be anything made unlawful at any time by this article, shall be presumptive evidence that the same is in violation of this article, and was made, done or created after this Act takes effect, and that such did not exist when this law took effect. [Acts 3rd C. S. 1917, p. 82.]

Art. 149. Exceptions.—The preceding article shall not apply to any act permitted by the Statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence on any of which shall be printed, or placed said flag, disconnected from any advertisement. [Id.]

Art. 150. Using Texas flag to advertise.—No person shall use any imitation, label, trade-mark, design, device, imprint or form of the flag of the State of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose. Any person, whether in his individual capacity or as an officer, agent or receiver of any corporation, who shall violate this article shall be fined not less than fifty nor more than one hundred dollars, and each day is a separate offense. No provision of this article shall apply to any fraternal or patriotic organizations using the Texas flag for an emblem. [Acts 1st C. S. 1913, p. 28.]

Art. 151. Sale of article with flag thereon.—No person shall offer or expose for sale any article or commodity of commerce bearing the imitation, design, imprint or form of the flag of the State of Texas. Any person whether in his individual capacity or as an officer, agent or receiver of any corporation who shall violate this article shall be fined not less than twenty-five nor more than fifty dollars. Each day shall be a separate offense. [Id.]

Art. 152. Insult to United States Flag.—Any person who shall within this State, publicly or privately, mutilate, deface, defile, defy, tramp upon, or cast contempt upon, either by word or act any flag, standard, color, or ensign of the United States, or that of any of its officers, or on any imitation of either of them, shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 14.]

Art. 153. Disloyalty in writing.—Any person, who shall at any time and place within this State, during the time the United States is at war with any other nation, or nations, commit to writing or printing, or both writing and printing, by letters, words, signs, figures, or any other manner, and in any language, anything of and concerning the United States, the entry or continuance of the United States in the war, or of and concerning the army, navy or marine corps of the United States, any flag, standard, color, or ensign of the United States, or any imitation thereof, or uniform of any of its officers, which is abusive in character, or disloyal to the United States, and reasonably calculated to bring into disrepute the United States, the entry, or continuance of the United States in the war, the army, navy, or marine corps of the United States, any flag standard, color or ensign of the United States, or that of any of its officers, and reasonably calculated to provoke a breach of peace if

written to or in the presence of a citizen of the United States, or if said in the presence and hearing of any citizen of the United States shall be confined in the penitentiary not less than two years nor more than twenty-five years. [Id.]

Art. 154. Possessing flag of enemy.—Whoever during the existence of a war between the United States and any other nation or nations shall knowingly within this State display, or have in his possession for any purpose whatsoever, any flag, standard, color, ensign or coat of arms of any nation with which the United States is at war or any imitation thereof, or that of any State, subdivision, city or municipality of any such nation shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 14.]

Art. 155. Disloyal language.—If any person shall, at any time or place within this State, during the time the United States of America is at war with any other nation, use any language in the presence and hearing of another person, of and concerning the United States of America, the entry, or the continuance, of the United States of America in the war, or of and concerning the army, navy, or marine corps of the United States of America, or of and concerning any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the uniform of any officer of the army of the United States of America, which language is disloyal to the United States of America, or abusive in character, and calculated to bring into disrepute the United States of America, the entry, or continuance, of the United States of America in the war, the army, navy, marine corps of the United States of America, or any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the flag, color, standard, or ensign, or the uniform of any officer of the army of the United States of America, and is of such nature as to be reasonably calculated to provoke a breach of the peace, if said in the presence and hearing of a citizen of the United States of America, shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 12.]

The Disloyalty Act, prohibiting the use of disloyal talk of such nature as to be reasonably calculated to provoke a breach of the peace while the government is at war violates Bill of Rights, § 8, relating to free speech, freedom of the press, etc. Ex parte Meckel, 87 Cr.R. 120, 220 S.W. 81.

Art. 156. Arrest without warrant. Venue.—Any officer without warrant may arrest anyone violating any provision of the four preceding articles when the offense is committed in his presence or within his view, or within the view of a magistrate, and such officer about to make such arrest is authorized to require the offender to at once desist from such violation. Travis county shall also have venue of said offenses. The Suspended Sentence Law shall not apply to such offenses. [Acts 4th C. S. 1918, p. 14.]

Art. 157. Discrimination against uniform.—Whoever shall subject or cause to be subjected any other person to the deprivation of any right, privilege or immunity usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time by law, regulation of the service or custom, on account of his wearing such uniform or of his being in such service, subject only to the limitations established by law and applicable alike to all persons, or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1st C. S. 1917, p. 20.]

TITLE 5—OFFENSES AFFECTING THE EXECUTIVE, LEGISLATIVE AND JUDICIAL DEPARTMENTS OF THE GOVERNMENT

CHAPTER 1.—BRIBERY

Article 158. [174] [125] Bribery of certain officers.—Whoever shall bribe or offer to bribe any executive, legislative or judicial officer after his election or appointment, and either before or after he shall have been qualified or entered upon the duties of his office, with intent to influence his act, vote, option,[1] decision or judgment on any matter, question, cause or proceeding which may be then pending or may thereafter by law be brought before such officer in his official capacity, or do any other act or omit to do any other act in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

[1] So in enrolled bill. Should probably read "opinion."

Art. 159. [175] [126] Officers accepting bribe.—Any legislative, executive or judicial officer who shall accept a bribe or consent to accept a bribe under an agreement or with an understanding that his act, vote, opinion or judgment shall be done or given in any particular manner or upon a particular side of any question, cause or proceeding which is or may thereafter by law be brought before him, or that he shall make any particular nomination, appointment, or do any other act or omit to do any act in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 160. [176] [127] Officers specified.—Under the name of executive, legislative and judicial officers are included the governor, lieutenant-governor, comptroller, secretary of state, state treasurer, commissioner of the general land office, commissioner of agriculture, commissioner of insurance, superintendent of public instruction, members of the legislature, aldermen of all incorporated cities and towns, judges of the supreme, district and county courts and of the courts of appeals, attorney general, district and county attorneys, justices of the peace, mayors and judges of such

city courts as may be organized by law, county commissioners, school trustees, and all other city, county and State officials. [Acts 1885, p. 69; Acts 1899, p. 320.]

Art. 161. [177] [128] Bribery of clerks, etc.—Whoever shall bribe or offer to bribe, any clerk or other officer of either branch of the Legislature, or any clerk or employé in any department of the State government, with the intent to influence such officer to make any false entry in any book or record pertaining to his office, or to mutilate or destroy any part of such book or record, or to violate any other duty imposed upon him as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 162. [178] [129] Accepting bribe by same.—If any officer named in the preceding article shall accept a bribe so offered, or consent to accept the same, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 163. [179] [130] Bribery of auditor, juror, etc.—Whoever shall bribe or offer to bribe any auditor, juror, arbitrator, umpire or referee, with intent to influence his decision or bias his opinion in relation to any cause or matter which may be pending before, or may thereafter by law be submitted to such auditor, juror, arbitrator, umpire or referee, shall be imprisoned in the penitentiary not less than two nor more than five years. [Acts 1858, p. 160.]

Art. 164. [180] [131] Acceptance of bribe by same.—If any juror, auditor, arbitrator, umpire or referee shall accept, or agree to accept, a bribe offered for the purpose of biasing or influencing his opinion or judgment, as set forth in the preceding article, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 165. [181] [132] Offense complete, when.—To complete the offenses mentioned in the two preceding articles, it is not necessary that the auditor, umpire, arbitrator or referee shall have been actually selected or appointed; it is sufficient if the bribe be offered or accepted with a view to the probable appointment or selection of the person to whom the bribe is offered, or by whom it is accepted. Nor is it necessary that the juror shall have been actually summoned; it is sufficient if the bribe be given or accepted in view of his being summoned or selected as such to sit in any particular case, civil or criminal.

Art. 166. [182] [133] Bribery of attorneys.—Whoever bribes or offers to bribe any attorney at law charged with the prosecution or defense of a suit, with intent to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or with intent to induce him to give counsel or in any way advise or assist the opposite party to the injury of his client in any cause, civil or criminal, or to neglect the interests of his client, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 167. [183] [134] Acceptance of bribe by attorney.—If any attorney at law charged, as above stated, with the management of any cause, civil or criminal, shall accept or agree to accept a bribe offered to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or to give counsel or in any way advise or assist the opposite party to the injury of his client or to neglect the interests of his client, he shall be punished in the manner provided in the preceding article.

Art. 168. [184] [135] Bribery of clerks of court.—Whoever shall bribe or offer to bribe any clerk or deputy clerk of any court of record to induce such officer to alter, destroy or mutilate any book, record or paper pertaining to his office, or to surrender to the person offending any book, record or paper for any unlawful purpose, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 169. [185] [136] Acceptance of bribe by clerk.—If any clerk or deputy clerk of any court of record shall accept or agree to accept a bribe offered for the purpose enumerated in the preceding article, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 170. [186] [137] Bribery of clerks to violate duty.—Whoever shall bribe or offer to bribe any officer named in Article 168 to do or omit to do any other act not enumerated in said article in violation of the duties of his office, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 171. [187] [138] Bribe to permit escape.—Whoever shall bribe or offer to bribe any sheriff or other peace officer to permit any prisoner in his custody to escape shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 172. [188] [139] Bribe as to process.—Whoever shall bribe or offer to bribe any sheriff or other peace officer, in any case, civil or criminal, to make a false return upon any process directed to him, or fail to return any such process, or summon, or fail to summon any one to serve on a jury, with a view to produce a result favorable to a particular side in any cause, civil or criminal, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 173. [189] [140] Bribery of peace officer.—Whoever shall bribe, or offer to bribe, a sheriff or any other peace officer to do or to omit to do any other act not heretofore enumerated in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 174. [190] [141] Acceptance of bribe by officer.—If any sheriff or other executive or peace officer shall accept or agree to accept a bribe offered, as mentioned in articles 171, 172 and 173, he shall receive the same punishment as is affixed to the offense of giving or offering a bribe in the particular case specified.

Art. 175. [191] [142] Bribery of witness.—Whoever shall bribe, or offer to bribe any witness in any case, civil or criminal, to disobey a subpœna or other legal process, or to avoid the service of the same by secreting himself, or by any other means, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1860, p. 95.]

Art. 176. [192] [143] Acceptance of bribe by witness.—If any witness in any case, civil or criminal, shall accept or agree to accept a bribe offered for any purpose mentioned in the preceding article, he shall be imprisoned in the penitentiary not less than two nor more than five years. [Id.]

Art. 177. [193] [144] "Bribe."—By a "bribe" as used throughout this Code, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing an officer or other person, such as are named in this chapter, in the performance of any duty, public or official, or as an inducement to favor the one offering the same, or some other person.

Art. 178. [194] [145] Bribe need not be direct.—The bribe need not be direct; it may be hidden under the semblance of a sale, wager, payment of debt, or in any other manner designed to cover the true intention of the parties. The bribe or promise thereof must precede the act which it is intended to induce the one bribed to perform.

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.]

Art. 178b. Bribery of officials, players and participants in athletic contests.—Whoever gives, promises or offers to any professional or amateur baseball, football, hockey, polo, tennis, or basketball player, or boxer or any player who participates or expects to participate in any professional or amateur game or sport, or to any manager, coach, or trainer of any team or participant or professional participant in any such game, contest, or sport, any gift, emolument, money, or thing of value, testimonial, or privilege with the intent to influence him to lose or try to lose or cause to be lost or to eliminate his or his team's margin of victory in any of said professional or amateur sports, games or contests in which such player or participant is taking part, or expects to take part, or has any duty or connection therewith, or who being a professional or amateur baseball, football, hockey, basketball, tennis, or polo player, boxer or prospective participant in any sport or game or a manager, coach or trainer of any team or individual participant or prospective participant in any such game, contest, or sport solicits or accepts any gift, emolument, money, or thing of value, testimonial, or privilege to influence him to lose, or try to lose, or cause to be lost, or to eliminate his or his team's margin of victory in said games, sports or contest in which he is taking part or expects to take part or has any duty in connection therewith, is guilty of a felony punishable by imprisonment for not less than one (1) year nor more than five (5) years. [Acts 1947, 50th Leg., p. 1009, ch. 427, § 1.]

CHAPTER 2.—LOBBYING

Art.
179. Defining lobbying.
180. Privately soliciting vote of legislator.
181. Exceptions.
182. Penalty.
183. Prohibited from going on floor.

Article 179. [195] Defining lobbying.—If any person having any direct interest, or the president or any other officer of any corporation having any direct interest in any measure pending before, or thereafter to be introduced in either branch of the Legislature of this State, in any manner, except by appealing to his reason, privately attempt to influence the action of any member of such Legislature, during his term of office, concerning such measure, he shall be deemed guilty of lobbying. [Sec. 1, Act April 6, 1907, Acts 1907, p. 162.]

Art. 180. [196] Privately soliciting vote of legislator.—If any paid or employed agent, representative or attorney of any person, association or corporation, shall at any place in this State, after the election and during the term of office of any member of the Legislature of this State, privately solicit the vote, or privately endeavor to exercise any influence, or offer anything of value or any other inducements whatever, to any such member of the Legislature, to influence his action concerning any measure then pending or thereafter to be introduced in either branch of the Legislature of this State, he shall be deemed guilty of lobbying. [Sec. 2, Id.]

Art. 181. [197] Exceptions.—The provisions of this law shall not apply to the Governor or a member of the Legislature of this State, nor prohibit any person either in person, or by his agent or attorney, or any corporation by representatives, agents or attorneys from exercising the rights of petition to the Legislature, or from collecting facts, preparing petitions, procuring evidence and submitting the same, together with arguments, to either branch of the Legislature, when in session, or to any committee thereof, in the interest of any measure in which he or it may be interested; but in such case the agency and the interest in the measure or the person so appearing shall be fully disclosed. [Sec. 3, Id.]

Art. 182. [198] Penalty.—Any person who shall be convicted of lobbying, shall be fined not less than two hundred nor more than two thousand dollars, and in addition may, at the discretion of the jury, be imprisoned in the penitentiary for not less than six months nor more than two years. Any violation of this law may be prosecuted in the county where the offense is committed, or in Travis County. [Sec. 4, Id.]

Art. 183. [199] Prohibited from going on floor.—No person employed in any manner to represent the interest in legislation of any person, association or corporation shall go upon the floor of either House of the Legislature, reserved for members thereof, while in session, except upon invitation of such House. Any person violating the provisions of this article shall be fined not to exceed one hundred dollars. [Sec. 5, Id.]

CHAPTER 3.—DRUNKENNESS IN OFFICE

Art.
184. Officer guilty of drunkenness.
185. "State or district officer."
186. County or municipal officer.
187. "Drunkenness."

Article 184. [200] [146] Officer guilty of drunkenness.—Any State or district officer who shall be guilty of drunkenness shall be subject to removal from office in the manner provided by law; and shall be fined not less than ten nor more than two hundred dollars. [Acts 1876, p. 76.]

Art. 185. [201] [147] "State or district officer."—Within the term "State or district officer" are included the governor, lieutenant-governor, the heads of the several executive departments at the Capitol, and their chief clerks, the judges of the supreme court, courts of appeals, and the district courts, district attorneys, members and officers of the senate and house of representatives, and all other officers who derive their appointment directly from State authority.

Art. 186. [202] [148] County or municipal officer.—Any county or municipal officer who shall

be guilty of drunkenness shall, for the first offense, be fined not less than five and not more than fifty dollars; upon a second conviction for the same offense, he shall be fined not less than fifty nor more than one hundred dollars; and upon a third conviction for the same offense, he shall be fined not less than one hundred nor more than three hundred dollars, and be subject to removal from office in the manner provided by law. [Act July 31, 1876, p. 76.]

Art. 187. [203] [149] "Drunkenness."—Drunkenness, as used in the preceding articles is the immoderate use of any spirituous, vinous or malt liquors to such an extent as to incapacitate an officer from the discharge of the duties of his office, either temporarily or permanently. [Id.]

TITLE 6—OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

CHAPTER 1.—BRIBERY AND UNDUE INFLUENCE

Article 188. [206] Bribery of voter to influence another.—Any person who lends or contributes or offers or promises to lend or contribute or pay any money or other valuable thing to any voter, to influence the vote of any other person, whether under the guise of a wager or otherwise, or to induce any voter to vote or refrain from voting at an election for or against any person or persons, or for or against any particular proposition submitted at an election, or to induce such voter to go to or to remain away from the polls at an election, or to induce such voter or other person to place or cause to be placed his name unlawfully on the list of qualified voters that is required to be furnished by the county tax collector, shall be confined in the penitentiary not less than one nor more than five years, and in addition shall forfeit any office to which he may have been elected at the election with reference to which such offense may have been committed, and is rendered incapable of holding any office under the State of Texas. [Sec. 160, p. 559, Acts 1905.]

Art. 189. [207] [153] [147] Bribery of election officers.—If any person shall bribe, or offer to bribe, any manager, judge or clerk of a public election, or any officer attending the same, as a consideration for some act to be done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding five hundred dollars. [O. C. 259.]

Art. 190. [208] [154] [148] Election officer accepting bribe.—If any manager, judge or clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding article, he shall be fined not exceeding five hundred dollars. [O. C. 260.]

Art. 191. [293] [192e] Bribery of officer of election.—If any person shall bribe or offer to bribe any presiding officer, manager, judge or clerk of any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for public office as a consideration for some act to be done or omitted to be done contrary to his duty in relation to such election, he shall be fined not exceeding five hundred dollars. [Sec. 5, Act April 8, 1895, Acts 1895, p. 41.]

Art. 192. [293] [192f] Bribery or attempted bribery of voter.—Any person who shall bribe or offer to bribe any voter for the purpose of influencing his vote at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office, shall be fined not exceeding five hundred dollars. [Act April 8, 1895, Acts 1895, p. 41.]

Art. 193. [209] Bribery of elector.—Any person who gives or offers to give any office, employment or thing of value, or promises to secure any office, thing of value or employment of or for any voter or to or for any other person, to vote or refrain from voting at an election for or against any person, or for or against any proposition submitted at an election, or to obtain his certificate of exemption, shall be confined in the penitentiary not less than three nor more than five years, and in addition shall forfeit any office to which he may have been elected, and becomes ineligible to any office to which he may have been elected or to any other public office. [Sec. 161, p. 559, Acts 1905.]

Art. 194. [210] Elector accepting bribe.—The penalty prescribed in the preceding article shall be imposed on any one who receives or agrees to receive any money, gift, loan or other thing of value, for himself or any other person, for voting or agreeing to vote, for going or agreeing to go to the polls on election day, or for remaining away or agreeing to remain away from the polls on election day, or for refraining or agreeing to refrain from obtaining his poll tax receipt or certificate of exemption, or for obtaining or agreeing to obtain the same or for voting or agreeing to vote for or against any particular person or proposition submitted to a vote of the people. [Sec. 162, p. 560, Acts 1905.]

Art. 195. [259] Inducing to pay political assessment.—Any officer or employé of the State or of a political subdivision thereof, who directly or indirectly uses his authority or official influence to compel or induce any officer, clerk or employé of the State or any political subdivision thereof, to subscribe, pay or promise to pay any political assessment, shall be fined not to exceed five hundred dollars. [Sec. 190, p. 564, Acts 1905.]

Art. 196. [260] Corruptly using authority or influence.—Any person who, while holding a public office, or seeking a nomination or appointment thereof, corruptly uses or promises to use directly or indirectly any official authority or influence possessed or anticipated in any way to aid any person in securing an office or public employment, or any nomination, confirmation, promotion, appointment or increase of salary, upon consideration that the vote or political influence or action of the person to be benefited, or any other person, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt consideration, shall be fined not to exceed five hundred dollars. [Sec. 191, p. 564, Acts 1905.]

Art. 197. [261] Demanding contribution.—Any head of any of the departments of State or other public officer who shall demand or receive any money or thing of value from any clerk or other person in his

office for his election expenses, or to reimburse him for money already expended, or who shall remove from any office any competent clerk who declines to make such contribution, shall be fined not to exceed five hundred dollars. [Sec. 192, p. 564, Acts 1905.]

CHAPTER 2.—POLL TAX

Art.
198. Poll tax receipts.
199. Tax collector unlawfully delivering receipt.
200. Delivering receipt or exemption certificate in blank or to fictitious person.
200a—1. Collector failing or refusing to perform duties as to receipts.
200a—2. False statements to procure receipt.
200a—3. Election officer aiding alien poll tax payer to vote guilty of misdemeanor.
201. Becoming agent to obtain receipt, etc.
202. Refusing to return receipt.
203. Unlawfully paying poll tax of a citizen.
204. Loaning money to pay.
205. Obtaining money on receipt.
205a. Mailing poll tax receipts, penalty.

Article 198. [224] Poll tax receipts.—Any collector of taxes, or any one in his employ, who wilfully fails or refuses to transcribe correctly from the original poll tax receipt or certificate of exemption and insert in the duplicate retained in the collector's office the name and other description of the citizen required by law to be given by him, or who fails to transcribe correctly from the duplicate kept in the collector's office and insert in the list of qualified voters of a precinct the name and description of the citizen as contained in said duplicate, or who issues a poll tax receipt after the first day of February in any year, bearing a date prior to the first day of February, or who wilfully fails to keep said original duplicate securely locked up when the same are not being used, or permits them to be mutilated, defaced, lost or destroyed, or who conceals, alters or destroys them, shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 152, p. 558, Acts 1905.]

Art. 199. [238] Tax collector unlawfully delivering receipt.—Any tax collector who delivers a poll tax receipt or certificate of exemption to any one except the one entitled thereto and at the time when the tax is paid or the certificate of exemption is applied for, except as specially permitted by law shall be fined not less than one hundred nor more than one thousand dollars, and shall be removed from office. [Sec. 169, p. 561, Acts 1905.]

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. [Acts 1905, p. 562, § 180; Acts 1939, 46th Leg., p. 226, § 1.]

Art. 200a—1. Collector failing or refusing to perform duties as to receipts.—Any Tax Collector charged with the duties as hereinabove provided[1] 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.]

[1] Rev.Civ.St. arts. 2965, 2970, 2975.
Section 1 is published as Rev.Civ.St. art. 2965, Section 2 as art. 2970, Section 3 as art. 2975.

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,[1] 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.]

[1] Rev.Civ.St., arts. 2965, 2970, 2975.

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.]

Art. 201. [229] Becoming agent to obtain receipt, etc.—Whoever knowingly becomes agent to obtain a poll tax receipt or certificate of exemption except as provided by law, or any one who gives money to another to induce him to pay his poll tax, shall be fined not exceeding five hundred dollars. [Sec. 157, p. 559, Acts 1905.]

Art. 202. [250] Refusing to return receipt.—Any one to whom a poll tax receipt or certificate of exemption may be intrusted for safe keeping who refuses on the demand of the owner to return the same to the owner thereof shall be fined not to exceed five hundred dollars. [Sec. 181, p. 563, Acts 1905.]

Art. 203. [233] Unlawfully paying poll tax of a citizen.—Any candidate for office or other person who pays or procures another to pay the poll tax of a citizen, except as permitted by law, shall be confined in the penitentiary not less than two nor more than five years. [Sec. 164, p. 560, Acts 1905.]

Art. 204. [239] Loaning money to pay.—Whoever loans or advances money to another knowing it is to be used for paying the poll tax of such other person shall be fined not to exceed five hundred dollars. [Sec. 170, p. 561, Acts 1905.]

Art. 205. [251] Obtaining money on receipt.—Any person who shall sell, pledge, loan or deposit his poll tax receipt or certificate of exemption for money or any other thing of value shall be fined not more than five hundred dollars, and the person who purchases, borrows or obtains possession of the same by way of pledge or loan shall be fined not more than five hundred dollars. Either of the parties to such wrongful act may be compelled to appear and testify in a proceeding against the other, but he shall not thereafter be arrested or punished for his participation in such wrongful act. [Sec. 182, p. 563, Acts 1905.]

Art. 205a. Mailing poll tax receipts, penalty.—Anyone violating this Act,[1] upon conviction, shall be fined not less than $25.00 nor more than $200.00. [Acts 1929, 41st Leg., 1st C.S., p. 111, ch. 51, § 4.]

[1] Acts 1929, 41st Leg., 1st C.S., ch. 51, p. 111, §§ 1–3, amending Rev.Civ.St. Arts. 2963, 2965, 2968.
Sections 1, 2 and 3 of this Act, being amendments thereof, are published as Rev.Civ.St. Arts. 2963, 2965, and 2968.

CHAPTER 3.—OFFENSES BEFORE ELECTION

Art.
206. Clerk to post names of candidates.
207. Failure to place name of candidate on ballot.
208. Protecting ballots, supplies, and returns.

Art.
209. Refusing employé privilege of voting.
210. Certificate of naturalization.
211. Political advertising.
212. Pay for editorial matter.
212a. Political advertising, regulations concerning.
213. Corporation contributing.
214. Using money donated by corporation.

Article 206. [219] Clerk to post names of candidates.—The county clerk of each county shall post in a conspicuous place in his office for the inspection and information of the public the names of all candidates that have been lawfully certified to him to be printed on the official ballot for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the ballot as provided by law and in case the county clerk refuses or wilfully neglects to comply with this requirement he shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 132, p. 554, Acts 1905.]

Art. 207. [255] Failure to place name of candidate on ballot.—Any county clerk or other officer charged by law with the duty of preparing or having printed the official ballot at any general or special election, and any county chairman or member of the county executive committee of any political party so charged with the duty of preparing or having printed the official ballot to be used at any primary election of such party, who fails or refuses, except in cases permitted by law, to have the name of any candidate or candidates whose nominations have been certified to him placed or printed on such official ballot, shall be confined in the penitentiary not less than one nor more than five years. [Sec. 186, p. 563, Acts 1905.]

Art. 208. [252] Protecting ballots, supplies and returns.—If any person intrusted with the transmission to the precinct election judges of official ballots, poll tax receipts and exemption certificate rolls, sample cards, distance markers and any supplies required to conduct an election wilfully fails to deliver the same within the time required by law, or wilfully does any act to defeat the delivery thereof, or not being a person intrusted therewith, shall do any act to defeat the due delivery thereof, he shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 158 and 183, Acts 1905.]

Art. 209. [244] Refusing employé privilege of voting.—Whoever refuses to an employé entitled to vote the privilege of attending the polls, or subjects such employé to a penalty or deduction of wages because of the exercise of such privilege, shall be fined not to exceed five hundred dollars. [Sec. 175, p. 562, Acts 1905.]

Art. 210. [262] Certificate of naturalization.—Whoever wilfully procures from any court, clerk or other officer a certificate of naturalization, which has been allowed, signed or sealed in violation of the laws of the United States or of this State, with intent to enable him or any other person to vote at any election, when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, shall be confined in the penitentiary not less than five nor more than ten years. [Sec. 193, p. 564, Acts 1905.]

Art. 211. [236] Political advertising.—Anything published in newspapers, pamphlet or printed journal in favor of or in opposition to any candidate for any public office or in favor of or in opposition to the success of any public officer, or in favor of any political party, or any proposition submitted to a vote of the people, when the same is published in consideration of the receipt or promise of money or thing of value, shall be known as political advertising. And no such advertisement shall be accepted for publication or printing unless it is signed by the responsible chairman of any candidate's committee, or any candidate himself, political committee, or by the chairman or representative of any commercial or other organization, or by the individual responsible for its publication, and such signature shall appear in the advertisement as printed. All advertisements of marked ballots, advising or suggesting how voters should mark their ballots shall be included in the meaning of this Article; and any editor, publisher, manager or agent of any newspaper, pamphlet or printed journal who shall publish political advertising other than as advertising matter, which shall be labeled at the beginning or end thereof with the word "advertisement," or who shall wilfully demand or receive for the publication of such political advertising money or other thing of value in excess of the sum due for such service at the regular advertising rates of such newspaper, pamphlet or printed journal, or any person who shall pay, or offer to pay the editor, publisher, manager or agent of any newspaper, pamphlet or printed journal for such service any money or thing of value in excess of the sum due at regular advertising rates, or any person who shall pay or offer to pay any editor, publisher, manager or agent of a newspaper, pamphlet or printed journal any money or thing of value for the publication of political advertising, except as advertising matter, 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 ten (10) nor more than thirty (30) days. Nothing herein shall be construed as applying to announcements of candidates for office. [Acts 1905, p. 560, § 167; Acts 1935, 44th Leg., p. 709, ch. 304, § 1.]

Art. 212. [237] Pay for editorial matter.—If any editor or manager of a newspaper or printed journal, or any person having control thereof, shall demand or receive any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or opposition to any candidate, or for or against any proposition submitted to a vote of the people, he, and also the one offering such reward shall be punished as in the preceding article, and if the offense be committed by the president of any corporation, or by any officer thereof, with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this and the preceding article may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify. [Sec. 168, p. 561, Acts 1905.]

Art. 212a. Political advertising, regulations concerning.—Section 1. 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.]

Art. 213. [263] Corporation contributing.—(a) No corporation, domestic or foreign, and no officer, director, stockholder, employee or agent, acting in behalf of any corporation, shall directly or indirectly give, pay, expend or contribute or promise to give, pay, expend or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to public office in this State or any district, municipality, or political subdivision thereof, or in order to influence or affect the vote on any question to be voted upon by the qualified voters of this State or any district, municipality, or political subdivision thereof, provided, however, that:

(b) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation; and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(c) If any corporation authorized by Section (b) hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, expended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended, and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend, or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars ($750), or exceeding Twenty-five Dollars ($25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation or expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more than Ten Thousand Dollars ($10,000) in any one election.

(d) Any person who shall violate any provision of this Article, or as an officer, director or employee of a corporation, or as a member of a partnership or association, shall authorize or do any act in violation hereof shall be punished by a fine of not more than Five Thousand Dollars ($5,000) or by imprisonment in jail for not more than six (6) months, or both. [Acts 1907, p. 169; Acts 1941, 47th Leg., p. 789, ch. 491, § 4.]

Section 5 of the Act of 1941 provided that a holding of partial invalidity should not affect the remaining provisions.

Art. 214. Using money donated by corporation.—If any officer, agent or employé of any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, or local, district or statewide commercial or industrial clubs, or associations, or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof, shall use or permit the use of any stock, money, assets or other property contributed to such organizations by any corporations, to further the cause of any political party, or to aid in the election or defeat of any candidate for office, or to pay any part of the expenses of any candidate for office, or part of the expenses of any political campaign, or political headquarters or to aid in the success or defeat of any political question to be voted on by the qualified voters of the State, or any subdivision thereof, such officer, agent or employé, shall be fined not less than five thousand nor more than ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years. [Acts 1917, p. 25.]

CHAPTER 4.—OFFENSES BY OFFICERS OF ELECTION

Article 215. [223] List of qualified voters.—Any person who being an officer, clerk or employé of the county collector of taxes, precinct judge, or clerk

of election who knowingly puts in the certified list of qualified voters of a precinct any other number than that written when the poll tax receipt or certificate of exemption was issued; or who knowingly delivers to or receives from any voter any poll tax receipt or certificate of exemption on which is placed any other name than that first written when it was issued, shall be fined not to exceed five hundred dollars. [Sec. 151, p. 558, Acts 1905.]

Art. 216. [227] Permitting illegal voting.—Any judge of an election or primary who wilfully permits a person to vote, whose name does not appear on the list of qualified voters of the precinct and who fails to present his poll tax receipt or certificate of exemption or make affidavit of its loss or misplacement or inadvertently left at home, except in cases where no certificate of exemption or tax receipt is required, shall be fined not exceeding five hundred dollars. [Sec. 155, p. 558, Acts 1905.]

Art. 217. [216] Refusing to permit voter to vote.—Any judge of any election who shall refuse to receive the vote of any qualified elector who, when his vote is objected to shows by his own oath that he is entitled to vote, or who shall refuse to deliver an official ballot to one entitled to vote under the law, or who shall wilfully refuse to receive a ballot after one entitled to vote has legally folded and returned same, shall be fined not to exceed five hundred dollars. [Articles 216 and 241.]

Art. 218. [228] Influencing voter.—Any judge, clerk, or other person who may be in the room where an election, either primary, special or general, is being held, who there indicates by word or sign how he desires a citizen to vote or not to vote, shall be fined not less than two hundred nor more than five hundred dollars and be confined in jail not less than ten nor more than thirty days. [Sec. 156, p. 559, Acts 1905.]

Art. 219. [241] Illegal acts of judge of election.—Any judge of election who wilfully permits the removal of ballots before the closing of the polls or wilfully fails to keep order within the polling place, or permits any person, except the clerks and judges of election or those who enter for the purpose of voting, to come within the guard rail, or knowingly permits anyone to remove, alter or deface a stamp number or signature legally placed on a ballot for future identification shall be fined not to exceed one hundred dollars. [Sec. 172, p. 561, Acts 1905.]

Art. 220. [217] [162] [156] Intimidation by election officer.—Any manager, judge or clerk of an election who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be fined not exceeding one thousand dollars. [O. C. 268.]

Art. 221. [214] [158] [152] Election officer opening ballot.—Any manager or other officer of election who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot box, except in the manner prescribed by law, shall be confined in the penitentiary not less than one nor more than two years. [Act Aug. 23, 1876, Sec. 16, Act April 19, 1879, Acts 1879, p. 119.]

Art. 222. [215] [159] [292] Election officer divulging vote.—Any presiding officer, judge, clerk, or other officer of any general or primary election who shall from an inspection of the tickets and not in a judicial investigation divulge how any person has voted at such election shall be fined not less than one hundred nor more than five hundred dollars. [Acts Aug. 23, 1876, Act April 19, 1879, Act April 8, 1895.]

Art. 223. [212] [157] [151] Interfering with ballot.—If any manager, judge or clerk of any election shall put into or permit to be put in the ballot box any ballot not given by a voter, or take out or permit to be taken out of such box any ballot deposited therein except in the manner prescribed by law, or change any ballot given by an elector, he shall be fined not less than one hundred nor more than one thousand dollars. [O. C. 264.]

Art. 224. Aid in marking ballot.—Not more than one person at the same time shall be permitted to occupy more than one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot except when a voter is unable to prepare the same himself because of some bodily infirmity such as renders him physically unable to write, or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest by word or sign or gesture how such voter shall vote, and that they will confine their assistance to answering his questions, to naming candidates and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any of his duties as such judge, and in all cases where assistance is given hereunder, two judges of the election shall assist such voter, they having been first sworn that they will not suggest by word, sign or gesture, how such voter shall vote, that they will confine their assistance to answering his questions in the English language, to naming candidates and if the voting be at a general election to naming the parties to which such candidates belong and that they will prepare the ballot as such voter directs, in the English language. If the election be a general election, the judges who assist such voter shall be of different political parties, if there be such judges present, and if the election be a primary election, a supervisor, or supervisors may be present when the assistance herein permitted is being given, but such supervisor must remain silent except in cases of irregularity or violation of this law. Any judge or other officer of an election who shall violate any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, or be confined in jail for not less than two nor more than twelve months, or both. [Acts 1919, p. 94.]

Art. 225. [258] Aid to voter.—Any judge or other officer at an election who assists any voter to prepare his ballot except when a voter is unable to prepare the same on account of blindness or some bodily infirmity such as renders him unable to write, or is over sixty years of age, or who shall aid such voter by using any other than the English language, and any judge or other officer of an election who in assisting a voter so incapacitated, or over sixty years of age in the preparation of his or her ballot shall prepare the same otherwise than said voter shall direct in the English language shall be fined not less than $200.00 nor more than $500.00 or by confinement in jail not less than two nor more than twelve months, or both. [Acts 1905, p. 564, Act Mar. 23, 1918, Act 1919, p. 95.]

Art. 226. [218] [163] [157] Pesiding officer failing to deliver ballot.—Any presiding officer of any election precinct who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and within the time provided by law, thereafter to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and in addition thereto, may be imprisoned in jail not ex-

ceeding six months. [Act Aug. 23, 1876, Act April 19, 1879, Act April 4, 1881, Act April 9, 1883.]

Art. 227. [225] Making false canvass; court may open ballot boxes.

Any Judge or Clerk of an election, chairman or member of a party executive committee, or officer of a primary, special or general election, who willfully makes any false canvass of the votes cast at such election, or a false statement of the result of a canvass of the ballots cast shall be confined in the penitentiary not less than two (2) nor more than five (5) years. In all such cases, the Court shall have authority to unseal and open the ballot boxes, and the Court may count, or cause to be counted under its direction, the ballots cast in any election; however, in so doing the Court shall exercise due diligence to preserve the secrecy of the ballots, and upon completion of such count the said ballot boxes with their original contents shall be resealed and redelivered to the County Clerk who shall keep the same until ordered by the Court to destroy the same. [Acts 1905, p. 558, § 153; Acts 1943, 48th Leg., p. 438, ch. 296, § 1.]

Art. 228. [242] False certificate by chairman.—Any chairman of a county executive or district or State executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, shall be fined not exceeding five hundred dollars. [Sec. 173, p. 562, Acts 1905.]

Art. 229. [264] [164] [158] Giving false certificate of election.—If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and in addition thereto may be imprisoned in jail not less than one month nor more than one year. [O. C. 269.]

Art. 230. [226] Wilfully failing or refusing to discharge duty.—Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a State Convention, or Secretary of State who wilfully fails or refuses to discharge any duty imposed on him under the law, shall be fined not to exceed five hundred dollars, unless the particular act under some other law is made a felony. [Sec. 154, p. 558, Acts 1905.]

Art. 231. "Election" defined.—The term election" as used in this chapter, means any election, either general, special, or primary, held under authority of law within this State, or within any town, city, district, county, precinct, or any other subdivision within this State for any purpose whatever.

Art. 231a. Election officers.—Any officer, election officer or judge, clerk or supervisor of any primary election who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty ($50.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or shall be confined in the county jail for any period not to exceed one year, or shall be punished by both such fine and imprisonment. [Acts 1933, 43rd Leg., p. 762, ch. 225, § 13.]

Sections 1–12 of this Act amend Rev.Civ.St. Arts. 3022, 3033, 3034, 3124, 3125, 3127, and repeal Article 3135.

Art. 231b. Failure of election judge to make returns.—Any County Judge, County Chairman or any presiding judge of a precinct election who fails to make the complete official returns as required by this Act, shall be punished by a fine of not less than Fifty ($50.00) Dollars, nor more than Two Hundred ($200.00) Dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment; provided, however, that the failure of any person named herein to make the election returns within the time prescribed by this Act shall not affect the validity of such returns when made. [Acts 1933, 43rd Leg., p. 769, ch. 228, § 3.]

Sections 1 and 2 of this Act are published as Rev.Civ.St. Arts. 3026a and 3123.

CHAPTER 5.—ILLEGAL VOTING

Art.
232. Illegal voting.
233. Instigating illegal voting.
234. False swearing by voter.
235. Procuring voter to swear falsely.
236. Illegal voting at primary.
237. Procuring an illegal vote.
238. Absentee voting.
239. Falsely personating another.
240. Voting at both primary elections.
241. Voting more than once.
242. Using dummy ballot.
243. Illegal acts while voting.

Article 232. [271] [171] [165] Illegal voting.—If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 275, Acts 1887, p. 37.]

Art. 233. [273] [174] [167] Instigating illegal voting.—Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be fined not less than one hundred nor more than five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding one month. [O. C. 276, Acts 1876, p. 311.]

Art. 234. [274–283] False swearing by voter.—Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be confined in the penitentiary not less than two nor more than five years.

Art. 235. [275] [176] [169] Procuring voter to swear falsely.—Whoever wilfully and corruptly procures any person to swear falsely, as prescribed in the preceding article, shall be confined in the penitentiary not to exceed three years, or be fined not exceeding three thousand dollars. [O. C. 279.]

Art. 236. [289] [192a] Illegal voting at primary.—Any person voting at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office who is not qualified to vote in the election precinct where he offers to vote at the next State, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day, or different days in the same primary election, shall be fined not exceeding five hundred dollars, or be imprisoned in jail not exceeding sixty days, or both. [Acts 1895, p. 40.]

Art. 237. [290] [192b] Procuring an illegal vote.—Whoever shall knowingly procure any illegal vote to be cast at such primary election shall be punished as provided in the preceding article. [Acts 1895, p. 40.]

Art. 238. Absentee voting.—Any person wishing to vote as an absentee voter who shall vote or offer to vote illegally, or in any case or at any place where he is not entitled to vote, or who shall make false representation in any effort to vote, or who shall attempt to vote on any poll tax receipt issued to a person other than himself, shall be fined not more than one thousand dollars or be imprisoned in

the county jail not more than two years or both so fined and imprisoned. This law applies to any and all elections including general, special and primary elections. [Acts 1923, p. 318.]

Art. 239. [246] Falsely personating another.—Whoever attempts to falsely personate at an election another person, and vote or attempt to vote on the authority of a poll tax receipt or certificate of exemption not issued to him by the county tax collector, shall be confined in the penitentiary not less than three nor more than five years. [Sec. 177, p. 562, Acts 1905.]

Art. 240. [240] Voting at both primary elections.—Whoever votes or offers to vote at a primary election or convention of a political party, having voted at a primary election or convention of any other party on the same day, shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 171, p. 561, Acts 1905.]

Art. 241. [221] Voting more than once.—Whoever at a general, special or primary election votes or attempts to vote more than once shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 149, p. 558, Acts 1905.]

Art. 242. [213] Using dummy ballot.—Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked paper or ballot, if he has one. Any person who gives, receives or secures or is interested in giving or receiving an official ballot or any paper whatever, on which is marked, printed or written the name of any person for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide by which he could make out his ticket, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail thirty days. [Sec. 70, p. 536, Acts 1905.]

Art. 243. [231] Illegal acts while voting.—Any voter who shall show his ballot so as to reveal the vote cast by him, or who marks it otherwise than required by law for identification or who after voting delivers to the precinct judge of election any ballot other than the one delivered to him by the judge at the polling place, shall be fined not exceeding five hundred dollars. [Acts 1905, sec. 559, p. 159.]

CHAPTER 6.—OFFENSES AFTER ELECTION

Art.
244. Altering or destroying ballots, etc.
245. Messengers tampering with ballot.
246. Failing to deliver returns.
246a. Immediate delivery of returns.
247. Preventing delivery of returns.
248. Failure to keep ballot box.
249. County clerk to keep ballot box.
250. County clerk to destroy ballots.
251. Not applicable in cases of contest.
252. Candidate failing to file statement.

Article 244. [248] Altering or destroying ballots, etc.—If any person shall wilfully alter or obliterate, suppress or destroy any ballots, election returns or certificates of election, he shall be confined in the penitentiary not less than three nor more than five years. [Sec. 179, p. 562, Acts 1905.]

Art. 245. [230] Messenger tampering with ballot.—Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same to the person directed shall be fined not exceeding five hundred dollars. [Acts 1905, p. 559.]

Art. 246. [276] [178] [171] Failing to deliver returns.—If any person intrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof or shall wilfully neglect to deliver the same as directed by law, he shall be fined not exceeding one thousand dollars. [O. C. 281.]

Art. 246a. Immediate delivery of returns.—Any chairman of a political party or other person or officer violating or failing to comply with any provision of this Act[1] shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25.00 nor more than $500.00, or be confined in the County jail not to exceed thirty days, or by both such fine and imprisonment. [Acts 1929, 41st Leg., p. 570, ch. 275, § 2.]

[1] Rev.Civ.St. Art. 3124.
Section 1 of this Act was an amendment to Rev.Civ.St. Art. 3124.

Art. 247. [277] [179] [172] Preventing delivery of returns.—Whoever shall take away any election return from any person intrusted therewith, either by force or in any other manner, or wilfully do any act that shall defeat the due delivery thereof, as directed by law, shall be fined not exceeding two thousand dollars. [O. C. 282.]

Art. 248. [253] Failure to keep ballot box.—Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be fined not to exceed five hundred dollars. [Sec. 184, p. 563, Acts 1905.]

Art. 249. [279] [181] [174] County clerk to keep ballot box.—If any county clerk shall fail, neglect or refuse to keep securely any ballot box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months. [Acts 1876, p. 308.]

Art. 250. [280] [182] [175] County clerk to destroy ballots.—If any county clerk shall fail, after the expiration of one year from the date of any election, to destroy by burning all the ballots cast at such election which may have come to his custody, he shall be punished as prescribed in the preceding article. [Acts 1876, p. 308.]

Art. 251. [281] [183] [176] Not applicable in cases of contest.—The foregoing article shall not apply to cases in which a contest may have grown out of any election within one year after the date of such election. [Acts 1876, p. 308.]

Art. 252. [232] Candidate failing to file statement.—Any candidate for any public office, whether elected or not, who fails to file with the county judge of his county within ten days after the date of a general election an itemized statement of all money or things of value paid or promised by him before or during his candidacy for such office, including his traveling expenses, hotel bills and money paid to newspapers, and make an affidavit to the correctness of such account, showing to whom paid or promised, shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 163, p. 560, Acts 1905.]

CHAPTER 7.—RIOTS AND UNLAWFUL ASSEMBLIES AND MISCONDUCT AT ELECTIONS

Art.
253. Riot at election.
254. Unlawful assembly to prevent election.
255. Disturbance at election.

Article 253. [265] [165] [159] Riot at election.—If any riot be committed at the place of holding a public election, or within one mile of such place, with a design to disturb or influence such election, every person engaged therein shall be fined not exceeding one thousand dollars. [O. C. 271.]

Art. 254. [266] [166] [160] Unlawful assembly to prevent election.—If any unlawful assembly meets at the place of holding an election or within a mile thereof, for the purpose of preventing the holding of such election, all persons engaged in such unlawful assembly shall be fined not exceeding five hundred dollars. [O. C. 272.]

Art. 255. [267] [167] [161] Disturbance at election.—If any person shall disturb any election by inciting or encouraging a tumult or riot, or shall cause any disturbance in the vicinity of any poll or voting place, he shall be fined not less than one hundred nor more than five hundred dollars, and in addition thereto may be imprisoned in jail not exceeding one month. [Acts 1876, p. 311.]

Art. 256. [268] [168] [162] Intimidation of electors.—Whoever shall, by force or intimidation, obstruct or influence, or attempt to obstruct or influence, any voter in the free exercise of the elective franchise, shall suffer the punishment prescribed in the preceding article. [Id.]

Art. 257. [269] [169] [163] Carrying arms about election.—Whoever, other than a peace officer, shall carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, shall be punished as described in article 255. [Acts 1873, p. 29, Acts 1876, p. 311.]

Art. 258. [256] Person in service of United States interfering with voter.—Any person in the civil or military service of the United States in this State who by threats, bribery, menace or other corrupt means attempts to control or controls the vote of an elector, or annoys, injures or punishes him for the manner in which he exercises his elective franchise in any election, shall be fined not more than five hundred dollars, and may be arrested and tried at any future time when he may be found in Texas. [Sec. 187, p. 563, Acts 1905.]

Art. 259. [231] Electioneering near polls.—Whoever shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, or who shall hire any vehicle for the purpose of conveying voters to the polling place, or shall wilfully remove any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars. [Sec. 159, p. 559, Acts 1905.]

Art. 260. [243] Defacing election booth, etc.—Any person who, during an election, wilfully defaces or injures an election booth or compartment, or wilfully removes any of the supplies provided for elections, or before the closing of the polls wilfully defaces or destroys any list of candidates to be voted for at an election which has been posted in accordance with law, shall be fined not exceeding five hundred dollars. [Sec. 174, p. 562, Acts 1905.]

Art. 261. [270] [170] [164] Illegal arrest of voter.—If any magistrate or peace officer shall knowingly cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony or breach of the peace, he shall be fined not exceeding three hundred dollars. [O. C. 270.]

CHAPTER 8.—LIMITING EXPENDITURE IN PRIMARY ELECTION

Article 262. Definitions.—The word "candidate" shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State permit to be determined by a primary election. The words "county nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county and the words "District nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in more than one county. The words "State nomination" shall mean the nomination for any office to be filled by the choice of the voters of the entire State.

In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this law be considered together as one primary election. [Sec. 1, Act Mar. 20, 1919, Acts 1919, p. 139.]

Art. 263. Appointing manager.—Every candidate for a State or District nomination may designate a campaign manager by written appointment filed with the Secretary of State. Every candidate for a county nomination may designate a campaign manager by written appointment to be filed with the county clerk of his county, and each candidate for State or District nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of the county. [Sec. 2, Id.]

Art. 264. Limiting expenditures by candidate.—Any candidate for any nomination for a State, county, district or precinct office, to be determined by a primary election held under the laws of this State, or any campaign manager for such candidate, who shall himself, or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money, or pay or give anything of value, or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any person for any nomination to be determined by such primary election, except for the purposes provided for by the laws of this State governing such primary elections; or any candidate or any campaign manager of any candidate or his clerk or agent, or assistant campaign manager, or his clerk or agent, in furthering or opposing the candidacy of any person for any nomination in any such primary election, who shall expend any money, or give or promise to give or pay any money or anything of value, in excess of the amount fixed and prescribed by the laws of this State regulating expenditures by candidates and campaign managers, at such primary

elections, shall be fined not exceeding one thousand dollars, or confined in jail for not more than one year, or both, or be confined in the penitentiary for not less than one nor more than five years. [Sec. 3, Id.]

Art. 265. Campaign contributions.—It shall be lawful for any person to make campaign contributions to be paid directly to the candidate or his lawfully appointed campaign manager or by citizens of any county to the lawfully designated and appointed assistant campaign manager for such county, such contributions to be used for lawful purposes. It shall be lawful for any citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty dollars for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or providing a place to hold the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers. A statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the county clerk of the county in which such meeting is held, within twenty-four hours after it is held. It shall be lawful for any person to expend a sum for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate a sum which shall not in the aggregate exceed ten dollars. It shall be lawful for any person to contribute bona fide his own personal services and personal traveling expenses, including hotel bills while traveling in the support of any candidacy. Except as expressly permitted by the foregoing provisions of this article, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidate lawfully designated as provided in this chapter or the agents of such campaign managers or assistant campaign managers lawfully authorized as provided in this chapter, either himself or by or through any other person or on behalf of any other person directly or indirectly to give, pay or expend any money or give or pay anything of value or promise to give, pay or expend any money or authorize any expenditure or assume any pecuniary liability for the purpose of aiding, or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby. Any person who shall violate any provision of this article shall be punished by a fine not to exceed one thousand dollars or by confinement in jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one nor more than five years. [Sec. 4, Id.]

Art. 266. Paid workers.—Whoever otherwise than in compliance with the provisions of this chapter, shall hire or employ or offer to hire or employ or shall reward or give to any person anything of value for his services or for loss of time or for reimbursement for his expenses in consideration of such person directly or indirectly working, electioneering or making public addresses for or against any candidate for a nomination in a primary election, or who rewards or offers to reward any person for his vote or influence or the promise of his vote or influence for or against any candidate for nomination in a primary election, shall be fined not to exceed one thousand dollars, or be confined in jail for not more than one year, or both, or be confined in the penitentiary not less than one nor more than five years. [Sec. 5, Id.]

Art. 267. One candidate contributing to another.—Any candidate for a nomination in a primary election or his campaign manager or his assistant campaign manager, who shall directly or indirectly himself or by or through another person, give, pay, expend or contribute any money or thing of value for the furtherance of the candidacy of any other candidate shall be fined not to exceed one thousand dollars or be confined in jail not to exceed one year, or both. [Sec. 6, Id.]

Art. 268. Giving or accepting.—Any candidate or other person who furnishes, gives, or delivers to another person any money or other thing of value to be used in violation of or for any purpose prohibited by any provision of this chapter and any person who receives or accepts any money or thing of value to be used in violation of or for any purpose prohibited by any provision of this chapter shall be punished by a fine not to exceed $1000.00, or by confinement in jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one nor more than five years. [Sec. 7, Id.]

Art. 269. Sworn statement.—Each candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters, and every candidate and campaign manager is hereby required to file a sworn statement of all monies previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this article if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten dollars in amount have been made and the purposes of such disbursements. Such statement shall also set forth that it is as full and explicit as the party making it is able to make, and the party making it shall before some officer qualified to administer oaths, take and subscribe the following oath, which shall be filed with said statement.

"I do solemnly swear that the foregoing statement filed herewith correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of ——— for the nomination for ——— before the ——— primary election, and that I have neither directly or indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any provision of the laws of Texas, governing primary elections of the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this article by candidates for State and District nominations and their campaign managers with the Secretary of State, and by candidates for County nominations and their campaign managers and by the assistant campaign managers of candidates for State and District nominations with the County Clerk of the County in which they reside.

Whoever shall wilfully and corruptly make any false oath, affidavit or sworn statements in complying with the requirements of this article shall be fined not to exceed $1000.00 or be confined in jail for not more than one year, or both, or be confined in the penitentiary not less than one nor more than five years. [Sec. 8, Id.]

CHAPTER 9.—ELECTION FOR CONSTITUTIONAL AMENDMENTS

Art.
270. Refusing judge, clerk and supervisor.
271. Making false return or certificate of result.
272. Intimidating voter.
273. False certificate.
274. County judge refusing to appoint officers.

Article 270. Refusing judge, clerk and supervisor.—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting precinct or box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected, and such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. Should the county judge fail or refuse to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. The managers or judges of the election so refusing, shall be fined not less than one hundred nor more than five hundred dollars, and imprisoned in jail for not less than twenty and not more than sixty days. [Secs. 1 and 2, Act March 17, 1911, Acts 1911, p. 144.]

Art. 271. Making false return or false certificate of result.—Any manager, judge or clerk of any such election, who shall knowingly make any false return or false certificate of the result of any such election, shall be confined in the penitentiary not less than one nor more than five years. [Sec. 5, Id.]

Art. 272. Intimidating voter.—Any election officer or supervisor who shall intimidate or attempt to intimidate any voter, or knowingly refuse to allow any qualified voter to vote, or any person who, within one hundred feet of the voting box on election day, shall intimidate or attempt to intimidate any qualified voter from voting, or in any manner by word or act attempt to influence any voter to cast his vote for or against any question provided under this Act to be voted upon, shall be fined not less than fifty nor more than five hundred dollars. [Sec. 5a, Id.]

Art. 273. False certificate.—Any officers of any county upon whom is placed by law the duty of making and certifying to the Secretary of State returns of any such election, who shall knowingly make or certify to any false certificate or false statement of the result of any such election shall be confined in the penitentiary for not less than one nor more than five years. [Sec. 5, Id.]

Art. 274. County judge refusing to appoint officers.—If any county judge refuses to appoint the officers as provided for and required by law, he shall be fined not less than fifty nor more than five hundred dollars, and be imprisoned in jail not less than ten nor more than thirty days, and such refusal shall be grounds for his impeachment and removal from office. [Sec. 7, Id.]

CHAPTER 10.—ELECTION OF UNITED STATES SENATOR

Art.
275. Offenses at primary election.
276. Failing to make statement.
277. Failure of duty.
278. Unlawful acts.
279. Candidate failing to perform duty.
280. Candidate doing unlawful acts.

Article 275. Offenses at primary election.—At each primary election held in this State for the nomination of a candidate for United States Senator, each provision of the laws of this State which has for its object the protection of the ballot and the safeguarding of the public against fraudulent voting, undue influence, corrupt practices, and in fact each restriction of whatever kind as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this chapter. The violation of any such provision or restriction at any such primary election shall be punished in the same manner as prescribed by law for the violation of any election law whether general, special or primary. [Sec. 6, p. 102, Acts 1st C. S. 1913.]

Art. 276. Failing to make statement.—Each person who shall receive any payment directly or indirectly, for political purposes in a campaign before a general election for United States Senator whether as salary or as expenses, shall within thirty days after such payment has been made or promised make a sworn statement showing in detail said payment or promised payments, by whom made and what services were rendered for same. This statement shall be filed with the secretary of State. Any person who comes within the provisions of this article and fails to make such statements, shall be confined in jail not less than ten nor more than thirty days. [Sec. 24, p. 107, Id.]

Art. 277. Failure of duty.—Any person other than a candidate for United States Senator and any member of any personal campaign committee or any party committee, who shall fail to do and perform any thing required of him in reference to the disbursement or collection, or the payment of money, or thing of value for political purposes, as defined by this chapter, shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than one hundred nor more than five hundred dollars. [Sec. 30, p. 108, Id.]

Art. 278. Unlawful act.—Any person (not a candidate) and any member of any personal campaign committee or party committee who shall do any of the things forbidden by this chapter with reference to the payment, collection or disbursement of money or other thing of value for political purposes, as defined herein, shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 31, Id.]

Art. 279. Candidate failing to perform duty.—Any candidate for United States Senator who shall fail to do any act required of him under the provisions of this chapter relating to the disbursement or collection of money or anything of value for political purposes, shall be confined in jail not less than thirty

nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 32, p. 108, Id.]

Art. 280. Candidate doing unlawful acts.—If any candidate for United States Senator shall do any act forbidden by any provision of this chapter with reference to the disbursement or collection of money, or anything of value, for political purposes as defined by this chapter, he shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 33, p. 108, Id.]

TITLE 7—RELIGION AND EDUCATION

CHAPTER 1.—DISTURBANCE OF RELIGIOUS WORSHIP

Article 281. [296] [193] Disturbing congregation.—Any person who, by loud or vociferous talking or swearing, or by any other noise or in any other manner wilfully disturbs any congregation or part of a congregation assembled for religious worship and conducting themselves in a lawful manner, or who wilfully disturbs in any manner any congregation assembled for the purpose of conducting or participating in a Sunday School, or to transact any business relating to or in the interest of religious worship or a Sunday School, and conducting themselves in a lawful manner, shall be fined not less than twenty-five nor more than one hundred dollars. [O. C. 284, Acts 1873, p. 43, Acts 1883, p. 17, Acts 1897, p. 102.]

Art. 282. [297] [194] Offender may be bound over.—If complaint be made to any magistrate that a person has committed the offense mentioned in the preceding article, he may be, at the discretion of the magistrate, bound over to keep the peace and to refrain from like disturbance for the term of one year.

CHAPTER 2.—SUNDAY LAWS

Article 283. [299] [196] [183] Working on Sunday.—Any person who shall labor, or compel, force, or oblige his employés, workmen, or apprentices to labor on Sunday, or any person who shall hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined not less than ten nor more than fifty dollars. [Act Dec. 16, 1863, Act Dec. 2, 1887, Acts 1887, p. 108.]

Art. 284. [300] [197] Not applicable.—The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll bridges, keepers of hotels, boarding houses and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons. [Act Dec. 2, 1871, Acts 1871, p. 62. Amended in revising 1879.]

Art. 285. [301] [198] Horse racing or gaming on Sunday.—Any person who shall run or be engaged in running any horse race, or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars. [Acts 1871, p. 62.]

Art. 286. [302] [199] [186] Selling goods on Sunday.—Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employé of any such person, who shall sell, barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission. [Act Dec. 2, 1871, Acts 1883, p. 66, Acts 1887, p. 108.]

Art. 287. Permitting sale of certain articles on Sunday; regulations as to motion picture shows.—The preceding Article shall not apply to markets or dealers in provisions as to sales of provisions made by them before nine o'clock A. M., nor to the sales of burial or shrouding material, newspapers, ice, ice cream, milk, nor to any sending of telegraph or telephone messages at any hour of the day or night, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices, nor to sales of gasoline, or other motor fuel, nor to vehicle lubricants, nor to motion picture shows, or theatres operated in any incorporated city or town, after one o'clock P. M.

Sec. 2. The Commissioners or City Council of the towns or cities in which said motion picture shows or theatres are located shall have the right and power by proper ordinance to prohibit or regulate the keeping open or showing of such motion picture shows or theatres on Sunday. [Acts 1925, 39th Leg., p. 347, ch. 139, § 1; Acts 1931, 42nd Leg., p. 195, ch. 116.]

Section 3 of this Act provides that if any section of the act is held invalid, such decision shall not affect the remainder.

CHAPTER 3.—TEACHERS AND SCHOOLS

Art. 288. Shall use English language.—Except as herein provided, each teacher, principal and superintendent employed in the public free schools of this State shall use the English language exclusively in the conduct of the work of the schools and recitations and exercises of the school shall be conducted in the English language, and the trustees shall not prescribe any texts for elementary grades not printed in English; provided, however, that it shall be lawful to provide text books, as now provided by law, for and to teach any modern language in the elementary grades of the public free schools above the second grade, and in the High School grades as outlined in the State Course of Study; provided, however, that it shall be lawful to provide text books for and to teach the Spanish language in elementary grades in the public free schools in Counties bordering on the boundary line between the United States and the Republic of Mexico and having a city or cities of five thousand (5,000) or more inhabitants according to the United States Census for the year 1920. It is lawful to teach Latin and Greek as a branch of study in the High School grades as outlined in the State Course of Study. Any such teacher, principal, Superintendent, trustee, or other school official having responsibility in the conduct of the work of such schools who fails to comply with the provisions of this Article shall be fined not less than Twenty-Five Dollars ($25.00) nor more than One Hundred Dollars ($100.00), cancellation of certificate or removal from office, or both fine and such cancellation or fine and removal from office. [Acts 4th C.S. 1918, p. 170; Acts 1927, 40th Leg., p. 267, ch. 188; Acts 1933, 43rd Leg., p. 325, ch. 125.]

Art. 289. Shall teach patriotism.—The daily program of every public school shall be so formulated by the teacher, principal or superintendent as to include at least ten minutes for the teachings of intelligent patriotism, including the needs of the State and Federal Governments, the duty of the citizen to the State, and the obligation of the State to the citizen. Any official or employé of the public free schools who fails to perform his legal duty in connection with the provisions of this law shall be subject to a fine of not more than five hundred dollars or removal from office or both fine and removal from office. [Acts 4th C.S., 1918, p. 67.]

Art. 290. To teach Texas History.—The History of Texas shall be taught in all public schools in and only in the history course of all such schools. The said course shall not be less than two hours in any one week. The State Superintendent of Public Instruction shall notify the different county and city superintendents as to how said course shall be divided, and any city or county superintendent who fails or refuses to follow out the provisions of this article shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1917, p. 302.]

Art. 291. [1512] [1006] Approving voucher without certificate.—Any county or city superintendent or school trustee who approves any teacher's contract or voucher until the person has presented a valid certificate shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1891, p. 187.]

Art. 292. [1513] Traffic in examination questions.—Whoever shall sell, barter, or give away, prior to any forthcoming examination, to applicants for teachers' certificates, or to any person, the questions prepared by the State Superintendent of Public Instruction to be used by the county, summer normal, or any board of examiners in the examination of teachers at said forthcoming examination; or any person who shall accept or otherwise obtain possession of such questions, or the answers thereto, prior to any such examination; or whoever shall use the same fraudulently at the time of said examination, or thereafter; or who shall permit or aid in the substitution of examination papers fraudulently prepared to be substituted for examination papers prepared during the examination; or who accepts remuneration for the granting of certificates or for aiding others to obtain certificates, except as provided for by law, shall be fined not less than one hundred and not more than five hundred dollars and imprisoned in jail for not less than twenty nor more than sixty days. [Acts 1901, p. 272, Acts 1905, p. 296, Acts 3rd C. S. 1920, p. 114.]

Art. 293. Violating Textbook Law.—Any person who wilfully violates any provision of the law providing for the purchase and distribution of free text books for the public free school [1] shall be fined not less than five nor more than one hundred dollars. [Acts 1919, p. 47.]

[1] So in enrolled bill. Should probably read "schools". This article is apparently superseded by article 293c.

Art. 293a. Frustrating use of prescribed text books.—Any school trustee who shall prevent or aid in preventing the use in any public school in this State of the books or any of them as adopted under the provisions of this Act, or any teacher in any public school in this State who shall wilfully fail or refuse to use the said books shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than five dollars and not more than fifty dollars for each offense, and each day of such wilful failure or refusal by said teacher or wilful prevention of the use of the books by said trustee shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 176, p. 427, § 23.]

The act referred to in this article, and article 293c, is the free textbook act, Acts 1925, 39th Leg., p. 417, ch. 176, the civil provisions of which are set forth in the Revised Civil Statutes 1925 as articles 2839 to 2876j.

Art. 293b. Rebate on text books.—No trustee or teacher shall ever receive any commission or rebate on any books used in the schools with which he is concerned as such trustees or teacher and if any such trustee or teacher shall receive or accept any such commission or rebate he shall be guilty of a misdemeanor and upon conviction he shall be fined not less than fifty dollars and not more than one hundred dollars. [Acts 1925, 39th Leg., ch. 176, p. 427, § 24.]

Art. 293c. Violating textbook law.—A wilful violation of any provision of this Act by any person shall be a misdemeanor punishable by fine of not less

than $5.00 nor more than $100.00. [Acts 1925, 39th Leg., ch. 176, p. 433, § 48.]

See note to article 293a. This article apparently supersedes article 293.

Art. 294. [418] Refusal to answer census trustee.—Every person having control of any child which will be over seven and under seventeen years of age on the first of September next thereafter and who, being requested by the census trustee to prepare the form prescribed by law giving the information showing the name, sex and date of birth of each child of which he has control and which is within said ages, or to give the information necessary to enable the trustee to prepare the same, shall refuse to do so, or shall refuse to make oath to such form when filled according to his statement of facts in regard to said children, or shall fail to return the form left at his home in his absence to the census trustee as required by law, shall be fined not less than five nor more than ten dollars. [Acts 1893, p. 199, Acts 1905, p. 285.]

Art. 294a. Violation of duty by census trustee.—Any Census trustee who shall wilfully fail or refuse to obtain the necessary information in regard to any child who should be included in the Scholastic Census on the first day of September next thereafter or who shall wilfully fail or refuse to include any child within said ages in his rolls or shall wilfully make any false report in his rolls or summaries shall be guilty of false swearing and shall be punished as prescribed by Law for that offense. And if the County Superintendent finds or believes that any Census Trustee has violated any duty required under this Act, such County Superintendent shall report said Census Trustee to the Grand Jury of the county at its next session after discovering such breach of duty. [Acts 1931, 42nd Leg., p. 42, ch. 33, § 2.]

Section 1 of this Act is published as Rev.Civ.St. Art. 2817a.

Art. 295. [1514] Loitering on school grounds.—Any person who loiters or loafs upon any public school grounds during the session of such school after being warned by the person in charge of such school to leave such grounds shall be fined not less than five nor more than twenty-five dollars. [Acts 1907, p. 452.]

Art. 296. Transfer of school children.—In the case of conditions arising from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden changes of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board of Education, be ordered by the State Superintendent of Public Instruction to be transferred to any other county or independent school district in any other county; providing that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur, and provided further that no application for emergency transfers shall be granted unless the number of transfers applied for exceeds twenty per cent. of the number of children assigned to said district including regular transfers as a result of the last preceding census. The State Superintendent shall in such case notify the county superintendent of the county to which the funds are to be transferred and the county superintendent of the county from which the funds are to be transferred that final apportionments of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. Any county judge serving as ex-officio county superintendent, or any county superintendent, district, city or town superintendent or any school officer who refuses to comply with the provisions of this article shall be fined not less than $50.00 nor more than $500.00, or be confined in jail not more than sixty days, or both. [Acts 1923, p. 253.]

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. [Acts 1915, p. 94; Acts 1923, p. 255; Acts 1935, 44th Leg., p. 409, ch. 160, § 1; Acts 1939, 46th Leg., p. 227, § 1.]

Art. 298. Exempt from attendance.—The following classes of children are exempt from the requirements of the compulsory attendance law:

(a) Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects.

(b) Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

(c) Any child who is blind, deaf, dumb, or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

(d) Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for children of the same race and color of such child, and with no free transportation provided.

(e) Any child more than sixteen (16) years of age who has satisfactorily completed the work of the ninth grade, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the county superintendent of public instruction, be exempted from further attendance at school. [Acts 1915, p. 94; Acts 1921, p. 235; Act Mar. 23, 1923; Acts 1923, p. 255; Acts 1945, 49th Leg., p. 185, ch. 142, § 1.]

Section 2e of the Act of 1945 provided that nothing in the act should change or amend any part of Senate Bill No. 278, Acts of the Regular Session of the Forty-ninth Legislature, Rev.Civ.St., art. 2892b.

Art. 299. Duties of parent or guardian.—If any parent or person standing in parental relation to a child within the compulsory school attendance ages who is not properly excused from attendance upon school for some exemption provided by law fails to require such child to attend school regularly for such period as is required by law, it shall be the duty of the attendance officer who has jurisdiction in the territory where said parent or person standing in parental relation resides, to warn such parent or person standing in parental relation that this law must be immediately complied with, and upon failure of said parent or person standing in parental relation to immediately comply with this law after such warning has been given, the official discharging the duties of the attendance officer shall forthwith file complaint against such parent or person standing in parental relation to

said child, which complaint shall be filed in the County Court, or in the Justice Court in the precinct where such parent or guardian resides. Any parent or other person standing in parental relation upon conviction for failure to comply with the provisions of this law shall be fined for the first offense five dollars, and for the second offense ten dollars, and for each subsequent offense twenty-five dollars. Each day that said child remains out of said school after said warning has been given or after said child has been ordered in school by the Juvenile Court, may constitute a separate offense. [Acts 1915, p. 96.]

Art. 300. Habitual truant.—If any parent or person standing in parental relation to any child within the compulsory school attendance ages shall present proof that he or she is unable to compel said child to attend school, said person shall be exempt from the penalties provided in the preceding article as regards the non-attendance of such child, and such child may be proceeded against as an habitual truant and be subject to commitment to the State Juvenile Training School or any other suitable school agreed upon between such parent or guardian and the judge of the Juvenile Court. [Id.]

Art. 301. School reports.—The State Superintendent of Public Instruction shall require of Judges acting as ex-officio county superintendents of public schools, of county, city and town superintendents, of county and city treasurers and depositories, and of treasurers and depositories of school boards, and of other school officers and teachers, such school reports relating to the school fund and to other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, treasurers, and depositories, and other school officers and teachers for the use of such teachers and officers the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them. All teachers, librarians, school presidents, superintendents, principals, or other school officers employed by all schools supported wholly or partly by the State, shall fill out and send to the State Department of Education, before the expiration of the first school month of each annual session, a registration card, supplied by the State Department of Education, which card shall furnish blanks for useful statistical information, and said teachers, librarians, school presidents, superintendents, and principals shall not be paid the salary for the first month's services, except on the presentation of a receipt certifying that the said registration card has been received by the State Department of Education. The monthly salary of any county judge acting as ex-officio county superintendent of public schools, or any county, district, city or town superintendent, or principal or any teacher or librarian in any school supported wholly or partly by the State, or any assessor, county treasurer, treasurer in county school depository or treasurer of any school district depository, shall be withheld by the officials or authorities paying the said salary, on notification by the State Superintendent of Public Instruction that said county judge, acting as ex-officio county superintendent of public schools, county, district, city or town superintendent or principal, teacher, librarian, assessor, county treasurer, treasurer of county school depository or treasurer of school district depository, has refused or failed to make the reports required of him; provided, that this notification shall not be sent by the State Superintendent until at least two written requests have been made for the desired information and until thirty days have elapsed from the time of the first request without the receipt of the information required; in such case the aforesaid monthly salary shall be withheld until a notice is received from the State Superintendent, certifying that the information requested has been furnished by the delinquent person.

Any employé of the State or of any district, county, city, town or school, who may be responsible for the payment of the salary of any county judge acting as ex-officio county superintendent of public schools, or any county, district or town superintendent or principal, or other school officer, or any teacher, librarian, assessor, county treasurer, treasurer of county school depository, or treasurer of school district depository, after notice by the State Superintendent that the said person has failed to comply with the provisions of this article who shall fail to comply with the provisions of this article shall be fined not less than fifty nor more than five hundred dollars. [Acts 1917, p. 294, Acts 2nd C. S. 1919, p. 185.]

Art. 301a. Conducting commercial college without permit.—Any person, or each member of any partnership or each member of any association of persons or each officer, including each director of any corporation which opens and conducts a commercial college or branch college or school without first having obtained the permit required in Section One of this Act, and without first having executed the bond required in Section Two of this Act, shall be guilty of a misdemeanor and punishable by fine of not less than one hundred dollars, nor more than five hundred dollars, and each day said college continues to be open and operated shall constitute a separate offense. [Acts 1929, 41st Leg., p. 523, ch. 250, § 4.]

Sections 1-3, 5 and 6 of this Act are published as Rev. Civ.St. Art. 1415a. Section 7 provides that, if any section is held invalid, the remainder shall continue in effect.

Art. 301b. Operation of school busses; motor vehicles to stop when bus is receiving or discharging passengers.—Sec. 1. All vehicles used for the transportation of pupils to and/or from any school or college, shall have a sign on the front and rear and on each side of said vehicle, showing the words "School Bus" and said words shall be plainly readable in letters not less than six (6) inches in height. It shall be the duty of the operator of such "School Bus" vehicle to see that such signs are displayed as above provided, and it shall be unlawful to operate any such "School Bus" vehicle unless such signs are so displayed thereon. When any such "School Bus" vehicle stops, every operator of a motor vehicle or motorcycle approaching the same from any direction shall bring such motor vehicle or motorcycle to a full stop before proceeding in any direction; and in event such "School Bus" vehicle is receiving and/or discharging passengers, the said operator of such motor vehicle or motorcycle shall not start up or attempt to pass in any direction until the said "School Bus" vehicle has finished receiving and/or discharging its passengers.

Sec. 2. Any party who violates any of the provisions of Section 1 of this Act shall, upon conviction thereof, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than Ten ($10.00) Dollars nor more than Five Hundred ($500.00) Dollars, or confined in the county jail not to exceed ninety (90) days, or both such fine and imprisonment; provided, however, that if death results to any person, caused either actually or remotely by a noncompliance and/or violation of any of the provisions of this Act, then and in that event, the party or parties so offending shall be punished as is now provided by law. [Acts 1931, 42nd Leg., p. 368, ch. 215.]

Section 3 of this Act provides that, if any section is held invalid, such decision shall not affect the remainder.

Art. 301c. Inquiry concerning religion of persons seeking employment in public schools.—Any person who, or any agency, bureau, corporation or association which shall violate any of the provisions of Sections 1 or 1-a of this Act, or who or which shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to

a penalty of not less than One Hundred Dollars nor more than Five Hundred Dollars, to be recovered by the person aggrieved thereby or by any resident of this State, to whom such person shall [1] assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or the defendant shall reside; and such person and the manager or owner of, or each officer of, such agency, bureau, corporation or association, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars nor more than Five Hundred Dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. [Acts 1933, 43rd Leg., 1st C. S., p. 48, ch. 15, § 2.]

[1] So in enrolled bill. Session Laws omit the word "shall". Sections 1, 1-a and 2 of this Act are published as Rev. Civ.St. Art. 2899a.

Art. 301d. Fraternities, sororities, and secret societies prohibited in public schools of certain counties.

Definition

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.]

TITLE 8—OFFENSES AGAINST PUBLIC JUSTICE

CHAPTER 1.—PERJURY

Article 302. [304] [201] [188] "Perjury."—Perjury is a false statement, either written or verbal, deliberately and wilfully made, relating to something past or present, under the sanction of an oath, or such affirmation as is by law equivalent to an oath, where such oath or affirmation is legally administered, under circumstances in which an oath or affirmation is required by law, or is necessary for the prosecution or defense of any private right, or for the ends of public justice. [O. C. 287.]

Art. 303. [305] [202] [189] Mistake or agitation.—A false statement made through inadvertence, or under agitation, or by mistake, is not perjury.

Art. 304. [306] [203] [190] Oath must be legally administered.—The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken.

Art. 305. [307] [204] [191] And about something past or present.—The false statement must be of something past or present; oaths of office, or any other promissory oaths, are not included in the definition of perjury, except that part of the official oath which relates to dueling.

Art. 306. [308] [205] [192] In what sort of proceeding.—All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal,

in or out of court, or before a grand jury, are included in the description of perjury.

Art. 307. [309] [206] [193] Immaterial statement.—The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made is not perjury.

Art. 308. [310] [207] [194] Punishment.—The crime of perjury, except as in cases provided for in the next article shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. [O. C. 292, Acts 1897, p. 146.]

Art. 309. [311] [208] [195] Perjury in capital case.—When the perjury is committed on a trial of a capital felony, and the person guilty of such perjury has, on the trial of such felony, sworn falsely to a material fact tending to produce conviction, and the person so accused of the capital felony is convicted and suffers the penalty of death, the punishment of the perjury so committed shall be death. [O. C. 293.]

CHAPTER 2.—FALSE SWEARING

Art.
310. False swearing.
311. Past or present.
312. As to public money.
313. As to quarantine matters.
314. Divulging grand jury proceedings.

Article 310. [312] [209] [196] False swearing.—If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of false swearing, and shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 294.]

Art. 311. [313] [210] [197] Past or present.—The false swearing must, as in regard to perjury, be relative to something past or present.

Art. 312. [314] [211] [198] As to public money.—If any officer of this State, or of any district or county thereof, who is charged by law with the duty of receiving or collecting public moneys, other than taxes, for the use of the State or counties, and reporting the same under oath to the district, county or commissioners court of any county, shall falsely report the amount of such collections, or any part thereof, he shall be deemed guilty of false swearing. [Acts 1874, p. 182.]

Art. 313. [315] [212] As to quarantine matters.—Any person suspected of violating any quarantine law or regulation, and who, upon being sworn by any one authorized to administer an oath by the provisions of any law of this State, shall knowingly swear falsely about any matter concerning which the quarantine laws and regulations permit examination, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1883, p. 27.]

Art. 314. [316] [213] Divulging grand jury proceedings.—Any grand juror or any person after being sworn according to law as a witness before said grand jury, who shall afterwards divulge either by word or sign any matter about which said witness may have been interrogated, or any proceeding or fact said juror or witness may have learned by reason of said witness appearing before said jury, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not exceeding six months. This article shall not apply to persons required to testify to any of these matters before a judicial tribunal. [Acts 1887, p. 131.]

CHAPTER 3.—SUBORNATION OF PERJURY AND FALSE SWEARING

Art.
315. Subornation of perjury or false swearing.
316. Attempt to suborn.

Article 315. [318] [214] [199] Subornation of perjury or false swearing.—Whoever shall designedly induce another to commit perjury or false swearing shall be punished as if he had himself committed the crime.

Art. 316. [319] [215] [200] Attempt to suborn.—Whoever by any means whatever corruptly attempts to induce another to commit the offense of perjury or false swearing, shall be confined in the penitentiary not less than two nor more than five years.

CHAPTER 4.—ARREST AND CUSTODY OF PRISONERS

Art.
317. Willfully permitting escape in capital case.
318. Wilfully permitting escape in a felony.
318a. Causing mutiny or riots in penitentiary or prison form.
319. Wilfully permitting escape in misdemeanors.
320. Negligently permitting escape in capital case.
321. Negligently permitting escape in felony.
322. Negligently permitting escape in misdemeanor.
323. Officers refusing to arrest or receive in felony.
324. Refusing to arrest or receive in misdemeanor.
325. Private person appointed to execute warrant.
326. Aiding one charged with felony to escape from jail.
327. Aiding one charged with misdemeanor to escape from jail.
328. Breaking into jail to rescue prisoner.
329. Aiding one charged with felony to escape.
330. Aiding one charged with misdemeanor to escape from officer.
331. State home for children.
332. Colony for the Feebleminded.
333. Interfering with custody of girl committed to Training School.
333a. Interfering with colored girl committed to Training School.
334. Assisting escape of juvenile.
335. Telegraph officer divulging process.
336. Preventing execution of civil process.
337. Offenses complete without actual escape.
338. Opposing arrest of another for felony.
339. Opposing arrest of another for misdemeanor.
340. Resisting execution of civil process.
341. Accused resisting warrant.
342. Process must be executed in legal manner.
343. "Accusation."
344. "Legally confined in jail."
345. "Jail."
346. "Officer."
347. "Arms."
348. Refusing to aid an officer.
349. Mode of punishment; placing in stocks and corporal punishment prohibited.
350. To report death of prisoner.
351. Report of prison physician.
352. Financial interest in contract.
353. Unauthorized punishment of prisoner.
353a. Escape from jail.

Article 317. [320] [216] [201] Wilfully permitting escape in capital case.—Any officer, jailer, or guard having the legal custody of any person accused or convicted of a capital offense who wilfully permits such person to escape or to be rescued shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 312.]

Art. 318. [321] [217] [202] Wilfully permitting escape in a felony.—Any officer, jailer, or guard who has the legal custody of any person accused or convicted of a felony not capital who wilfully permits such person to escape or to be rescued shall be confined in the penitentiary not less than two nor more than five years. [O. C. 313.]

Art. 318a. Causing mutiny or riots in penitentiary or prison farm.—Any person employed at

the Texas State Penitentiary at Huntsville, Texas, or on any of the prison farms of the State of Texas, as an officer or employee of the Texas Prison System, or any other person who instigates, connives at, wilfully attempts to cause, assists in, or who conspires with any other person or persons to cause any mutiny, riot, or escape from such penitentiary or prison farm, or from any prison transfer truck, or any other mode of conveyance, or shall in any manner calculated to effect the object, aid in the escape of any prisoner in custody in such penitentiary, prison farm, or prison transfer truck, or any other mode of conveyance, or shall in any manner, either directly or indirectly, furnish aid to or harbor and conceal any prisoner who has escaped from such penitentiary, prison farm or prison truck, or any other mode of conveyance, shall be punished by confinement in the penitentiary for life or for any term of years not less than five (5). [Acts 1934, 43rd Leg., 3rd C.S., p. 42, ch. 23, § 1.]

Art. 319. [322] [218] [203] Wilfully permitting escape in misdemeanors.—Any officer, jailer, or guard having the legal custody of a person accused or convicted of a misdemeanor who wilfully permits such person to escape or to be rescued shall be fined not exceeding one thousand dollars. [O. C. 314.]

Art. 320. [323] [219] [204] Negligently permitting escape in capital case.—Any officer, jailer, or guard who has the legal custody of a person accused or convicted of a capital offense, who negligently permits such person to escape or to be rescued shall be fined not exceeding two thousand dollars. [O. C. 315.]

Art. 321. [324] [221] [205] Negligently permitting escape in felony.—Any officer, jailer or guard who has the legal custody of a person accused or convicted of a felony not capital who negligently permits such person to escape or to be rescued shall be fined not exceeding one thousand dollars. [O. C. 316.]

Art. 322. [325] [221] [206] Negligently permitting escape in misdemeanor.—Any officer, jailer, or guard who has the legal custody of a person accused or convicted of a misdemeanor who negligently permits such person to escape or to be rescued shall be fined not exceeding five hundred dollars. [O. C. 317.]

Art. 323. [326] [222] [207] Officers refusing to arrest or receive in felony.—Any sheriff or other officer who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a felony, whereby such person escapes, or wilfully refuses to receive in a jail under his charge, or to receive into his custody any person lawfully committed to such jail and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars. [O. C. 318, Acts 1860, p. 96.]

Art. 324. [327] [223] [208] Refusing to arrest or receive in misdemeanor.—Any sheriff or other officer who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a misdemeanor whereby the accused escapes, or who wilfully refuses to receive into a jail under his charge or to receive in his custody any person lawfully committed to such jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be fined not exceeding five hundred dollars. [O. C. 319, Acts 1860, p. 96.]

Art. 325. [328] [224] [209] Private person appointed to execute warrant.—If any private person, appointed with his own consent to execute a warrant of arrest shall be guilty of any offense heretofore enumerated in this chapter, he shall be punished in the same manner as an officer in a like case. [O. C. 320.]

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 (5) years. This Article shall also apply to anyone aiding one who has been convicted, and is being lawfully detained in jail, to escape from jail. [O.C. 321, Acts 1858, p. 162; Acts 1939, 46th Leg., p. 229, § 1.]

Art. 327. [330] [226] [211] Aiding one charged with misdemeanor to escape from jail.—Whoever shall, by any means contemplated in the preceding article, aid in the escape of a person legally confined in jail upon an accusation for a misdemeanor, shall be fined not exceeding five hundred dollars. [O. C. 323.]

Art. 328. [331] [227] [212] Breaking into jail to rescue prisoner.—Whoever shall break into any jail for the purpose of effecting the rescue or escape of a prisoner therein confined, or for the purpose of aiding in the escape of any prisoner so confined, shall be imprisoned in the penitentiary not less than two nor more than six years. [O. C. 322.]

Art. 329. [332] [228] [213] Aiding one charged with felony to escape.—Whoever wilfully aids in the escape of a prisoner from the custody of an officer by whom he is legally held in custody on an accusation of felony, by doing any act calculated to effect that object, shall be confined in the penitentiary not less than two nor more than seven years; and if, in aiding in the escape, he shall make use of arms, he shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 325.]

Art. 330. [333] [229] [214] Aiding one charged with misdemeanor to escape from officer.—Whoever wilfully aids a prisoner to escape from the custody of an officer by whom he is legally detained in custody after conviction of a misdemeanor or while being so detained in custody on an accusation for misdemeanor, by doing an act calculated to effect that object, shall be fined not exceeding five hundred dollars; and if in aiding in the escape he shall make use of arms, he shall be fined not exceeding one thousand dollars. [O. C. 326, Acts 1905, p. 377.]

Art. 331. State Home for children.—Whoever shall persuade, coerce, employ or induce in any manner any child who has been committed to the State Home for Dependent and Neglected Children, from any institution or from any home selected by the person empowered by law to make such selection, without the knowledge and consent of such persons, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than sixty days nor more than six months, or both. [Acts 1919, p. 304.]

Art. 332. Colony for the Feebleminded.—Whoever entices a patient away from the State Colony for Feebleminded, or assists any such patient to escape therefrom, or shall remove or abduct or kidnap any such patient therefrom, as the terms "abduct" and "kidnap" are defined in this Code, or conceals any patient who has escaped or been enticed, removed, abducted or kidnapped from such colony, shall be confined in the penitentiary for any term not more than five years. [Acts 1923, p. 174.]

Art. 333. Interfering with custody of girl committed to Training School.—Whoever shall persuade, coerce, employ or induce in any manner any girl who has been committed to the Girls Training School, from such institution or from any home selected by the persons empowered by law to make such selection, without the knowledge and consent of such persons, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than sixty days, or both. [Acts 1913, p. 291.]

Art. 333a. Interfering with colored girl committed to Training School.—Any person who shall persuade, coerce, employ or induce in any manner any girl who has been committed to the Colored Girl's Training School provided for in this Act [1] to leave said school, or to leave any home selected for any such girl as provided in this Act without the knowledge or consent of the superintendent of said school and the Board of Control, and the person immediately in charge of said girl, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than One Hundred Dollars and not more than Five Hundred Dollars, or by imprisonment in the County Jail for not less than thirty days and not more than sixty days, or may be punished by both such fine and imprisonment. [Acts 1927, 40th Leg., p. 441, ch. 293, § 11.]

[1] Rev.Civ.St. Art. 3259a.

Art. 334. [334] [230] Assisting escape of juvenile.—Whoever shall knowingly assist any inmate lawfully confined in the State Juvenile Training School to escape, or who shall knowingly conceal such inmate, or advise or abet the escape of such inmate or who shall furnish such inmate with money, arms, or any character of means to escape, with the purpose of facilitating the escape of such inmate, shall be confined in the penitentiary not less than two nor more than five years.

Art. 335. [335] [231] [215] Telegraph officer divulging process.—Any executive officer, director, superintendent, manager, operator, clerk, messenger or other party in the employ of a telegraph company, who shall wilfully divulge or in any manner make known, except to the proper authority, the contents of any warrant, affidavit or telegram relating to any crime already committed, or for the prevention of the same, shall be fined not less than five hundred nor more than one thousand dollars, or be confined in the penitentiary not less than two years nor more than five years. [Acts 1871, p. 40.]

Art. 336. [336] [232] [216] Preventing execution of civil process.—Whoever shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the execution of such process, shall be fined not exceeding five hundred dollars; evading the execution of such process is not an offense under this article. [O. C. 327.]

Art. 337. [337] [233] [217] Offenses complete without actual escape.—The offenses enumerated in articles 326, 327, 328, 329 and 330 are complete without actual escape of the prisoner. A person accused of any of said offenses may be prosecuted and tried, although the person escaping be retaken, and although after being retaken he is tried and acquitted.

Art. 338. [339] [235] [219] Opposing arrest of another for felony.—Whoever shall wilfully oppose or resist an officer in executing, or attempting to execute any lawful warrant for the arrest of another person in a felony case shall be confined in the penitentiary not less than two nor more than five years. If arms be used in such resistance, he shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 331; Acts 1858, p. 163.]

Art. 339. [340] [236] [220] Opposing arrest of another for misdemeanor.—If any person shall wilfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a misdemeanor case, or in arresting or attempting to arrest any person without a warrant, where the law authorizes or requires the arrest to be made without a warrant, he shall be fined not less than twenty-five nor more than five hundred dollars, and if arms be used, be fined not less than fifty nor more than one thousand dollars. [O. C. 332; Acts 1881, p. 108.]

Art. 340. [341] [237] [221] Resisting execution of civil process.—Whoever shall wilfully resist or oppose an officer in executing or attempting to execute, any process in a civil cause shall be fined not exceeding five hundred dollars; and if arms be used in such resistance, the punishment shall be doubled. [O. C. 333.]

Art. 341. [344] [238] [222] Accused resisting warrant.—If the party against whom a legal warrant of arrest is directed in any criminal case, resist its execution when attempted by any person legally authorized to execute the same, he shall be fined not exceeding five hundred dollars. If arms be used in making the resistance, in such manner as would make him liable for an assault and battery or assault with intent to murder, or any other offense against the person, he shall receive the highest penalty affixed by law for the commission of such offense in ordinary cases. [O.C. 334.]

Art. 342. [345] [239] [223] Process must be executed in legal manner.—To render a person guilty of any offense included within the meaning of articles 338 and 339 the warrant or process must be executed or its execution attempted in a legal manner. [O. C. 335.]

Art. 343. [346] [240] [224] "Accusation."—The word "accusation" as used in this Code means a charge made in a lawful manner against any person that he has been guilty of some offense which subjects him to prosecution in the name of the State. One is said to be "accused" of an offense from the time that any "criminal action" shall have been commenced against him.

A legal arrest with or without warrant; a complaint to a magistrate, or an indictment are examples of accusation. [O. C. 356.]

Art. 344. [347] [241] [225] "Legally confined in jail."—A person is "legally confined in jail," or "legally detained in custody," when he has been committed or arrested upon a legal warrant, or arrested in any legal manner. [O. C. 337.]

Art. 345. [348] [242] [226] "Jail."—The word "jail" means any place of confinement used for detaining a prisoner. [O. C. 338.]

Art. 346. [349] [243] [227] "Officer."—By "Officer," as used in this chapter, is meant any peace officer, as sheriff, deputy sheriff, constable, marshal or policeman of a city or town, any jailer or guard, or any person specially authorized by warrant to arrest. [O. C. 339.]

Art. 347. [350] [244] [228] "Arms."—The term "arms," as used in this chapter, includes any deadly weapon.

Art. 348. [351] [245] [229] Refusing to aid an officer.—If any person, being called on by a magistrate or peace officer shall fail or refuse to aid such officer in any manner in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate or

peace officer, he shall be fined not exceeding one hundred dollars. [O. C. 339; Acts 1858, p. 163.]

Art. 349. [1610] Mode of punishment; placing in stocks and corporal punishment prohibited.—The Prison Commission may adopt such modes of punishment as may be necessary, such punishment being always humane, and placing prisoners in stocks shall be prohibited. It shall be a misdemeanor for any guard, agent, servant, picket, farm manager, or other employee of the Texas Prison System to inflict corporal punishment on the person or body of any prisoner of said prison system. Any such guard, agent, servant, picket, farm manager, or other employee of the Texas Prison System guilty of hitting, striking or whipping any such prisoner shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), and imprisonment in jail not less than thirty (30) days nor more than six (6) months.

Nothing in this Act shall be so construed as to prevent the use of all necessary means on the part of any guard, agent, servant, picket, farm manager, or other employee of the Texas Prison System in suppressing any actual riot, revolt, mutiny, or attempted escape of any prisoner or prisoners, or in defending himself when attacked by any prisoner or prisoners. [Sec. 33, Act September 17, 1910; Acts 1941, 47th Leg., p. 341, ch. 185, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 350. To report death of prisoner.—The Prison Commission or other persons in charge of prisoners upon the death of any prisoner under their care and control if he die suddenly or from accident or injury, shall at once notify the nearest justice of the peace of the county in which said prisoner dies of such death. It shall be the duty of such justice of the peace, notified of the death of such prisoner, to go and make a personal examination of the body of such prisoner, and such justice shall reduce to writing the evidence taken during such inquest and shall furnish a copy of the same to the district judge of the county in which said prisoner dies. The copy so furnished to said district judge shall be turned over by him to the succeeding grand jury; and the said judge shall charge the grand jury if there be any suspicion of wrong doing shown by the inquest papers to thoroughly investigate the cause of such death. No inquest shall be required when the prisoner dies from natural causes, and has been under the care of the prison physician. Any officer or employé of the prison system having charge of any prisoner at the time of the death by accident, injury or sudden death of such prisoner, who fails to immediately notify a justice of the peace of the death of such prisoner, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail not less than sixty days, nor more than one year. [Acts 1910, p. 156, Acts 1st C. S. 1917, p. 52.]

Art. 351. [1614] Report of prison physician.—Each physician employed in the prison system shall at the end of each month file with the Prison Commission a written sworn report which shall state the name, race and sex of each prisoner treated, or examined by him during said month, the malady or disease with which each was afflicted, and if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such further information concerning said matters, and the condition of each prisoner treated or examined by him during said month, as he may possess. For a failure to make such a report or any false statement knowingly made by any such physician in any such report he shall be prosecuted for perjury. [Acts September 17, 1910, Sec. 50.]

Art. 352. [1616] Financial interest in contract.—Any officer, agent or employé in any capacity connected with the prison system who shall be financially interested either directly or indirectly in any contract for the furnishing of supplies or property to the prison system, or the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to the prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system shall be confined in the penitentiary not less than two nor more than five years. Each transaction is a separate offense. [Sec. 56, Id.]

Art. 353. [1617] Unauthorized punishment of prisoner.—Any sergeant, guard or other officer or employé of the prison system who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system shall be guilty of an assault. It shall be the duty of the Prison Commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. In all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. [Sec. 57, Id.]

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.]

Section 2 of the Act of 1939 repealed conflicting laws.

CHAPTER 5.—FALSE CERTIFICATE OR ENTRY BY AN OFFICER

Article 354. [352] [246] [230] Commissioner giving false certificate.—Whoever being a commissioner of deeds and depositions who is residing out of this State and acting as such commissioner under authority of a law of the State, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him as the same purports to have been acknowledged or approved shall be confined in the penitentiary not less than two nor more than five years. [O. C. 340.]

Art. 355. [353] [247] [231] "Instrument of writing."—By "instrument of writing" is meant any deed, conveyance, transfer, release, obligation or other written instrument of any kind whatever which such commissioner is, by law, authorized to authenticate for record. [O. C. 341.]

Art. 356. [354] [248] [232] Falsely certifying to deposition.—If any such commissioner shall falsely certify to any deposition [1] to have been taken before him, and to be used in any cause pending in a court of this State, he shall be punished as is prescribed in article 354. [O. C. 342.]

[1] So in enrolled bill. The word "purporting" should probably be inserted.

Art. 357. [355] [249] [233] Certifying falsely to affidavit.—If any such commissioner shall

falsely certify to any affidavit purporting to have been made before him, and which, by law, he is authorized to take, he shall be punished as prescribed in article 354. [O. C. 343.]

Art. 358. [356] [250] [234] Clerk of court making false entry.—If any clerk of a court shall knowingly make any false entry upon the record of his court which may prejudice or injure the rights of any person he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 344.]

Art. 359. [357] [251] [235] Clerk giving false certificate.—If any such clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such clerk may by law give such certificate if the same were true, he shall be punished as directed in the preceding article. [O. C. 345.]

Art. 360. [358] [252] [236] Notary public giving false certificate.—If any notary public or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 346.]

Art. 361. [359] [253] [237] Officer giving blank certificate.—If any officer authorized by law to take depositions or administer oaths in this State, shall falsely certify that any deposition was sworn to before him, or any oath made, or shall with fraudulent intent place his certificate, signature or seal to any affidavit which is drawn with blanks as to any other matter of substance, he shall be imprisoned in the penitentiary not less than two nor more than five years. Within the meaning of this article shall be included the case of an officer who, with design that the same may be filled up and used for fraudulent purposes attaches his signature or seal of office to any paper wholly blank. [O. C. 347, Acts 1858, p. 163.]

Art. 362. [360] [254] [238] Failing to keep record of acknowledgments.—Any county clerk, justice of the peace, notary public, or any other officer in this State authorized by law to take acknowledgments or proof of instruments required or permitted by law to be placed on record, who shall willfully fail, neglect or refuse to enter and record in a well-bound book a short statement of each acknowledgment or proof taken by him and sign the same officially, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 156.]

Art. 363. [361] [255] [239] Requisites of such record.—By "short statement," as used in the preceding article, is meant that such statement shall recite the true date on which such acknowledgment or proofs were taken, the name of the grantor and the grantee of such instrument, its date, if proved by a subscribing witness the name and the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown this fact shall be stated. and by whom such person was introduced to the officer, if by any one; and the known or alleged residence of such person. Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated; and a failure to comply with any one of the requirements shall be punished as prescribed in the preceding article. [Acts 1874, p. 156.]

Art. 364. [362] [255a] False certificate of corporate indebtedness, etc.—If any mayor, county judge, tax assessor, or other officer or person, for the purpose of securing the certificate of the Attorney General, provided for in the issuance and sale of bonds by any county, city or town in this State, shall knowingly make, or be concerned in making or forwarding to the Attorney General, a false certificate as to the amount of the taxable value of the property in such county, city or town, as shown by the last official assessment. or knowingly and falsely certify as to the amount of indebtedness of such county, city or town, or the rate of tax levied to provide interest and sinking fund for such indebtedness, or other facts required by the Attorney General, he shall be confined in the penitentiary not less than one nor more than five years. [Acts 1893, p. 85.]

CHAPTER 6.—EXTORTION AND PECULATION

Art.
365. Collecting illegal fees.
366. Demanding illegal fees.
367. Applies to all officers.
368. State officer buying claims against State.
369. "State officer" defined.
370. Officers and employés of penitentiary.
371. County or city officer trading in claims.
372. Public utility corporations.
373. County or city officer interested in contracts.
374. Interest in contract of Navigation District.
375. Interest in contract of Levee District.
376. Interest in drainage contract.
377. Interest in contract of Improvement District.
378. Interest in water supply contract.
379. Interest in contract of Water Control District.
380. Purchase of witness fees by officer.
380a. Collecting debts for others.

Article 365. [363] [256] [240] Collecting illegal fees.—If any officer or person authorized by law to demand or receive fees of office, shall willfully collect for himself or for another any fee or fees not allowed by law, or any money as a purported fee for a service or act not done, or any fee or fees due him by law in excess of the fee or fees allowed by law for such service, he shall be confined in the penitentiary not less than two or more than five years for each offense. [O. C. 352, Acts 1883, p. 5; Acts 1907, p. 307.]

Art. 366. [364] [256a] Demanding illegal fees.—If any officer or other person authorized by law to demand or receive fees of office shall willfully make out his account for fees in excess of those allowed by law, or for fees not allowed by law, and shall present or file such account with the proper officer with whom the law requires the same to be presented or filed, he shall be fined not less than twenty-five nor more than two hundred and fifty dollars for each offense. [Acts 1907, p. 307.]

Art. 367. [365] [257] [241] Applies to all officers.—The two preceding articles apply to all persons holding any office to which fees are attached, and to the heads of the departments of the government in whose offices fees may be charged.

Within the purview of the two preceding articles the demand and receipt of any such fee or fees denominated therein, or money as set out therein, proof of the demand shall be prima facie evidence of the unlawful and wilful intent on the part of the person or officer mentioned therein, but such person or officer shall have the right to introduce evidence showing that such demand or receipt of money was made in good faith and without any intent to injure or defraud, and the Court shall charge the Jury with the provisions of this article. [O.C. 353; Acts 1933, 43rd Leg., p. 143, ch. 68.]

Art. 368. [370] [262] [246] State officer buying claims against State.—Any officer of this State who shall trade for, buy, or be in any way concerned in the purchase of any claim or demand against the State, shall be fined one thousand dollars. [Act May 3, 1873, p. 62.]

Art. 369. [371] [263] [247] "State officer" defined.—By the term "officer of this State" as used in the preceding article is meant the Governor, Lieutenant Governor, any head or employé of any of the executive departments, members and officers of both houses of the Legislature, the judges of the several courts, district and county attorneys, sheriffs, tax collectors and tax assessors.

Art. 370. [372] Officers and employés of the penitentiary.—No officer or employé of the State penitentiaries shall be permitted to purchase any goods or merchandise or other property from the State or penitentiary system, except such surplus fruits, vegetables, ice, water, steam and lights as may be produced or manufactured on the premises of the penitentiary, or to appropriate to his private use or employment the labor, services or use of any State penitentiary convict, or of any animal, vehicle or other personal property belonging to the State, unless it be by the express consent of the penitentiary board had by an order to that effect entered of record on the minutes of said board, providing for the amount to be paid by such officer or employé, for the use, employment and services of such convict or convicts or the use of any personal property belonging to the State; and no employé or officer using any State property shall be allowed to use same in keeping boarders for profit unless such boarder or boarders be in the employ of the State penitentiary system; and no penitentiary sergeant, guard or other officer or employé of the penitentiary shall accept or receive any salary or other compensation from any person or corporation hiring or otherwise employing State convicts. Any such officer or employé who shall violate any provision of this article shall be punished by dismissal from his office or employment and by a fine of not less than twenty-five nor more than two hundred dollars and if the conviction be for accepting or receiving any salary or compensation from a hirer or employer of State convicts, the party so convicted shall, in addition to the penalty above described, be confined in jail not less than one month nor more than one year.

Any person or any member of a co-partnership or firm, or any agent, servant or representative of such person, co-partnership or firm, or any officer, agent, servant or representative of any corporation, hiring or employing State convicts by contract with the State or penitentiary system of hire, lease, or for any share or portion or per cent of the crops or other products of the labor of such convicts, who shall pay or promise or offer to pay, either directly or indirectly, to any sergeant, guard or other employé of the State having such convicts in charge or under his control, either in whole or in part, any money or other valuable thing, shall be confined in the penitentiary for two years. [Acts 1903, p. 161.]

Art. 371. [373] [264] [248] County or city officer trading in claims.—Any officer of any county or of any city or town who shall contract directly or indirectly, or become in any way interested in any contract for the purchase of any draft or order on the treasurer of such county, city or town, or for any jury certificate or any other debt, claim or demand for which said county, city or town may or can in any event be made liable, shall be fined not less than ten nor more than twenty times the amount of the order, draft, jury certificate, debt, claim or liability so purchased or contracted for. Within the term "officer," is included ex-officers until they have made a final settlement of their official accounts. [Acts 1874, p. 47.]

Art. 372. [374] Public utility corporations.—No Mayor or any member of any City Council or Board of Aldermen, of any city or town in this State, shall accept directly or indirectly any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said Council or Board of Aldermen, or any gift or anything of value from any water, gas, light and sewer companies, corporations or persons. The servants, agents, officers or employés, or any person acting directly or indirectly in behalf of any of said companies, corporations or persons mentioned, who shall directly or indirectly give or grant any privilege, frank, free water, light, gas, sewerage service or free service of any kind, or any gift of anything of value to any Mayor, or to a member of such City Council, Board of Aldermen, or any such Mayor, or a member of any such Council or Board of Aldermen who shall receive, accept or enjoy such free light, water, gas, or sewerage service, or other free service, or a lower rate than the regular rate, or any gift of anything of value as prohibited herein shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not exceeding twelve months, or both. [Acts 1907, p. 218.]

Art. 373. [376] [266] [250] County or city officer interested in contracts.—If any officer of any county, or of any city or town shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents, or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined not less than fifty nor more than five hundred dollars. [Acts 1874, p. 48.]

Art. 374. [377] Interest in contract of Navigation District.—If any county judge or any county commissioner, any member of the Navigation Board or navigation and canal commissioner, or engineer shall directly or indirectly become interested in any contract for any work to be done by any Navigation District or in any fee paid by such district whereby he or others shall receive any money consideration or other thing of value, except in payment of services as provided by law, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1909, p. 45.]

Art. 375. [378] Interest in contract of Levee District.—If the county judge or any county commissioner or any district supervisor or the district engineer of any Levee Improvement District shall directly or indirectly become interested in any contract for any work to be done by said district whereby he shall receive any money consideration or other thing of value other than such pay as is provided for by law, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1909, p. 154, Acts 1915, p. 247.]

Art. 376. Interest in drainage contract.—If the county judge or any county commissioner or drainage commissioner or the drainage engineer shall become interested in any contract for the construction of any work to be done by any drainage district or in any fee paid by such district whereby he shall receive any money consideration or other thing of value, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1907, p. 91, Acts 1911, p. 263.]

Art. 377. [379] Interest in contract of Improvement District.—If any director of any Water Improvement District or any engineer or employé thereof shall directly or indirectly become interested in any contract for the purchase of any material required or construction of any work by said district, he shall be fined not to exceed one hundred dollars or be confined in jail for not less than six months

nor more than one year, or both. [Acts 1905, p. 250, Acts 1913, p. 386, Acts 1917, p. 180.]

Art. 378. Interest in water supply contract.—If the supervisor, engineer or any employé of any Fresh Water Supply District shall directly or indirectly become interested in any contract for the purchase of any material required or for the construction of any work by said district he shall be fined not to exceed one thousand dollars, or be imprisoned in jail for not less than six months nor more than one year, or both and shall be removed from office and disqualified for further employment. [Acts 2nd C. S. 1919, p. 127.]

Art. 379. Interest in contract of Water Control District.—If any director of any Water Control and Preservation District or any engineer or other employé thereof, shall be directly or indirectly interested either for themselves or as agents for any one else, in any contract for the construction of any work or improvement, or repair or reconstruction of such improvements by said district, he shall be confined in the penitentiary not less than one nor more than five years. [Acts 4th C. S. 1918, p. 95.]

Art. 380. [380] [267] [251] Purchase of witness fees by officer.—Any county judge, clerk or deputy clerk of any district or county court, sheriff, or his deputy, justice of the peace or constable, who shall purchase or otherwise acquire from the party interested any fee or fees coming to any witness in any proceeding whatever, either before the district or county court, or the court of any justice of the peace, or before any coroner's inquest, shall be fined not exceeding one hundred dollars. [Acts 1858, p. 164.]

Art. 380a. Collecting debts for others.—Any Justice of the Peace, sheriff, constable or other peace officer in this State, who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, or who shall receive compensation therefor except as prescribed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, and in addition to such fine may be removed from office. Provided, however, that nothing herein shall be construed to prohibit any Justice of the Peace who is authorized by law to act for others in the collection of debts from undertaking such collections where the amount is beyond the jurisdiction of the Justice Court. [Acts 1929, 41st Leg., p. 483, ch. 227, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws. Section 2a provides that, if any section is held invalid, such holding shall not affect the remainder.

CHAPTER 7.—FAILURE OF DUTY

Article 381. [388] [268] [252] Refusing to issue or execute process, etc.—Whenever any officer who is by law charged with the issuance or execution of process, either in civil or criminal actions corruptly and wilfully refuses to issue or execute such process, or corruptly or wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be fined not exceeding five hundred dollars, and may be imprisoned in jail not exceeding one year. [O. C. 348.]

Art. 382. [389] [269] [253] Failure to arrest offender.—If any justice of the peace, sheriff or other peace officer shall wilfully neglect to return, arrest or prosecute any person committing a breach of the peace or other crime or misdemeanor which has been committed within his view or knowledge, or shall wilfully absent himself from any place where

such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be fined not less than seventy-five nor more than five hundred dollars. [O. C. 354.]

Art. 383. [368] [260] [244] Officer failing to deposit trust funds, etc.—Any officer of any court having the custody by law of any money, evidence of debt, script, instrument of writing or other article that may have been deposited in court to abide the result of any legal proceedings, who shall fail to 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; or who, when such money or other article is so deposited, shall fail to keep it always accessible and subject to the control of the proper court or who shall fail to keep, in a well-bound book, a correct statement showing each and every item of money or other article so received or deposited, on what account received, and what disposition has been made of the same, shall be fined not less than ten nor more than two hundred dollars, or be imprisoned in jail not exceeding three months; and may, in addition thereto, be punished for contempt. [Acts 1876, p. 7.]

Art. 383a. Clerks' failure to perform duties as depositories of trust funds.—Any county or district clerk who fails to perform any duty required by this Act, or shall do or perform any act prohibited by the provisions of this Act shall be punished by fine of not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in jail not exceeding two years, or by both such fine and imprisonment, and in addition thereto may be punished for contempt. [Acts 1930, 41st Leg., 4th C.S., p. 21, ch. 14, § 15.]

Sections 1–14 of this Act are published as Rev.Civ.St. Art. 2558a.

Art. 384. [369] [261] [245] Failing to turn over funds to successor.—Any officer such as is enumerated in the preceding article, who shall fail or refuse to turn over to his successor in office, on the expiration of his own term of office, the record of trust funds therein specified, together with the packages of money or other articles in his possession or control, shall be punished as prescribed in the preceding[1] article. [Acts 1876. p. 7.]

[1] Preceding refers to Article 383.

Art. 385. [390] Sheriff or constable violating militia law.—Any sheriff or constable who refuses or neglects to perform any duty imposed on him by the law for the organization of the militia, or to execute any lawful process which shall have been issued by the Governor or proper officer of a court martial shall, in the district court, be fined not more than five hundred dollars, and may be imprisoned in jail not exceeding one year. [Sec. 128, p. 203, Acts 1905.]

Art. 386. [391] District or county attorney violating militia law.—Any district or county attorney who refuses to perform any duty imposed upon him by the law for the organization of the militia shall in the district court be fined not more than five hundred dollars, and, may be imprisoned in jail not exceeding one year. [Sec. 129, p. 203, Acts 1905.]

Art. 387. [392] County clerk violating militia law.—Any county clerk who marks "Exempt" any person enrolled as liable to military duty, whom he knows not to be exempt shall be fined not more than five hundred dollars, and may be imprisoned in jail not exceeding one year. [Sec. 130, p. 203, Acts 1905.]

Art. 388. [393] [207] [254] Officers of old county failing to deliver records to new.—Any district or county clerk, sheriff, justice of the peace, county treasurer or surveyor, or any other officer of a county to which some other unorganized or disorganized county is attached for judicial or other purposes, who shall fail, neglect or refuse to turn over to the proper officers of such unorganized or disorganized county on demand and after the organization of such unorganized or disorganized county and the qualification of its officers, all books, records, maps and all other property belonging to said county so organized that may be in his possession, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not exceeding one year. [Acts 1874, p. 188.]

Art. 389. [394] [271] [255] Approving official bond with nonresident surety.—Any officer whose duty it may be to pass upon and approve the official bond of a sheriff, or other county officer, who shall approve such bond when any surety thereon is not a resident of the county of such sheriff or other officer, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 93.]

Art. 390. [395] [272] [256] Officer failing to report collections for State.—Any district attorney, sheriff, deputy sheriff, constable, or other officer, whose duty it may be to collect money other than taxes for the use of the State, who shall fail to report to the district court of his county, in writing and under oath, on the first day of each term thereof, the amount of money that may come into his hands for the use of the State since the last term of said court, from whom collected, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Acts 1874, p. 182.]

Art. 391. [396] [273] [257] Officer failing to report collections for county.—Any officer, such as is named in the preceding article, whose duty it may be to collect money, other than taxes, for the use of any county, who shall fail to report in writing, and under oath, to the commissioners court of such county at each regular term thereof, the amount of money that may have come into his hands for the use of such county since the last term of said court, from whom the same was received, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 392. [397] [274] [258] Town or city officer failing to report collections.—Any town or city marshal, or constable, or other officer or person who may collect money other than taxes for the use of such town or city, who shall fail to report in writing and under oath to the mayor and board of aldermen, or common council of such town or city on the first Monday of each month, the amount of money that may have come into his hands during the month preceding such report for the use of such town or city, from whom the same was collected, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 393. [398] [275] Justice to report jury service.—Justices of the peace shall report to the county clerk on the first Monday in each month the names of the persons who have served as jurors in his court for the preceding month, and the number of days and fractions of days that they have served respectively, and the number of cases in which they have served respectively on each of said days or fractional days. Every justice failing to make and file such report shall be fined not less than twenty-five nor more than two hundred and fifty dollars. [Acts 1881, p. 32.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 394. [399] [276] [259] Commissioners court failing to make statement.—If the commissioners court of any county shall wilfully fail, neglect or refuse to make, or cause to be made a tabular statement of the assets, expenditures, and indebtedness of such county at each regular term of said court, specifying therein the names of creditors and the items of indebtedness, with their respective dates of accrual and also the names of persons to whom moneys have been paid, with the amounts paid each during the quarter for which such statement is prepared, or shall wilfully fail, neglect or refuse to publish an exhibit showing the aggregate receipts and disbursements of each separate fund for the quarter in some newspaper published in the county (or if there be no newspaper, then by posting such exhibit in at least four public places in the county), immediately after the first regular term in each calendar year, or shall wilfully fail, neglect or refuse to post such exhibit made at the third regular meeting of said court in each calendar year at the court house door, and at least three other public places in the county, the members of the court so failing, neglecting or refusing, shall be fined not less than twenty nor more than one hundred dollars. [Acts 1891, p. 91.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 395. [400] Tax assessor failing to report.—The Commissioner of Agriculture shall furnish blank forms to the tax assessors of each county before the first day of January of each year, including forms as to the acreage in cotton, grain and other leading products of the State, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. Said tax assessor shall return said blanks, with accurate answers to the Commissioner of Agriculture on or before the first day of June following. Failure upon the part of any county tax assessor to make such reports as are required by law shall be deemed a misdemeanor and upon conviction thereof such tax assessor shall be fined not less than fifty nor more than two hundred and fifty dollars. [Acts 1907, p. 129.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 395a. [Repealed by Acts 1933, 43rd Leg., p. 10, ch. 8.]

Article repealed was Acts 1931, 42nd Leg., p. 498, ch. 278, §§ 6-8.

Art. 396. [401] Duty as to county treasurer's report.—When the Commissioners Court has compared and examined the quarterly report of the Treasurer and found the same correct, it shall cause an order to be entered upon the minutes of the court stating the approval thereof, which order shall recite separately the amount received and paid out of each fund by the Treasurer since the preceding Treasurer's quarterly report, and the balance of such fund, if any, remaining in the Treasurer's hands, and shall cause the proper credit to be made in the accounts of the Treasurer in accordance with said order, and said court shall actually inspect and count all the actual cash and assets in the hands of the Treasurer belonging to the county at the time of the examination of his said report; and prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in the county Treasurer's quarterly report made by said Treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands, which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said commissioners court of the term at which the same were filed, and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices.

Any county judge, county commissioner, or county clerk who shall negligently or intentionally fail or refuse to comply with the requirements of this article, shall be fined not less than twenty-five nor more than five hundred dollars. [Acts 1897, p. 27.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 397. [402] [277] [259a] Commissioner failing to attend court.—Should any member of the commissioners court of any county wilfully fail or refuse to attend any regular meeting or term of said court at which the business or question of levying a county tax for any purpose is to be acted on, he shall be fined not less than two hundred nor more than five hundred dollars. [Acts 1885, p. 51.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 398. [403] [278] Treasurer failing to make report.—If any county treasurer in this State shall fail, neglect or refuse to furnish to the commissioners court of his county, upon demand, a detailed statement of the amount of county funds, including permanent and available county school funds, received by him from any given time, and when and from whom received, the amount of each fund on hand, the amount paid out, when and to whom paid; on what account, and the kinds of funds received and disbursed; or shall fail, neglect or refuse to exhibit to said commissioners court upon demand, all his books and accounts from any given time, together with all vouchers relating to the same, for the inspection and auditing by said court; or shall fail, neglect or refuse to forthwith produce to said commissioners court, upon demand, all cash and other assets in his hands belonging to his county to be counted by said commissioners court, he shall be fined not less than one hundred nor more than five hundred dollars, and may be punished for contempt by said court. [Acts 1905, p. 369.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 399. [404] [279] [261] Clerk failing to keep indexes.—Any clerk of the county or district court who shall fail to provide and keep in his office, as part of the records thereof, well-bound alphabetical indexes and cross-indexes of the names of all parties to all suits disposed of or pending in his court, together with a reference opposite each party's name to the page of the minute book upon which is entered the final judgment in each case, shall be punished by fine not less than fifty nor more than one hundred dollars. Each month's failure is a separate offense. [Acts 1876, p. 25.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 400. [405] [280] [262] Withdrawal of deeds when records are burned.—Any clerk or deputy clerk of the county court of any county, the land records or records of title in which have been burned, who shall permit any deed filed for record in his office to be withdrawn within twelve months after the same is filed, shall be fined not less than one hundred nor more than five hundred dollars, and may in addition thereto, be imprisoned in jail not to exceed one year. [Acts 1876, p. 252.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 401. [406] [281] [263] To what deeds not applicable.—The preceding article shall not apply to deeds executed or purporting to have been

executed subsequent to the destruction of such records. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 402. [407] [282] [264] County judge practicing law.—Any county judge in this State who shall practice or offer or attempt to practice as an attorney at law in any county court or court of a justice of the peace shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1876, p. 216.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 403. [408] [283] Exceptions to preceding article.—County judges in those counties wherein the civil or criminal jurisdiction of the county court has or may be diminished shall if a licensed lawyer have the right to practice in all justice and county courts in cases where the courts over which they preside have neither original nor appellate jurisdiction. [Acts 1879, S. S. p. 12.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 404. [409] [284] [265] Issuing marriage license without consent.—If the clerk of any county court or other officer authorized by law to issue a license for marriage shall, without the consent of the parent or guardian of the party applying, or if there be no parent or guardian without the consent of the county judge of the county of the residence of such minor, issue a marriage license to a male person under the age of twenty-one years or to a female under the age of eighteen years, he shall be fined not exceeding one thousand dollars. [Acts 1860, p. 101; Acts 1911, p. 63.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 405. [410] [285] [266] Father's consent sufficient.—If both parents of any minor be alive, the consent of the father alone shall be sufficient to authorize the issuance of license to the minor. [Acts 1858, p. 186.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 406. [411] Performing marriage without license.—If any person authorized by law to celebrate the rites of matrimony in this State performs the marriage ceremony without a license first having been issued as required by law, he shall be fined not less than fifty nor more than five hundred dollars. [Acts 1899, p. 307.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 407. [412] [286] [267] Failure to return corrected field notes.—If any county surveyor in this State who has been paid his fees for making and recording a survey shall fail or unnecessarily delay to correct the field notes of such survey upon the request of the Commissioner of the General Land Office, or of the party interested, and return the same to the General Land Office when such field notes have been returned to him by such Commissioner for correction, shall be fined not less than double nor more than four times the amount of the fees originally paid him for such survey. [Act October 24, 1871.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 408. [163] [122] [117] Unlawfully handling Land Office files.—Whoever shall handle or examine any of the papers, files or records in the General Land Office without the consent of the Commissioner or chief clerk, or without the presence and superintendence of a clerk in said office, shall be fined not less than one nor more than five hundred dollars. [O. C. 244.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 409. Mining claim survey.—Anyone interfering with, removing or destroying any monument, post or notice of any locator of a mining claim shall be fined not to exceed one hundred dollars, or be imprisoned in jail for thirty days, or both. [Acts 2nd C. S. 1919, p. 242.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 410. [417] [289] [270] Failure to survey mining claim.—Upon receiving the application for the survey of any mining claim and fee provided by law, the surveyor shall record the application, together with the affidavit, and he shall thereupon forthwith proceed to survey said claim, and forward the field notes to the Commissioner of the General Land Office within thirty days after filing the application, in default of which he shall be fined not less than twenty nor more than one hundred dollars. [Acts 1905, p. 198.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 411. Lands omitted from taxation.—If any tax assessor, county judge, or any member of the commissioners court shall wilfully neglect, fail or refuse to perform any duty required of him by the laws of this State relating to the assessment of lands in his county subject to taxation which have not been assessed for taxation, he shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail not less than one month nor more than one year or both. [Acts 1905, p. 322.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 412. Delinquent taxes.—Any State or county officer who is by law charged with any duty relating to the collection and bringing suit for collection of delinquent taxes due the State or any county who shall fail or refuse to perform any of said duties shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1915, p. 252.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 413. [420] Intangible Tax Board.—Any county tax assessor who shall violate or in any respect fail to comply with any provision of the law creating the State Intangible Tax Board, and any member of any board of equalization and any county tax assessor who shall modify or change or vote to modify or change in any manner whatsoever the finding, valuation or apportionment of any intangible assets as so fixed, determined declared and certified by said State Tax Board shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 476.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 414. [426] [294] [275] Wilful neglect of official duty.—If any officer of the law shall wilfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article. [Acts 1864, p. 7.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 414a. Neglect of duty by comptroller or treasurer.—Any person who shall knowingly and willfully violate 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 Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not less than 30 days nor more than six months, or by both such

fine and imprisonment. [Acts 1930, 41st Leg., 5th C. S., p. 230, ch. 73, § 5.]

Sections 1–3 of this Act amended Rev.Civ.St. Arts. 4343, 4368, 4388.

Art. 414b. Neglect of duty concerning budget.—Any officer, employee or official of the State Government, or of the County Government, or of any school district who shall refuse to comply with the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1000.00), or be imprisoned in the county jail for not less than one month, or more than twelve months, or shall be punished by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 339, ch. 206, § 20.]

Section 1 of this Act amends Rev.Civ.St. Arts. 688, 689.
Sections 2–19 and 20a, are published as Rev.Civ.St. Arts. 689a—1 to 689a—18, 689a—20.

Art. 415. [430] [295] [276] General penalty.—Whenever in the Penal Code or Code of Criminal Procedure it is declared that an officer is guilty of an offense on account of any particular act or omission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be fined not exceeding two hundred dollars. [O. C. 349, Acts 1863, p. 12.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 416. [427] Neglect in drawing juries.—Between the first and fifteenth days of August of each year, in all counties having therein a city containing a population aggregating twenty thousand or more people, as shown by the preceding Federal census, the tax collector or one of his deputies, together with the tax assessor or one of his deputies, together with the sheriff or one of his deputies, and the county clerk or one of his deputies, and the district clerk or one of his deputies, shall meet at the court house of the county and shall select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year the jurors for service in the district and county courts of such county for the ensuing year in the manner provided by the Revised Statutes for the selection of jurors in all counties having a city therein which contains twenty thousand or more people. If any officer mentioned in this article shall wilfully or negligently fail to serve as herein provided, or if any said officer shall wilfully or negligently fail to designate one of his deputies for such service, or after such designation such deputy shall wilfully or negligently fail to serve, the officer so failing to serve or designate a deputy, or the deputy so failing to serve shall be fined not less than fifty nor more than five hundred dollars. [Acts 1907, p. 269; Acts 1911, p. 150.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 417. [428] Stuffing jury wheel.—Whoever shall put into a jury wheel or take from the wheel, except at the times and in the manner provided for by law, a card or cards bearing the name of any person, shall be fined not less than fifty nor more than five hundred dollars. [Acts 1907, p. 272.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 418. [429] Violating jury wheel law.—If any person shall violate any provision of the laws of this State providing for drawing juries from the wheel, or shall wilfully or negligently fail or neglect to perform any duty therein required of him, then where no penalty is specifically imposed, he shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 418a. [Unconstitutional.]

This article, Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, §§ 15, 16, 18, was declared unconstitutional by the Court of Criminal Appeals as being discriminatory. See Randolph v. State, 117 Cr.R. 80, 36 S.W.2d 484.

Sections 1–14 of this Act are published as Rev.Civ.St. Art. 2116b.

Art. 419. [431] [296] [277] Malfeasance in office.—All offenses committed by officers of the law, when not otherwise designated are known as malfeasance in office. By "officers of the law," is meant any magistrate, peace officer or clerk of a court.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 419a. [Repealed by Acts 1943, 48th Leg., p. 400, ch. 270, § 5.]

The article repealed was Acts 1933, 43rd Leg., p. 594, ch. 194.

Art. 419b. Failure of officers or governing board of institutions to perform duties.—Sec. 7. Any State officer, agent, employee or member of a governing board of any of the above named institutions, or any other person who violates any provision of this Act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than five hundred ($500.00) dollars, and in addition may be sentenced to not less than fifteen (15) days nor more than three (3) months in the county jail. Failure to print and furnish to the officers above named, the reports above specified, shall subject all of the members of the governing board of the institutions above mentioned to the penalties provided for in this section of the Act. Every day in excess of the number of days hereinabove provided for that any sum of money belonging to any of the funds enumerated in this Act, whether depositable in special depositories or whether those that should be deposited in the State Treasury, shall be withheld from deposit at its proper place of deposit, shall constitute a separate offense and each day of such withholding shall subject the officer, agent, employee or person so withholding said sum to the penalties herein provided for. [Acts 1933, 43rd Leg., p. 746, ch. 221.]

Sections 1–6, 8 and 8a of this Act are published as Rev. Civ.St. Art. 2654d.

Art. 420. [433] [298] [278a] Sheriff failing to report fugitives.—Any sheriff failing or refusing to make out and forward to the Adjutant General certified lists of fugitives from justice within the time and according to the forms provided for by the laws of this State governing such fugitives, shall be fined not less than ten nor more than one hundred dollars. [Acts 1887, p. 44.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 421. [434] Sheriff appointing too many deputies.—Any sheriff who shall appoint any more deputies than are provided for by law shall be fined not less than one hundred nor more than five hundred dollars. This article shall not apply to counties having more than one district court. [Acts 1903, p. 160.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 422. [1578] [1013] Officer refusing to give data.—Any State or county officer who fails or refuses to give any statistics or information required of him by law shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1899, p. 23.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 422a. [Repealed by Acts 1943, 48th Leg., p. 429, ch. 293, § 1.]

The article repealed was Acts 1929, 41st Leg., 1st C.S., p. 222, ch. 91, § 8.

Art. 422b. Refusal to permit examination by State Auditor, of books, accounts or papers; punishment.—Any officer or person employed by the State of Texas or any governmental unit of the state who shall refuse to permit the examination or access to the books, accounts, reports, vouchers, papers, documents or cash drawer or cash of his office, department, institution, board, or bureau by the State Auditor, or who shall in any way interfere with such examination, or who shall refuse to make any report required by this Act,[1] shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred ($100.00) Dollars nor more than One Thousand ($1,000.00) Dollars, or by imprisonment in the county jail for not less than one (1) month nor more than twelve (12) months, or by both such fine and imprisonment. [Acts 1943, 48th Leg., p. 429, ch. 293, § 14.]

[1] This article and Rev.Civ.St. articles 4366, 4413a—8 to 4413a—23.

Sections 1–13, 15, 16, 18–20 of the Act of 1943 are published as Rev.Civ.St. arts. 4413a—8 to 4413a—23. Section 17 amends Rev.Civ.St. art. 4366.

Art. 423. [1579] Failing to keep finance ledger.—Any county clerk or county auditor who shall wilfully fail, neglect or refuse to keep or cause to be kept the finance ledger provided for by law, or who shall fail, neglect or refuse to make the quarterly statement provided for by law, shall be fined not less than fifty nor more than two hundred dollars. Such failure, neglect or refusal for each quarter is a separate offense. [Acts 1893, p. 161.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 424. [1580] [1013b] Treasurers to report.—Any county or city treasurer or treasurer of the school board of each city or town having exclusive control of its schools, who fails to make and transmit any report and certified copy thereof, or either, required by law, shall be fined not less than fifty nor more than five hundred dollars. [Acts 1893, p. 188.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 425. [1581] [1582] Failure to vote on depository law.—Any member of the commissioners court who shall fail or refuse to vote at any February term thereof next following each general election for a compliance with the requirements of the law providing for the selection of a bank or banker as the depository of the funds of such county shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail not less than one nor more than six months, or both. Such failure or refusal is ground for removal from office. [Acts 1907, p. 208; Acts 1917, p. 16.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 425a. [Repealed by Acts 1929, 41st Leg., p. 33, ch. 11, § 2.]

Article repealed was Acts 1927, 40th Leg., p. 197, ch. 129, § 1.

Art. 426. [1583] Disclosing bid on depository.—Any city secretary of any incorporated city or any other person who shall before the city council meets for the purpose of selecting a bank or banker as the depository of the funds of such city open any proposal from any bank or banker desiring to be selected as depository of such funds, or who shall before the selection of such depository disclose directly or indirectly to any person, the amount of any bid from such bank or banker, shall be fined not less than ten nor more than one hundred dollars. [Acts 1907, p. 132.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 427. [1584] Checks and warrants on city depository.—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. No warrant shall be drawn by the mayor and secretary upon any 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 special fund, or for the purpose of investing said special fund according to law. No city treasurer shall pay off, 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 to pay interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said funds according to law. Any mayor who shall draw a warrant against a special fund as above defined for any other purpose than above specified, or any city treasurer who shall pay, or issue a check to pay a warrant drawn on the special fund of any city other than for the legal purpose of paying interest due on said bonds, the principal of said bonds or for investing said sinking fund according to law, shall be confined in the penitentiary not less than one nor more than five years. [Acts 1905, p. 397.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 427a. Officers or employés of insane hospitals or asylums violating laws relating to restraint of inmates.—Any supervisor, attendant or other employee of any institution who knowingly violates or willingly permits to be violated any provision of the three preceding sections[1] shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than three hundred ($300.00) dollars. [Acts 1925, 39th Leg., ch. 174, p. 414, § 22.]

[1] The three preceding sections referred to are Rev.Civ.St. Arts. 3193k, 3193l and 3193m.

Art. 427b. County clerk's failure of duty as to recording plats.—When any such map, plat, or replat is tendered for filing in the office of the County Clerk of any county in which any city of the above class may be situated, it shall be the duty of such Clerk to ascertain that the proposed plan, plat or replat is or is not subject to the provisions of this Act,[1] and if it is subject to its provisions, then to examine said map, plat or replat to ascertain whether the endorsements required by this Act appear thereon. If such endorsements do appear thereon, he shall accept same for registration. If such endorsements do not appear thereon, he shall refuse to accept same for registration. When same does not disclose whether the land covered by said map, plat or replat, or any part thereof, is or is not within five miles of the corporate limits of a city of the class above mentioned, the County Clerk may require one offering said map, plat or replat for registration to file with him an affidavit setting forth such information. The filing or recording of any plan, plat or replat contrary to the provisions of this Act shall constitute a misdemeanor punishable by fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), and both the County Clerk and any Deputy filing or recording the same shall be guilty. [Acts 1927, 40th Leg., p. 342, ch. 231, § 7.]

Sections 1–6, 8–10, of this Act are published as Rev.Civ. St. Art. 974a.

Section 11 provides that if any provision or part of the Act is held invalid such holding shall not affect the remaining provisions.

Section 12 of Acts 1927, 40th Leg., p. 342, ch. 231, repeals all conflicting laws or parts of laws to the extent of such conflict.

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.—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 provisions identical with Acts 1931, 42nd Leg., p. 308, ch. 182, set out as article 427c, and at the end thereof carried a citation to the Act of 1931.

Art. 427d, 427e. [Repealed by Acts 1941, 47th Leg., p. 914, ch. 562, § 45.]

The articles repealed were Acts 1935, 44th Leg., 2nd C.S., p. 1854, ch. 472; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 2, § 19.

CHAPTER 8.—MISCELLANEOUS OFFENSES

Article 428. [422] [291] [272] Compounding a crime.—Whoever has knowledge that an offense against the penal laws of this State has been committed, and shall agree with the offender, directly or indirectly, not to prosecute or inform on him in consideration of money or other valuable thing paid, delivered or promised to him by such offender, or other person for him, shall be fined not less than one hundred nor more than one thousand dollars. (Added in revising, 1879.)

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 429. [424] [293] [273] False personation of officer.—Whoever falsely assumes or pretends to be a Judicial or Executive Officer of this State or Justice of the Peace, sheriff or deputy, constable or any other Judicial or ministerial officer of any county or a State Ranger in this State and takes upon himself to act as such shall be guilty of a misdemeanor and shall be confined in jail not exceeding six months or be fined not exceeding Five Hundred ($500.00) Dollars or by both such fine and imprisonment. [Act Nov. 12, 1866, Acts 1866, p. 201; Acts 1931, 42nd Leg., p. 430, ch. 259, § 1.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 430. [421] Barratry.—Whoever shall, for his own profit or with the intent to distress or harass the defendant therein, wilfully instigate, maintain, excite, prosecute or encourage the bringing, in any court of this State, of a suit at law or equity in which he has no interest; or shall, for his own profit or with such intent, wilfully bring or prosecute any false suit of his own at law or equity; or shall wilfully instigate, maintain, excite, prosecute or encourage the bringing or prosecution of any claim in which he has no interest, for his own profit or with the intent to distress or harass the person against whom such claim is brought or prosecuted; or shall seek to obtain employment in any claim to prosecute, defend or collect the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such claim; or shall, by himself or another seek or obtain such employment by giving, directly or indirectly, to the person from whom the employment is sought, money or other thing of value, or shall, directly or indirectly pay the debts or liabilities of the person from whom such employment is sought, or who shall loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought before such employment whether the same be done directly by him or through another; or any attorney at law who shall seek or obtain employment in any suit or case at law, or in equity, to prosecute or defend the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such cases; or who shall, by himself or another, seek or obtain such employment by giving directly or indirectly to the person from whom employment is sought money or other thing of value, or who shall directly or indirectly pay the debts or liabilities of the person from whom such employment is sought, or who shall loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought, before such employment, in order to induce such employment, whether the same shall be done directly by him or through another, shall be fined not to exceed five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding three months. The penalties herein prescribed shall apply not only to attorneys at law, but to any other person who may be guilty of any of the things set forth in this article. The term attorney shall include counsel at law. (Acts 1901, p. 125, Acts 1917, p. 336.)

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 430a. Corporation or association practicing law.

Unlawful practice

Section 1. It shall be unlawful for any corporation or any person, firm, or association of persons, except natural persons who are members of the bar regularly admitted and licensed, to practice law.

Definition

Sec. 2. For the purpose of this Act, the practice of law is defined as follows: Whoever (a) In a representative capacity appears as an advocate or draws papers, pleadings, or documents, or performs any act in connection with proceedings pending or prospective before a court or a justice of the peace, or a body, board, committee, commission or officer constituted

by law and having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the State or subdivision thereof; or, (b) For a consideration, reward or pecuniary benefit, present or anticipated, direct, or indirect, advises or counsels another as to secular law, or draws a paper, document or instrument affecting or relating to secular rights; or, (c) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or (d) For a consideration, direct or indirect, gives an opinion as to the validity of the title to real or personal property, or (e) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is practicing law. Nothing in this section shall be construed to prohibit any person, firm, association or corporation, out of court, from attending to and caring for his or its own business, claims or demands, or the claims, demands or traffic business of said corporation or of the individual members of said corporations or associations; nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, nor shall anything in this section be construed as prohibiting any bank or trust company without resorting to court action from acting for its customer in enforcing, securing, settling or adjusting any item mentioned in subdivision (e) above, nor shall anything in this section prohibit any person or association of persons from pursuing as a vocation the business of adjusting insurance or freight rate claims; provided further that nothing in this Act shall prohibit any person or association of persons from appearing before any Board, Commission or Administrative Body in connection with their vocation of adjusting Insurance or Freight Rate claims; provided that subdivision (e) hereof shall not prohibit any individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency, or commercial reporting credit agency within this State, subject to an occupation tax under Article 7061, Chapter 2, Title 122, Revised Civil Statutes, 1925, of Texas, from furnishing reports and collecting, securing, settling, adjusting or compromising, out of court, defaulted, controverted or disputed accounts or claims growing out of contractual relations, provided that said individual, company, corporation or association complies with the above statute; and provided further that nothing in this Act shall be construed as prohibiting real estate agents from collecting rents for their employers; provided that nothing herein shall prevent Notaries Public from drawing conveyances for or without compensation.

Practice by corporation unlawful; acting as fiduciary

Sec. 3. It shall be unlawful for any corporation to practice law as defined by this Act or to appear as an attorney for any person other than itself in any court in this State, or before any judicial body or any board or commission of the State of Texas; or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall prepare corporate charters or amendments thereto, or other legal documents not relating to its authorized business, or draw wills; or hold itself out in any manner directly or indirectly as being entitled to do any of the foregoing acts; provided, that the foregoing shall not prevent a corporation, person or association of persons from employing an attorney or other agent or representative in regard to its own affairs in any hearing or investigation before any administrative official or body.

Provided, further, that the above provisions of this Act shall not be construed to prohibit a person or corporation acting in a fiduciary capacity from transacting the necessary clerical business incidental to the routine or usual administration of estates, trusts, guardianships, or other similar fiduciary capacities, or filing accounts, preparing and filing tax returns of every nature, and other such administrative acts, nor from participating through his or its own agent or attorney, in cooperation with testator's attorney, in the preparation of testator's will, where no compensation is charged for such service and no compensation whatever is charged or received, other than the usual commission allowed by the court for administering the estate or trust, or provided for by the instrument creating the trust or other fiduciary relationship.

And provided, further, that nothing herein shall prohibit any insurance company from causing to be defended, or prosecuted, or from offering to cause to be defended, through lawyers of its own selection, the insureds or assureds in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common carriers or other corporations and associations or any of its subsidiaries pursuant to arrangement between said corporations or associations.

Sharing fees with persons not attorneys

Sec. 4. It shall be unlawful for any attorney at law to share any fee or fees earned or received by him for legal services with any person or firm, not a licensed attorney or attorneys, or with any association or corporation.

Restraining practice

Sec. 5. The county attorney and/or District Attorney and/or Criminal District Attorney of any county in Texas shall on his own initiative or upon the application of any Bar Association in the State of Texas bring such action in the name of the State of Texas in the proper court to enjoin any such person, corporation, or association of persons from violating any of the provisions of this Act, and it shall be the duty of the county attorneys and/or District Attorney and/or Criminal District Attorney of this State to file complaints in the proper court against any person, corporation, or association of persons upon the receipt of information of the violation of any of the provisions of this Act.

Penalty

Sec. 6. Any person, firm, corporation, or association of persons violating any of the provisions of this Act shall be guilty of a misdemeanor. If any provision of this Act is violated by any person individually or by any person or persons representing a corporation, or association, or by a corporation, the defendant or defendants upon conviction shall be punished by a fine of not more than Five Hundred ($500.00) Dollars nor less than One Hundred ($100.00) Dollars.

Agreements in violation of act illegal

Sec. 7. Any agreement by any person, corporation, or association in violation of this Act shall be illegal and such person, corporation, or association shall not be able to recover for any services rendered in violation of this Act, either on the contract or a quasi-contractual obligation. If any person, corporation, or association of persons shall, by any act or omission in violation of this Act, cause any loss, damage, or injury to any person, corporation or association of persons, such person, corporation, or association of persons shall be liable in actual damages therefor to any person, corporation, or association of persons who

sustained any such loss, damage or injury; and such liability shall be absolute and not dependent upon any question or showing of want of skill, care or diligence.

Partial invalidity

Sec. 8. All laws and parts of laws inconsistent herewith are hereby repealed, and in case any section, subdivision, paragraph, or sentence of this Act is declared unconstitutional the validity of the rest of this Act shall not be affected thereby. [Acts 1933, 43rd Leg., p. 835, ch. 238.]

Art. 431. [1486] Examination of records of corporation.—If any president, vice-president, treasurer, secretary, manager, agent or other officer of any corporation doing business under permit or charter from this State shall fail or refuse to permit the Attorney General or any of his assistants or representatives who may be authorized in writing by the Attorney General to make such examination, to examine or to take copies of any or all of the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, he shall be fined not less than one hundred nor more than one thousand dollars, and be imprisoned in jail not less than thirty nor more than one hundred days. Each day of such failure or refusal shall be a separate offense. (Acts 1907, p. 35.)

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 432. [381] "Nepotism."—No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. [Acts 1909, p. 85, Acts 1915, p. 149.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 433. [382] Officers included.—The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. This enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions. [Acts 1909, p. 86.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 434. [383] Evading nepotism law by trading.—No officer or other person included within any provision of this law shall appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment or duty of any person whose services are to be rendered under his direction or control and to be paid for, directly or indirectly out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any provision of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment to any such office, position, or clerkship, employment or duty of any person whomsoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 435. [385] Shall not approve account.—No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 436. [387] Official stenographer.—No district judge shall appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 437. [386] Punishment.—Whoever violates any provision of the five preceding articles shall be guilty of a misdemeanor involving official misconduct, and shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 438. Exceptions.—That nothing in this law shall apply to any appointment to the office of a notary public, or to the confirmation thereof; or to the appointment of a page, secretary, attendant or other employee by the Legislature for attendance on any member of the Legislature who, by reason of physical infirmities, is required to have a personal attendant. [Acts 1925, p. 148.] [39th Leg., ch. 30, § 2.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Arts. 438a, 438b. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 78, ch. 44, § 1.]

Articles repealed were Acts 1925, 39th Leg., p. 357, ch. 149, §§ 2, 3.

The text of sections 2 and 3 of the Act of 1925 was also incorporated in R.S.1925 as Code of Criminal Procedure, Articles 4a and 4b.

For section 1 of the Act of 1925, see Code of Criminal Procedure, Article 4.

TITLE 9—OFFENSES AGAINST THE PUBLIC PEACE

CHAPTER 1.—UNLAWFUL ASSEMBLIES

Art.
444. To rescue one accused of capital felony.
445. To rescue one accused of lesser felony.
446. To rescue one accused of misdemeanor.
447. To prevent the sitting of any tribunal.
448. To prevent collection of taxes.
449. To prevent any person from pursuing his labor.
450. To frighten anyone by disguise.
451. To disturb families.
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454. Lawful meetings included.
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Article 439. [435] [299] "Unlawful assembly."—An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 440. [436] [300] To prevent elections.—If the purpose of the unlawful assembly is to prevent the holding of any public election or to prevent any particular person or number of persons from voting at a public election the punishment shall be that which is prescribed in article 254.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 441. [437] [301] To prevent execution of law, etc.—If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of a court in a civil action, the punishment shall be a fine not to exceed five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 442. [438] [302] To effect rescue of capital felon.—If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offense, the punishment shall be a fine not to exceed one thousand dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 443. [439] [303] To effect rescue of non-capital felon.—If the purpose of the unlawful assembly be to effect the rescue of any person lawfully convicted of a felony less than capital, the punishment shall be a fine not exceeding five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 444. [440] [304] To rescue one accused of capital felony.—If the purpose of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offense before trial, the punishment shall be a fine not exceeding five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 445. [441] [305] To rescue one accused of lesser felony.—If the purpose of the unlawful assembly be to rescue any person lawfully arrested or imprisoned for any felony less than capital, the punishment shall be a fine not exceeding three hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 446. [442] [306] To rescue one accused of misdemeanor.—If the purpose of the unlawful assembly be to rescue a person accused of a misdemeanor, the punishment shall be a fine not exceeding two hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 447. [443] [307] To prevent the sitting of any tribunal.—If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful court, board of arbitrators or referees, the punishment shall be a fine not exceeding one thousand dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 448. [444] [308] To prevent collection of taxes.—If the purpose of the unlawful assembly be to prevent the collection of taxes or other money due the State, the punishment shall be a fine not exceeding five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 449. [445] [309] To prevent any person from pursuing his labor.—If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 450. [446] [310] To frighten anyone by disguise.—If the purpose of the unlawful assembly be to alarm and frighten any person by appearing in disguise, so that the real person so acting and assembling cannot be readily known, and by using language or gestures calculated to produce in such person the fear of bodily harm, the punishment shall be by fine not exceeding five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 451. [447] [311] To disturb families.—If the purpose of the unlawful assembly be to repair to the vicinity of any residence, and to disturb the inmates thereof by loud, unusual or unseemly noises, or by the discharge of fire-arms, the punishment shall be by fine not exceeding five hundred dollars. A private residence may be either a public or private house.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 452. [448] [312] To effect any other illegal object.—If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be fined not more than two hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 453. [449] [313] Lawful meeting not included.—No public meeting for the purpose of exercising any political, religious or other lawful rights or for the purpose of lawful amusement or recreation is within the meaning of this chapter.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 454. [450] [314] Lawful meetings included.—Where the persons engaged in an unlawful assembly met at first for a lawful purpose and afterward agreed upon an unlawful purpose, they are equally guilty of the offense defined in article 439.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 454a. Wearing mask in public.—If any person shall go into or near any public place masked or disguised in such manner as to hide his identity or render same difficult to determine, he or she shall be guilty of a misdemeanor, and upon conviction fined in any sum not exceeding $500.00 or imprisonment in

the county jail not exceeding twelve months, or by both such fine and imprisonment provided this article shall not apply to private or public functions, festivals or events not fostered, caused or presented by any secret society or organization. [Acts 1925, 39th Leg., ch. 63, p. 213, § 1.]

[1] So in enrolled bill. The word "to" should probably be inserted.

Art. 454b. "Public place" defined.—Any "public place" as used in the preceding article is any public road, street, or alley of a town, city, or any store, garage, workshop, or any place at which people are assembled or to which people commonly resort for purposes of business, amusement, or other lawful purposes, other than a church or other place where people are assembled for religious services or purposes. [Acts 1925, 39th Leg., ch. 63, p. 213, § 2.]

Art. 454c. Masked person entering house.—If any person who is masked or disguised in such manner as to hide his or [1] identity, or as to render same difficult to determine shall go into or near any private house, or shall demand or seek entrance therein or disturb any of the inhabitants thereof, he shall be guilty of a felony and upon conviction thereof shall be punished by confinement in the penitentiary for a term of not less than one nor more than ten years; provided this article shall not apply to persons attending social gatherings in private homes where social custom sanctions the wearing of a mask or disguise. [Acts 1925, 39th Leg., ch. 63, p. 213, § 3.]

[1] So in enrolled bill. The word "her" should probably be inserted.

This article, in so far as attempting to make it an offense to disturb the inhabitants of a private house while disguised in such manner as to render the identity of the offense difficult to determine, was held in violation of Const. art. 1, § 10, as failing to definitely and clearly describe offense. See Anderson v. State, 113 Cr.R. 450, 21 S.W.(2d) 499.

Art. 454d. Masked person entering church.—If any person masked or disguised in such manner as to hide his identity or make same difficult of determination shall go into any church or other place where people are assembled for religious services or purposes, he shall be punished by confinement in the penitentiary for a term of years not less than two nor more than ten; provided this article shall not apply to any entertainments or service solely under the auspices of such church or religious gathering, and not fostered, caused or presented by any secret society or organization. [Acts 1925, 39th Leg., ch. 63, p. 213, § 4.]

Art. 454e. Masked persons assaulting; "masked" defined.—If any two or more persons acting in concert, or aiding and abetting each other, when either or all of whom are masked, or in disguise, shall assault or shall falsely imprison any other person, each of such persons so offending shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for any term of years not less than five. The terms "masked" or "in disguise" used in this article mean that such person by artificial means has so changed or obscured his usual appearance as to render his identification impossible, or more difficult than it would have been if such mask or disguise has [1] not been used. [Acts 1925, 39th Leg., ch. 63, p. 214, § 5.]

[1] So in enrolled bill. Should probably read "had".

Art. 454f. Masked individuals parading on public highway.—It shall be unlawful for any secret society or organization, or a part of the members thereof, masked or in disguise, to parade upon or along any public road or any street or alley of any city or town in this State, and all members of such society or organization so parading, or other members of such, who aid, abet or encourage such parade, shall be guilty of an offense and upon conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 63, p. 214, § 6.]

Art. 454g. Partial invalidity not to affect other parts.—Should any article or part of this Act be held invalid it shall not affect or invalidate any other article or part thereof. [Acts 1925, 39th Leg., ch. 63. p. 214, § 7.]

CHAPTER 2.—RIOTS

Art.
455. "Riot."
456. To prevent collection of taxes.
457. Execution of law.
458. Rescue of felon under death sentence.
459. Rescue of felon less than capital.
460. Rescue of one convicted of misdemeanor.
461. Rescue of one imprisoned for capital felony.
462. Felony less than capital.
463. Misdemeanor.
464. Preventing any person from labor.
465. Disturbing residence.
466. Committing any other illegal act.
467. Penalty when object not accomplished.
468. All participants guilty.
469. Where assembly was at first lawful.
470. One may be prosecuted.
471. Indictment.
472. Duty of officers in case of riot.

Article 455. [451] [315] "Riot."—If the persons unlawfully assembled together do or attempt to do any illegal act, all those engaged in such illegal act are guilty of riot.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 456. [452] [316] To prevent collection of taxes.—If the purpose of a riot be to prevent the collection of taxes or other money due the State, any person engaged therein shall be fined not less than two hundred nor more than one thousand dollars, although the purpose of the riot be not effected; and if such illegal purpose be effected, in addition thereto, imprisonment in jail not exceeding two years may be added.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 457. [453] [317] Execution of law.—If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of this State, or the lawful decree of any court in a civil case, he shall be confined in jail not exceeding two years, and be fined not less than two hundred nor more than one thousand dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 458. [454] [318] Rescue of felon under death sentence.—Whoever by engaging in a riot shall rescue one lawfully convicted and given the death penalty or under lawful sentence of death shall be confined in the penitentiary not less than five nor more than ten years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 459. [455] [319] Rescue of felon less than capital.—Whoever by engaging in a riot shall rescue any prisoner lawfully convicted of felony less than capital, or lawfully under sentence for such offense, shall be confined in the penitentiary not less than two nor more than seven years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 460. [456] [320] Rescue of one convicted of misdemeanor.—Whoever by engaging in a riot shall rescue any prisoner lawfully convicted of a

misdemeanor, shall be confined in jail not less than six months nor more than two years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 461. [457] [321] Rescue of one imprisoned for capital felony.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a capital felony, shall be confined in the penitentiary not less than two nor more than seven years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 462. [458] [322] Felony less than capital.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a felony less than capital shall be confined in the penitentiary not less than two nor more than seven years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 463. [459] [323] Misdemeanor.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a misdemeanor shall be confined in jail not less than six nor more than twelve months.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 464. [460] [324] Preventing any person from labor.—Whoever by engaging in a riot shall prevent any other person from pursuing any labor, occupation or employment, or intimidate any other person from following his daily avocation, or interfere in any manner with the labor or employment of another, shall be confined in jail not less than six months nor more than one year.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 465. [461] [325] Disturbing residence.—Whoever by engaging in a riot shall disturb the inmates of any residence by loud, unusual or unseemly noises, or by the discharge of firearms in the immediate vicinity of such residence, shall be fined not less than fifty nor more than five hundred dollars. A residence may be either a public or private house.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 466. [462] [326] Committing any other illegal act.—Whoever by engaging in a riot shall commit any illegal act other than those mentioned in the ten preceding articles shall, in addition to receiving the punishment affixed to such illegal act, be also confined in jail not exceeding one year, or be fined not exceeding one thousand dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 467. [463] [327] Penalty when object not accomplished.—When the purpose of the riot was to effect any illegal acts mentioned in the preceding articles of this chapter, and such unlawful object is not effected, the punishment may, in the discretion of the jury, be diminished to half the penalty affixed to such riot where the illegal purpose was effected.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 468. [464] [328] All participants guilty.—One engaged in any riot whereby an illegal act is committed shall be deemed guilty of the offense of riot, according to the character and degree of such offense, whether the said illegal act was in fact perpetrated by him or by those with whom he is participating.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 469. [465] [329] Where assembly was at first lawful.—Where the assembly was at first lawful, and the persons so assembled afterward agree to join in the commission of an act which would amount to riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known are guilty of riot.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 470. [466] [330] One may be prosecuted.—Anyone engaged in an unlawful assembly or riot may be prosecuted and convicted before the others are arrested.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 471. [467] [331] Indictment.—The indictment must state the illegal act which was the object of the meeting, or which they proceeded to do if the assembly was originally lawful, and must state and it must be proven on the trial, that three or more persons were assembled, and their names must be given if known; if unknown, it must be so alleged.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 472. [468] [332] Duty of officers in case of riot.—If any persons shall be unlawfully or riotously assembled together, it is the duty of any magistrate or peace officer, so soon as it may come to his knowledge to go to the place of such assembly and command the persons assembled to disperse; and all who continue so unlawfully assembled or engaged in a riot after being warned to disperse shall be punished by the addition of one-half the penalty to which they would otherwise be liable if no such warning had been given.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 3.—AFFRAYS AND DISTURBANCES OF THE PEACE

Article 473. [469] [333] [313] Affray.—If any two or more persons shall fight together in a public place they shall be fined not exceeding one hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 474. [470] [334] Disturbing the peace.—Whoever shall go into or near any public place or into or near any private house and shall use loud and vociferous, or obscene, vulgar, or indecent language or swear or curse, or yell or shriek, or expose his person, or rudely display any pistol or other deadly weapon, in a manner calculated to disturb the inhabitants of such place or house, shall be fined not to exceed one hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 475. [472] [335] "Public place."—A "public place," as used in the two preceding articles, is any public road, street or alley of a town or city, or any store or work shop or any place at which people are assembled or to which people commonly resort for purposes of business, amusement or other lawful purpose.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 475a. Motor boats, operating without muffler or silencer.—Section 1. From and after the passage of this Act, it shall be unlawful for any

person or persons to operate a motor boat without a muffler on its motor, or to operate a motor boat without having the muffler on its motor silenced, within one-half (½) mile of any private residence within this State.

Sec. 2. Any person or persons violating Section 1 of this Act shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than Ten Dollars ($10) nor more than One Hundred Dollars ($100), or may be imprisoned in the county jail for not less than ten (10) days nor more than thirty (30) days, or may be punished by both such fine and imprisonment.

Sec. 3. The provisions of this Act shall not apply to persons when engaged in motor racing events or contests in which three (3) or more contestants and three (3) or more motor boats are participating. [Acts 1945, 49th Leg., p. 475, ch. 301.]

Art. 476. Profane language over telephone.—Whoever uses any vulgar, profane, obscene or indecent language over or through any telephone shall be fined not less than five nor more than one hundred dollars. [Acts 1909, p. 87.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 477. [204] [150] Drunk in public place.—Whoever shall get drunk or be found in a state of intoxication in any public place, or at any private house except his own, shall be fined not exceeding one hundred dollars. [Acts 1913, p. 177.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 478. [205] Drinking liquor on train.—Whoever shall drink intoxicating liquor as a beverage in or upon any railway passenger train, coach, closet, vestibule or platform connected therewith, while said train or coach is in the service of passenger transportation, or shall drink such liquor on any truck, bus or automobile, airplane or dirigible while same is being operated as a common carrier of passengers, shall be fined not less than ten nor more than one hundred dollars. Nothing herein shall prevent the use of such liquor as a stimulant in case of actual sickness of the person using it. [Acts 1907, p. 51; Acts 1929, 41st Leg., p. 69, ch. 34, § 1.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 479. Peddler refusing to leave.—Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars. [Acts 1913, p. 142.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

This article constitutes unconstitutional abridgment of freedom of press and religion as applied to minister of Jehovah's Witnesses who refused village manager's request to discontinue religious activities and leave government-owned village constructed for defense workers. Tucker v. State, 66 S.Ct. 274, 326 U.S. 517, 90 L.Ed. 274.

Art. 480. [473] [336] Shooting in public place.—Any person who discharges any gun, pistol or firearm of any kind, or discharges any cannon cracker or torpedo on or across any public square, street or alley of any town or city or within one hundred yards of any business house in this State shall be fined not more than one hundred dollars. A "cannon cracker" is any combustible package more than two inches long and more than one inch through. [Acts 1901, p. 300.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 480a. Shooting on public road.—Any person who shoots or discharges any gun, pistol or firearm in, on, along or across any public road in this State shall be fined not more than One Hundred Dollars. [Acts 1929, 41st Leg., 2nd C.S., p. 4, ch. 3, § 1.]

Art. 481. [474] [337] Horse racing on road or street.—Whoever shall run or be in any way concerned in running any horse race in, along or across any public road or any public square, street or alley in any city, town or village, shall be fined not less than twenty-five nor more than one hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 482. [1020] [599] Abusive language.—Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars. [Acts 1887, p. 13.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 4.—UNLAWFULLY CARRYING ARMS

Article 483. [475] [338] [318] Unlawfully carrying arms.—Whoever shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, slung-shot, sword cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, shall be punished by fine not less than $100.00 nor more than $500.00 or by confinement in jail for not less than one month nor more than one year. [Acts 1887, p. 6; Acts 1905, p. 56; Acts 1918, p. 194.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 484. [476] [339] [319] Not applicable.—The preceding article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of his official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to any deputy constable, or special policeman who receives a compensation of forty dollars or more per month for his services as such officer, and who is appointed in conformity with the statutes authorizing such appointment; nor to the Game, Fish and Oyster Commissioner,[1] nor to any deputy, when in the actual discharge of his duties as such, nor to any game warden, or local deputy Game, Fish and Oyster Commissioner when in the actual discharge of his duties in the county of his residence, nor shall it apply to any game warden or deputy Game, Fish and Oyster Commissioner who actually receives from the State fees or compensation for his services. [Acts 1871, p. 25, Acts 1918, p. 194.]

[1] Office of Game, Fish and Oyster Commissioner was abolished and powers, duties and functions transferred to Game, Fish and Oyster Commission, see Article 978f, post.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 485. [477] [340] Carrying arms in any assembly.—If any person shall go into any church or any religious assembly, any schoolroom, ballroom, or other place where persons are assembled for amuse-

ment or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or social gathering, or to any election on the day or days of any election where any portion of the people of this State are collected to vote at an election, or to any other place where people may be assembled to muster or perform any other public duties, and shall have or carry about his person any pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass knuckle, bowie knife, or any other kind of a knife made and manufactured for the purpose of offense and defense, he shall be fined not less than one hundred nor more than five hundred dollars, or be confined in jail not less than thirty days nor more than twelve months, or both. [Acts 1871, p. 25; Acts 1915, p. 132.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 486. [478] [341] Not applicable to whom.—The preceding article shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated. [Acts 1871, p. 25. Revision of 1879.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 487. [479] [342] Arrest without warrant.—Any person violating any article of this chapter may be arrested without warrant by any peace officer and carried before the nearest justice of the peace. Any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some reliable person, shall be fined not exceeding five hundred dollars. [Acts 1871, p. 26.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 488. Dope seller carrying arms.—Whoever shall carry on or about his person a pistol or any other weapon or arm mentioned in the first article of this chapter while possessing for the purpose of unlawful sale, furnishing or giving away any drug, narcotic, derivative or preparation or marijuana mentioned in article 720 of this Code, shall be confined in the penitentiary for not less than one nor more than ten years. [Act June 18, 1923, p. 164.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 489. [1048] Sale of weapon to minor.—Whoever shall knowingly sell, give or barter, or cause to be sold, given or bartered to any minor a pistol or any other weapon or arm mentioned in the first article of this chapter, without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than ten nor more than thirty days, or both. [Acts 1897, p. 221.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 489a. Sale or lease of weapon to minor or person under heat of passion.—If any person shall knowingly sell, rent, or lease any pistol to a minor, or any other person under the heat of passion, he shall be guilty of a misdemeanor, or, if any person violates any of the provisions hereof, he shall be guilty of a misdemeanor, and upon conviction, punished by a fine of not less than Ten Dollars ($10.00), nor more than Two Hundred Dollars ($200.00), provided that no person may purchase a pistol unless said purchaser has secured from a Justice of the Peace, County Judge, or District Judge, in the county of his or her residence a certificate of good character. Said certificate to be kept with the permanent record of the dealer. No person may purchase a pistol who has served a sentence for a felony.

Nothing in this bill shall affect the law against carrying pistols. [Acts 1931, 42nd Leg., p. 447, ch. 267, § 4.]

Sections 1-3, 6, of this Act are published as Rev.Civ.St. Art. 7047d. Section 5 repeals Article 7068.

Art. 489b. Machine guns.

Definition

Sec. 1. "Machine gun" applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than five (5) shots or bullets may be automatically discharged from a magazine by a single functioning of the firing device.

"Person" applies to and includes firm, partnership, association or corporation.

Penalty

Sec. 2. Whosoever shall possess or use a machine gun, as defined in Section 1, shall be guilty of a felony and upon conviction thereof, shall be confined in the State Penitentiary, for not less than two (2) nor more than ten (10) years.

Sale, penalty

Sec. 3. Whoever shall sell, lease, give, barter, exchange, or trade, or cause to be sold, leased, given, bartered, exchanged, or traded, a machine gun as hereinabove defined to any person shall be guilty of a felony and upon conviction thereof, shall be confined to the State Penitentiary, for not less than two (2) nor more than ten (10) years.

Exception of peace officers and others

Sec. 4. Nothing contained in Section 2 of this Act shall prohibit or interfere with:

1. The possession of machine guns by the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose.

2. The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake.

3. The possession of machine guns by officials and employees of the Texas State Prison System.

Sale to certain officers as not prohibited

Sec. 5. Nothing contained in this Act shall prohibit or interfere with the sale, lease, barter, exchange or gift of a machine gun as defined in this Act, or the transportation required for such purpose to the Adjutant General of the State of Texas, the duly qualified and commissioned Sheriff of a county in Texas, to a duly qualified and commissioned Chief of Police of any municipality within the State of Texas, the duly authorized purchasing agent for the Texas State Prison System, the military forces or peace officers of the United States. [Acts 1933, 43rd Leg., 1st C.S., p. 219, ch. 82.]

TITLE 10—OFFENSES AGAINST MORALS, DECENCY AND CHASTITY

CHAPTER 1.—UNLAWFUL MARRIAGES

Article 490. [481] [344] [324] Bigamy.—Any person who has a former wife or husband living who shall marry another in this State shall be confined

in the penitentiary not less than two nor more than five years. [Acts 1887, p. 37.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 490a. Cohabiting in this State; bigamy; when.—Every person, having a husband or wife living, who shall marry another person, without this State, and shall afterward live with or cohabit with such other person within this State, shall be adjudged guilty of bigamy, and punished in the same manner as provided in Art. 490 of the Penal Code of the State of Texas. [Acts 1931, 42nd Leg., p. 10, ch. 9, § 1.]

Art. 491. [482] [345] Defensive matter.—The preceding article does not apply to one whose husband or wife shall have been continually remaining out of the State or shall have voluntarily withdrawn from the other and remained absent for five years, the one marrying again not knowing the other to be living within that time, nor to any one who has been legally divorced.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 492. [483] [346] [326] Miscegenation.—If any white person and negro shall knowingly intermarry with each other in this State, or having so intermarried in or out of the State shall continue to live together as man and wife within this State, they shall be confined in the penitentiary not less than two nor more than five years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 493. [484] [347] [327] "Negro" and "white person."—The term "negro" includes also a person of mixed blood descended from negro ancestry from the third generation inclusive, though one ancestor of each generation may have been a white person. Any person not included in the foregoing definition is deemed a white person within the meaning of this law.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 494. [485] [348] [328] Proof of marriage.—In trials for any offense included in this chapter, proof of marriage by mere reputation shall not be sufficient.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 2.—INCEST

Art.
495. Punishment.
496. Who men cannot marry.
497. Who women cannot marry.
498. Evidence.

Article 495. [486] [349] Punishment.—All persons who are forbidden to marry by the succeding [succeeding] articles who shall intermarry or carnally know each other shall be confined in the penitentiary not less than two nor more than ten years.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 496. [487] [350] [330] Who men can not marry.—No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother or sister or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter or the daughter of his wife's son or daughter.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 497. [488] [351] [331] Who women can not marry.—No woman shall marry her father, her father's brother or half-brother, her mother's brother or half-brother, her own brother or half-brother, her son, the son of her brother or sister or her half-brother or half-sister, the son of her son or daughter, her mother's husband, her daughter's husband, her husband's son, the son of her husband's son or daughter. [As amended Acts 1933, 43rd Leg., p. 326, ch. 126.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 498. [489] [352] Evidence.—On a trial for incest the fact of the relationship between the parties may be proved as in civil suits, and proof of carnal knowledge shall be in all cases sufficient without proof of marriage.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 3.—ADULTERY AND FORNICATION

Art.
499. "Adultery."
500. Proof of marriage.
501. Both guilty.
502. Punishment for adultery.
503. "Fornication."
504. Punishment for fornication.

Article 499. [490] [353] [333] "Adultery."—"Adultery" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman when either is lawfully married to some other person.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 500. [491] [354] Proof of marriage.—Proof of marriage in such cases may be made by the original or a certified copy of the marriage license and return thereon, or by the testimony of any one present at the marriage or who has known the husband and wife to live together as married persons.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 501. [492] [355] Both guilty.—When adultery has been committed, both parties are guilty though only one may be married.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 502. [493] [356] Punishment for adultery.—Every one guilty of adultery shall be fined not less than one hundred nor more than one thousand dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 503. [494] [357] "Fornication."—"Fornication" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 504. [495] [358] Punishment for fornication.—Every one guilty of fornication shall be fined not less than fifty nor more than five hundred dollars.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 4.—SEDUCTION

Art.
505. Seduction.
506. Marriage obliterates offense.
507. Abandonment after seduction and marriage.
508. "Seduce."
509. Liability of married man.

Article 505. [1447] [967] [814] Seduction.—If any person by promise to marry shall seduce an unmarried female under the age of twenty-five years and shall have carnal knowledge of such female, he shall be confined in the penitentiary not less than two

nor more than ten years. [Acts 1858, p. 185; Acts 1903, p. 221.]

Not repealed. **Ex parte** Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 506. [1449] [969] [816] Marriage obliterates offense.—If the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, the prosecution shall be dismissed. If after the prosecution is begun and before he pleads to the indictment before a court of competent jurisdiction, the defendant in good faith offers to marry the female so seduced and she refuses to marry him, such refusal shall be a bar to further prosecution. This article shall not apply to the case of a defendant who was in fact married at the time of committing the offense. [O. C. 790; Acts 1903, p. 221.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 507. [1450] Abandonment after seduction and marriage.—If any person by promise of marriage shall seduce an unmarried female under the age of twenty-five years and shall have carnal knowledge of said female, and if after prosecution has begun, the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, and if the defendant within two years after said marriage without the fault of said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce under the laws of this State, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to leave him, or shall be guilty of such outrages or cruelties toward her as to make their living together insupportable thereby leaving her or forcing her to leave him and live apart from each other, he shall be confined in the penitentiary not less than two nor more than ten years. Such female so seduced and subsequently married and abandoned shall be a competent witness against said defendant. [Acts 1909, p. 97.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 508. [1448] [968] [815] "Seduce."—The word "seduce" is used in the sense in which it is commonly understood.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 509. [1451] [970] [817] Liability of married man.—No one who was married at the time of committing the offense and that fact known to the woman, shall be held liable for the offenses defined in this chapter.

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 5.—BAWDY AND DISORDERLY HOUSES

Art.
510. "Bawdy house."
511. "Assignation house."
512. "House."
513. "Disorderly house."
514. Keeping bawdy or disorderly house.
515. Owner, lessee or agent liable.
516. Employing prostitutes.
517. Duty of officers.
518. Liquor in bawdy or disorderly house.

Article 510. [496] "Bawdy house."—A bawdy house is one kept for prostitution or where prostitutes are permitted to resort or reside for the purpose of plying their vocation. [Acts 3rd C. S. 1910, p. 32.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 511. [497] "Assignation house."—An assignation house is a house, room or place where men and women meet by mutual appointment, or by appointment made by another for the purpose of sexual intercourse. [Acts 3rd C. S. 1910, p. 32.]

Not repealed. **Ex parte** Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 512. [499] [360] [340] "House."—Any room or part of a building or other place appropriated for either of the purposes above mentioned is a bawdy or a disorderly house within the meaning of this chapter. [O. C. 397.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 513. [496] "Disorderly house."—A disorderly house is any assignation house, or any house to which persons resort for the purpose of smoking or in any manner using opium. [Acts 3rd C. S. 1910, p. 32.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 514. [500] [361] [341] Keeping bawdy or disorderly house.—Any person who shall directly, as agent for another, or through an agent, keep or be concerned in keeping, or aid or assist or abet, in keeping a bawdy or disorderly house in any house, building, edifice or tenement, or shall knowingly permit the keeping of a bawdy or disorderly house in any house, building, edifice or tenement owned, leased, occupied or controlled by him or her, directly, as agent for another or through any agent, shall be fined two hundred dollars and confined in jail for twenty days for each day he or she shall keep, be concerned in keeping or knowingly permit to be kept such bawdy or disorderly house. [Acts 1907, p. 247.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 515. [501] [361] [341] Owner, lessee or agent liable.—Any owner, lessee, or the agent of either, controlling the premises, having information that such premises are being kept, used or occupied as a bawdy or disorderly house, shall be guilty of knowingly permitting the premises to be kept as a bawdy or disorderly house, unless he shall immediately proceed to prevent such keeping, use or occupancy by giving such information to the county or district attorney, or take such other action as may reasonably accomplish such result. [Acts 1907, p. 247.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 516. [502] [362] [341a] Employing prostitutes.—Any person who shall directly, as agent for another, or through an agent, knowingly employ or have in his service in any capacity in any theater, play house or dance house, any prostitute, lewd woman or woman of bad reputation for chastity, or permit such woman to display or conduct herself therein in an indecent manner, shall be fined not less than one hundred nor more than five hundred dollars and confined in jail for twenty days for each day that such woman is kept in service or so permitted to display or conduct herself. [Acts 1889, p. 38; Acts 1907, p. 247.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 517. [506] [363] Duty of officers.—All peace officers are especially charged to discover and report and aid in the enforcement of the articles of this chapter; judges are required to give them specially in charge to the grand juries, and each grand jury is required to call before them all officers charged with enforcing said articles and examine them as to their knowledge and information of violations thereof and their diligence in their enforcement. [Acts 1889, p. 33.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 518. Liquor in bawdy or disorderly house.—If any person, whether the owner, lessee, manager, housekeeper, proprietor, servant, agent, employé, inmate, visitor or any other person shall give away or

drink or permit to be given away or drunk any spirituous or vinous or malt liquors whether capable of producing intoxication or not, in any bawdy house, disorderly house or assignation house, he shall be confined in jail for not less than thirty nor more than ninety days and be fined not less than fifty nor more than five hundred dollars. [Acts 1911, p. 23.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 6.—PANDERING

Art.
519. "Pandering."
520. Defenses and venue.
521. Female competent to testify.
522. Keeping resort to aid pandering.
523. Marriage no defense.

Article 519. "Pandering."—Any person who shall procure or attempt to procure or be concerned in procuring with or without her consent a female inmate for a house of prostitution, or who by promises, threats, violence or by any device or scheme shall cause, induce, persuade or encourage a female to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a female person; or shall by such means persuade or encourage an inmate of such a house to remain therein as such inmate; or shall by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any female person to become or remain an inmate of such a house, or to enter any place in which prostitution is encouraged or allowed in this State or to come into or leave this State for the purpose of prostitution, or who shall procure any female person to become an inmate of a house of ill-fame within this State, or to come into or to leave this State for the purpose of prostitution, or who shall give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to become an inmate of a house of ill-fame within this State, or to come into this State or leave this State, for the purpose of prostitution, shall be confined in the penitentiary for any term of years not less than five. [Acts 1911, p. 29.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 520. Defenses and venue.—It is no defense that any part of any act prohibited by the preceding article was committed outside this State, and the offense shall in such case be deemed and alleged to have been committed and the accused tried in any county in which the prostitution was intended to be practiced or in which the offense was consummated, or in which any overt act in furtherance thereof was done. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 521. Female competent to testify.—Any such female shall be a competent witness to testify for or against the accused as to any act or words with him or by him with another in her presence, notwithstanding her having married him before or after the violation of the law, whether called as a witness during the existence of the marriage or after its dissolution. No testimony or statement given by such female during the trial for any such offense above named shall be used against her in any criminal prosecution. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 522. Keeping resort to aid pandering.—Any person who shall keep or be concerned in keeping or maintaining any house or station or rendezvous or place of resort for females under the guise of securing for such female a place of employment, but with the intent to place such female in a house of prostitution or in the possession of another person to be used for prostitution, shall be punished by confinement in the penitentiary for any term of years not less than five. Any person keeping such house or station or place of rendezvous or resort for females who shall employ any other person to procure any female to go to such place or resort shall be confined in the penitentiary for any term of years not less than five. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 523. Marriage no defense.—The act or state of marriage shall not be a defense to any violation of any article of this chapter. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

CHAPTER 7.—MISCELLANEOUS OFFENSES

Art.
524. Sodomy.
525. Procuring.
526. Indecent publications and exposures.
527. Immoral publications, motion pictures, penny arcade machine pictures, and indecent objects.
528. Desecration of graves.
528a. Enclosing or removing fence enclosing cemetery.
529. Interference with dead bodies.
530. Traffic in dead bodies.
531. Violating Anatomical Board Act.
532. Traveling women dancers.
533. Exceptions.
534. Contributing to delinquency of child.
535. Enticing minor from legal custody.
535a. Traffic in children under fifteen years.
Sec.
1. Felony; punishment.
2. Offering or advertising for barter, sale, or exchange.
3. Partial invalidity.

Art. 524. [507] [362] [342] Sodomy.—Whoever has carnal copulation with a beast, or in an opening of the body, except sexual parts, with another human being, or whoever shall use his mouth on the sexual parts of another human being for the purpose of having carnal copulation, or who shall voluntarily permit the use of his own sexual parts in a lewd or lascivious manner by any minor, shall be guilty of sodomy, and upon conviction thereof shall be deemed guilty of a felony, and shall be confined in the penitentiary not less than two (2) nor more than fifteen (15) years. [Acts 1860, p. 97; Acts 1943, 48th Leg., p. 194, ch. 112, § 1.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 525. [498] [359a] Procuring.—Whoever shall invite, solicit, procure, allure or use any means in alluring or procuring any female to visit and be at any particular house, room or place for the purpose of meeting and having unlawful sexual intercourse with any male person, or to take part or in any way participate in any immoral conduct with men or women, or to use at such place any intoxicating liquor; or give to any person the name and address, or either, or photograph of any female for the purpose of enabling the person to whom the same is given to meet and have unlawful sexual intercourse or to bring about or procure such intercourse with such female shall be fined not less than fifty nor more than two hundred dollars and be confined in jail not less than one nor more than six months. [Acts 1907, p. 246.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 526. [508] [365] [343] Indecent publications and exposures.—If any person shall make, publish or print any indecent and obscene print, picture or written composition manifestly designed

to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another in public, he shall be fined not exceeding one hundred dollars. [O. C. 399.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 527. [509] Immoral publications, motion pictures, penny arcade machine pictures, and indecent objects.—Whoever shall within this State engage in the business of editing, publishing or disseminating any newspaper, pamphlet, magazine, or any printed paper devoted mainly to the publications of scandals, whoring, lechery, assignations, intrigues between men and women and immoral conduct of persons, or shall knowingly have in his possession for sale or shall keep for sale or distribute or in any way assist in the sale or shall give away such newspaper, pamphlet, magazine or printed matter in this State, or whoever shall within this State engage in the showing and exhibition of lewd and lascivious motion pictures, or of lewd and lascivious pictures in penny arcade machines, or of indecent objects or images, or shall knowingly have in his possession for sale, or shall keep for sale or distribute or in any way assist in the sale or give away any such lewd and lascivious motion pictures, penny arcade pictures, or indecent objects or images, shall upon conviction be deemed guilty of a misdemeanor and be punished by confinement in the County jail for not more than six (6) months or fined not more than One Thousand ($1,000.00) Dollars, or by both such fine and imprisonment. [Acts 1897, p. 160; Acts 1943, 48th Leg., p. 38, ch. 35, § 1.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Section 2 of the Act of 1943 repealed conflicting laws.

Art. 528. [510] [366] [344] Desecration of graves.—If any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave stone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he shall be fined not exceeding five hundred dollars or be imprisoned in jail not to exceed six months. [Acts 1858, p. 166.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

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.]

Art. 529. [511] [367] [345] Interference with dead bodies.—If any person not authorized by law or by a relative for the purpose of reinterment, shall disinter, disturb, remove, dissect, in whole or in part, or carry away, any human body or the remains thereof, or remove any jewels, apparel or anything therefrom, or shall conceal said body, knowing it to be so illegally disinterred, he shall be confined in the penitentiary for not more than twenty-five (25) years, or be confined in jail for not more than twelve (12) months, or fined nor [1] more than Five Hundred Dollars ($500.00), or be punished by both such fine and imprisonment in jail. [O.C. 399b; Acts 1858, p. 166; Acts 1931, 42nd Leg., p. 448, ch. 268, § 1.]

[1] So in enrolled bill. Should probably read "not".

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 530. [512] Traffic in dead bodies.—No school, college, physician or surgeon shall be allowed or permitted to receive any dead human body until bond shall have been given as provided by law, and whosoever shall sell or buy any such body or in any way traffic in the same, or shall transmit or convey, or procure to be transmitted or conveyed, any said body to any place outside the State shall be fined not exceeding two hundred dollars or be imprisoned not exceeding two years in jail. [Acts 1907, p. 119.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 531. [513] Violating Anatomical Board Act.—Any person having duties imposed upon him by the provisions of the Anatomical Board Act who shall refuse, neglect or omit to perform any of them as required by said law, shall be fined not less than one hundred nor more than five hundred dollars for each offense. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 532. Traveling women dancers.—Any person, or aggregation of persons traveling from place to place composed in whole or in part of women who shall show or exhibit in any dancing performances, or as dancers in a tent, inclosure, temporary structure or in any location whatever, shall be fined not less than one hundred nor more than five hundred dollars and be confined in jail not less than thirty days nor more than one year. [Acts 1919, p. 26.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 533. Exceptions.—It shall not be unlawful under the preceding article for any regularly organized show, theatrical company or troupe to show or exhibit dancing performances in permanently established opera houses, play houses or auditoriums, or for any licensed circus not exhibiting more than one day in succession in any town or city to give dancing exhibitions in connection with any regular performance. [Id.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 534. Contributing to delinquency of child.—In all cases where any child shall be a "Delinquent child" or a "neglected child" as defined in the Statutes of this State, or when any person is an habitual drunkard or an addict to cocaine, morphine or other narcotics, and in all cases where a child is caused to become a delinquent child or a dependent and neglected child under the age of seventeen years, whether previously convicted or not, the parent, guardian or person having the custody of, or the person responsible for such child, habitual drunkard or narcotic addict, or any person who by any act encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency or the neglect of such child, habitual drunkard or narcotic addict, or who shall in any manner cause, encourage, act in conjunction with or contribute to the delinquency, dependency or the neglect of any such child under the age of seventeen years, or habitual drunkard or narcotic addict shall be fined not exceeding five hundred ($500.00) dollars or be imprisoned in jail not to exceed one year or both. By the term delinquency as used herein is also meant any act which tends to debase or injure the morals, health or welfare of such child, habitual drunkard or narcotic addict, and includes the use of tobacco in any form, drinking intoxicating liquor, the use of narcotics, going into or remaining in any bawdy house, assignation house, disorderly house, or road house, hotel, public dance hall where prostitutes, gamblers or thieves are permitted to enter and ply their trade, going in-

to a place where intoxicating liquors or narcotics are kept, drank, used or sold or associating with thieves and immoral persons or cause them to leaving [1] home or to leave the custody of their parents or guardian or persons standing in lieu thereof without first receiving their consent or against their will or who by undue influence, cause such habitual drunkard or narcotic addict to unlawfully co-habit with any person known to them to be an habitual drunkard or narcotic addict, and any other act which would constitute such a child a delinquent or cause it to become a delinquent by committing such act. [Acts 1907, p. 209; Acts 1918, 4th C.S. p. 125; Acts 1929, 41st Leg., p. 238, ch. 103, § 1.]

[1] So in enrolled bill. Should probably read "leave".

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 535. [1047] [625a] Enticing minor from legal custody.—Any person in this State who shall knowingly entice or decoy any minor in the State away from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such minor shall be fined not less than twenty-five nor more than two hundred dollars. In all cases where charitable and benevolent institutions have established homes for dependent orphans of their deceased members and the person legally entitled to the guardianship of such orphans surrenders them to such homes for care and support, such institutions under their agencies and rules are considered as standing in the stead of the parent. [Acts 1893, p. 114.]

Not repealed. Ex parte Copeland (Cr.App.) 91 S.W.(2d) 700.

Art. 535a. Traffic in children under fifteen years.

Felony; punishment

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.]

TITLE 11—OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

CHAPTER 1.—BANKING

Arts. 536–559a. [Repealed by Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

Prior to repeal article 554 was amended by Acts 1939, 46th Leg., p. 229, § 1.

Similar provisions in Texas Banking Code of 1943, see Rev.Civ.St. art. 342—101 et seq.

Art. 560. Speculative venture.—No person or association of persons, trustee or trustees, acting under any common law declaration of trust, engaged in the business of banking or operating a bank of deposit in this State shall employ any part of the funds of the depositors of said institution in any speculative venture or enterprise owned or promoted by said bank or any of the partners, officers or managers thereof. [Acts 1923, p. 422.]

Art. 560a. [Repealed by Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

The article repealed was Acts 1927, 40th Leg., p. 325, ch. 221.

Art. 561. Affidavit of solvency.—Annually, not later than January 15th of each year, each person or persons, association of persons or partnerships, or trustee or trustees acting under any common law declaration of trust, or the officers or the managers thereof, owning or operating any bank of deposit within this State, shall file with the county clerk of the county wherein the principal business of said institution is conducted an affidavit stating that said person or association of persons, partnership or institution, operating under a common law declaration of trust, is solvent and has and owns property and assets in this State the value of which is in excess of any and all of the liabilities of such person, association of persons, partnership or institution operating under a declaration of trust. [Acts 1923, p. 422.]

Art. 562. Statement of private bank.—Every person, partnership or association of persons, the trustee or trustees of every joint stock association, or institution, operating under any common law declaration of trust, owning or operating a bank of deposit within this State, shall annually, not later than January 20th, file with the county clerk of the county in which the principal office of said joint stock association or institution operating under a common law declaration of trust is located, a written sworn statement giving the names of each partner or stockholder, or member holding or owning any financial interest or stock in such partnership or institution operating under a common law declaration of trust or association

of persons; and a copy of such statement shall be published by the institution, partnership or association of persons, trustee or trustees of such institution, in some newspaper of general circulation in said county, if such newspaper be published within said county. [Id.]

Art. 563. Advertisement of responsibility.—No person, association of persons, partnership, or any trustee or trustees, acting under any common law declaration of trust, owning or operating any private banking institution or bank of deposit within this State, shall advertise in any newspaper or otherwise within this State, that said person or association of persons, partnership or institution operating under any common law declaration of trust, owns, possesses or has a financial responsibility in excess of, or above the real and true financial responsibility of such person, association of persons, partnership or institution operating under a declaration of trust. By the term "financial responsibility" as herein used, is meant money or real or personal property within this State. [Id.]

Art. 564. Punishment.—The violation of any provision of the six preceding articles by any person, association of persons, partnership, or trustees acting under any common law declaration of trust, shall constitute a misdemeanor as to such person, as to each member or association of persons, and as to each and every trustee acting under such common law declaration of trust, punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in jail for not less than thirty days nor more than twelve months, or by both such fine and imprisonment. Each day said business is carried on or attempted to be carried on shall be a separate offense. [Id.]

Art. 565. Insolvent private bank accepting deposits.—Any person, association of persons, partnership, or any trustee or trustees acting under any common law declaration of trust, or any manager, cashier or other person owning or operating any unincorporated bank or banking institution, banking company, trust company, bank and trust company, savings bank, or the trustee or manager thereof doing business in this State who shall receive or assent to the reception of any deposit of money or other valuable thing into said bank or banking institution, or trust company or institution, or bank and trust company, or savings bank, or if any such person, association of persons, owner or agent of any such bank or banking institution, or any director or agent of any such institution shall create or assent to the creation of any debt, debts or indebtedness in consideration or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution, or trust company, or institution, or any institution operating under a common law declaration of trust, after such person shall have had knowledge of the fact that such bank, banking institution or trust company, or bank and trust company, or savings bank, is insolvent, or in failing circumstances, he shall be confined in the penitentiary not less than two nor more than ten years. The failure of any such bank, banker, or banking institution, trust company, or bank and trust company, or savings bank, shall be prima facie evidence of the knowledge on the part of such person, persons, partnership, officers and trustees of any institution operating under a common law declaration of trust that the same was insolvent or in failing circumstances when the money or property was received and deposited. [Id.]

Art. 566. Exceptions.—The provisions of the eight preceding articles shall not apply to any person, association of persons, partnerships or trustees, or trustees acting under any common law declaration of trust, who, at the time this Act becomes effective are actively engaged in the operation of any bank, trust company, bank and trust company or savings bank within this State, nor to any bank which may have been in successful operation in this State for twenty years and shall have suspended operation prior to the passage of this Act, but which shall resume operation within twelve months after the passage of this Act. The right to continue such business of such bank, trust company, bank and trust company or savings bank so engaged, or shall resume business as provided in this Act, and by their heirs, legal representatives, assigns and successors, is hereby expressly recognized, confirmed and fixed. Said provisions shall not apply to any person, association of persons, partnerships or trustee, or trustees acting under any common law declaration of trust, who has for a period of one year next preceding the date that this Act becomes effective, and who, as such, in the course of the liquidation of any bank or trust company or bank and trust company within this State, has acquired the assets, or any part thereof, including the real estate used as its banking house or place of business and has assumed the liabilities, or a part thereof, of such liquidated bank or trust company or bank and trust company. [Acts 1923, p. 422.] [Acts 1925, 39th Leg., ch. 148, p. 356, § 1.]

Art. 567. Rural Credit Union.—Any officer or member of a Rural Credit Union organized under the laws of this State who embezzles or misapplies any money or funds belonging to such Rural Credit Union shall be confined in the penitentiary not less than five nor more than ten years. [Acts 1913, p. 163.]

Art. 567a. [Repealed by Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art 11.]

Art. 567b. Obtaining money, goods, etc., with intent to defraud, by giving or drawing check, draft or order without sufficient funds.

Prima facie evidence

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 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 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 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; 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.]

Section 7 of this Act repeals section 4 of article 1546 of the Penal Code.

Section 8 provided that partial invalidity should not affect the remaining portions of the Act.

The provisions of this article relating to issuing worthless checks that proof of deposit of check for collection in ordinary channels of trade and return of check unpaid to person making deposit should be prima facie evidence of presentation to and nonpayment of check by bank on which it was drawn and was not paid exceeded power of legislature to change rules of evidence and was void. Mayes v. State, 145 Cr.R. 295, 167 S.W.2d 745.

CHAPTER 2.—INSURANCE

Article 568. [644] [417] [388a] Who are insurance agents.—Whoever solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or do any other act in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done or the risk is taken, as far as relates to all the requirements and penalties herein set forth. [Acts C. S. 1879, p. 32.]

Art. 569. Exception.—The preceding article shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and the assured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters, nor to attorneys at law in the State acting in the regular transaction of their business as such, and who are not local agents nor acting as adjusters for any insurance company. [Id.]

Art. 570. [645–689] Unlawfully acting as agent.—Whoever shall do or perform any of the acts or things mentioned in the first article of this chapter for any insurance company referred to in said article without such company having first complied with the requirements of the laws of this State, shall be fined not less than five hundred nor more than one thousand dollars. [Id.]

Art. 570a. Penalty for acting as, or employing, life, health, or accident insurance agent without license.—Sec. 6. Any person who shall act as a life, health or accident insurance agent without having first obtained a license as herein provided, or who shall solicit life, health or accident insurance or act as a life, health or accident agent without having been appointed and designated by some duly authorized life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or statewide mutual association to do so as herein provided, or any person who shall solicit life, health or accident insurance or act as an agent for any person or insurance company or association not authorized to do business in Texas; or any officer or representative of any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company or association, or organization, local mutual aid association, or statewide mutual association who shall knowingly contract with or appoint as an agent any person who does not have a valid and outstanding license, as herein provided shall be guilty of a misdemeanor and, upon conviction, shall be fined any sum not in excess of Five Hundred Dollars ($500) and shall be barred from receiving a license as an insurance agent for a period of at least two (2) years. [Acts 1933, 43rd Leg., p. 356, ch. 138, § 6; Acts 1935, 44th Leg., p. 679, ch. 289, § 6.]

Sections 1–5, 7, 7a of this Act are published as Rev.Civ. St. Art. 5068b.

Art. 571. [643] [416] [388] Violating insurance laws.—Whoever violates any provision of the laws of this State regulating the business of life, fire, or marine insurance, shall, where the punishment is not otherwise provided for, be fined not less than five hundred not [nor] more than one thousand dollars. [Acts 1875, p. 44.]

Art. 571a. Violating law as to automobile insurance.—Any insurer or officer or representative thereof which shall violate any provision of this Act [1] 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. [Acts 1927, 40th Leg., p. 373, ch. 253, § 12; Acts 1937, 45th Leg., p. 671, ch. 335, § 3.]

1 Rev.Civ.St. art. 4682b.
Sections 1–11 of the Act of 1927 are published as Rev. Civ.St., art. 4682b.

Art. 572. Soliciting without certificate of authority.—Whoever for direct or indirect compensation solicits insurance in behalf of any insurance company of any kind or character, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such company, or after such certificate of authority shall have

been canceled or revoked, shall be fined not more than one hundred dollars.

Art. 573. [690] Agent procuring by fraudulent representation.—Any such agent or solicitor who knowingly procures by fraudulent representations payment of an obligation for the payment of a premium of insurance, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1909, p. 208.]

Art. 574. [692] Agent or physician making false statement.—Any solicitor, agent or examining physician who knowingly or wilfully makes any false or fraudulent statement or representation in or with reference to any application for insurance, shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

Art. 575. [693] False statement by officer of foreign company.—Any officer of any insurance company not organized under the laws of this State, who shall file with the Commissioner of Insurance [1] any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be imprisoned in the penitentiary for a term of not less than one year. [Acts 1909, p. 211.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 576. [691] Conversion by insurance agent.—Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this State and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be punished as if he had stolen the same. [Acts 1909, p. 208.]

Art. 577. [687] Director or officer pecuniarily interested.—No director or officer of any insurance company transacting business in this State, or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property or any loan from such company, nor be pecuniarily interested either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan. Nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower not in excess of the reserve value thereof. Any person violating any provision of this article shall be fined not less than three hundred nor more than one thousand dollars. [Act March 22, 1909, sec. 12, Acts 1909, p. 197.]

Art. 578. [688] Companies not to discriminate.—No insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of or payment of premiums or rates charged for policies of life or endowment insurance or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any officer or agent of such company violating any provision of this article shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1909, p. 199.]

Art. 579. Indemnity contracts.—Any attorney in fact duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts, who shall, except for the purpose of applying for certificate of authority from the Commissioner of Insurance [1] as provided for by such law, exchange any contract of indemnity of the kind and character specified in such law, or shall directly or indirectly solicit or negotiate any application for same without first complying with the law governing such contracts, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1915, p. 271.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 580. Workmen's Compensation Insurance.—Any officer or representative of any insurance company or association authorized to write workmen's compensation insurance in this State, who shall violate any provision of the laws relating to such business contained in chapter 10, Title "Insurance" of the Revised Statutes, relating to the State Insurance Commission and such business, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1923, p. 411.]

Art. 580a. Insurance policies payable in merchandise or burial materials prohibited.—Sec. 1. It shall hereafter be unlawful for any person, corporation, insurance company, fraternal organization, burial association or other association to write, sell or issue any certificate, policy, contract or membership, maturing upon the death of the person holding the same or upon the death of some member of the holder's family, if such certificate, policy, contract or membership provides that it is to be paid or settled, or if the plan of such person, corporation, organization or association provides that its certificates, policies, contracts or memberships are to be paid or settled, in merchandise or services rendered, or agreed to be rendered, or by furnishing burial materials or burial services, or in discounts on the regular prices of merchandise, burial materials or funeral services or other services; or if such certificate, policy, contract or membership is to be paid at maturity in anything except money.

Sec. 2. Any person, corporation, insurance company, fraternal organization, burial association or other association which shall hereafter write, sell or issue any certificate, policy, contract, or membership prohibited by the foregoing section of this Act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Ten Dollars ($10.00) nor more than Two Hundred Fifty Dollars ($250.00), each sale of any such policy, contract or membership shall constitute a separate offense. [Acts 1931, 42nd Leg., p. 247, ch. 147.]

Art. 580b. Misrepresentations as to terms of insurance policy.—Sec. 1. No Life, Health or Casualty Insurance Corporation including corporations operating on the cooperative or assessment plan, Mutual Insurance Companies, and Fraternal Benefit Associations or Societies, and any other societies or associations authorized to issue insurance policies in this State, and no officer, director, representative or agent therefor or thereof, or any other person, corporation or co-partnership, shall issue or circulate or cause or permit to be issued or circulated, any illustrated circular or statement of any sort, misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies, or certificate of membership or class of such certificate, misrepresenting the true nature thereof. Nor shall any such corporation, society or association, or officer, director, agent or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association or society, or member thereof, for the purpose of inducing or tending to induce, such person to lapse, forfeit or surrender his said insurance or membership therein.

Sec. 2. If any person shall violate any of the provisions of Section 1 hereof, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined in a sum not less than Twenty-five ($25.00) Dollars nor more than Five Hundred ($500.00) Dollars, or be imprisoned in the county jail not more than sixty (60) days, or by both such fine and imprisonment.

Sec. 3. The Commissioner of Insurance,[1] upon giving five (5) days' notice by registered mail, and upon hearing had for that purpose, may forfeit the charter, permit or license to do business of any society, association or corporation violating the provisions hereof, and may forfeit likewise the certificate of any person to write such insurance, where a certificate is required by law. [Acts 1931, 42nd Leg., p. 332, ch. 199.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

FRATERNAL BENEFIT SOCIETY

Art. 581. False statement to fraternal benefit society.—Any person, officer, member or examining physician of any society authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both. [Acts 1913, p. 235.]

Art. 582. Unlawfully soliciting membership.—Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 583. Soliciting without certificate of authority.—Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance [1] a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for not less than three nor more than six months, or both. [Id.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 584. Exceptions.—No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district. [Id.]

Art. 585. General penalty.—Any officer, agent or employé of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall where the penalty is not provided for in the preceding articles of this chapter, be fined not exceeding two hundred dollars. [Id.]

MUTUAL LIFE COMPANIES

Art. 586. Investment of funds.—Mutual life insurance companies shall invest their funds in accordance with the provisions of the statutes concerning investments of life insurance companies in this State; all moneys of mutual life companies, coming into the hands of any officer or officers thereof, when not invested as prescribed by said laws, shall be deposited in the name of such company or companies in some bank or banks which are subject to either State or national regulation and supervision, and which have been approved by the Commissioner of Insurance [1] as depositories therefor. Any officer or director of any such company who shall knowingly and wilfully violate or assent to the violation of the provisions of this article shall be imprisoned in the penitentiary not less than one nor more than five years. [Acts 1921, p. 150.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 587. [Repealed by Acts 1933, 43rd Leg., p. 893, ch. 193, § 2.]

OTHER MUTUAL INSURANCE

Art. 588. [680] Mutual accident insurance law.—Any officer or any employé of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1903, p. 175.]

Art. 589. Failure to report condition.—If at any time the admitted assets of any mutual company operating under the law providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner of Insurance,[1] and he may make an examination into the company's affairs if he deems best, and if such president and secretary shall fail to report the company's condition as so required, they shall each be fined not less than one

hundred nor more than five hundred dollars. [Acts 1913, p. 57.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 590. [683] False statement or misappropriation.—Whoever shall intentionally submit a false statement, or intentionally misappropriate the funds of mutual companies organized under the laws providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall be confined in the penitentiary not less than five nor more than ten years. [Id.]

Art. 590a. Mutual Aid Associations, penalty.—Any person or persons who shall violate any of the provisions of this law shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than five hundred ($500.00) dollars. [Acts 1929, 41st Leg., p. 563, ch. 274, § 28.]

Sections 1–31 of this Act are published as Rev.Civ.St. Arts. 4875a—1 to 4875a—31.

INSURANCE ON THE LLOYDS PLAN

Art. 591. Underwriters and attorneys.—Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on the Lloyds plan, by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. Policies of insurance may be executed by an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney. [Acts 1921, p. 238.]

Art. 592. To file application for license.—The attorney for a Lloyds shall file with the Commissioner of Insurance [1] a verified application for license setting forth the data and information required by law, and upon complying with the law such Commissioner shall issue to any attorney applying therefor a license specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law. [Id.]

[1] Office of Commissioner of Insurance abolished and powers and duties transferred to the Board of Insurance Commissioners, see Rev.Civ.St. Arts. 4679–4679d, 4682a.

Art. 593. Examination of books and affairs.—The Commissioner of Insurance [1] may make examinations of the books and affairs of any attorney for underwriters at a Lloyds, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand. [Id.]

See note to Article 592, ante.

Art. 594. Assuming undue risk.—No attorney for underwriters at a Lloyds shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined by law and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured. [Id.]

Art. 595. Violation of Lloyds insurance law.—Any person, who, as principal, attorney, agent, broker, or other representative, shall engage in the business of making insurance on the Lloyds plan, as defined in this chapter and by the Revised Statutes of this State, without complying with the requirements of such law governing such business, or who shall violate any provision of the four preceding articles, shall be fined not exceeding five hundred dollars. [Id.]

FIRE INSURANCE

Art. 596. Accepting rebates.—Whoever shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives, or any other person, any rebate of premium payable on policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, shall be fined not exceeding one hundred dollars or be imprisoned in jail not exceeding ninety days, or both. [Acts 1913, p. 205.]

Art. 597. Violating fire insurance law.—Any officer or director of any fire insurance company affected by the statutes of this State creating the State Insurance Commission, or any agent, or any one acting or employed by such company who alone or in conjunction with any corporation, company or person, shall wilfully do or cause to be done any act prohibited or declared to be unlawful by such statutes, or who wilfully fails to do any act required to be done by such statutes, or who shall wilfully permit any act directed not to be done, or who shall be guilty of any wilful infraction of such statutes, shall be fined not less than three hundred nor more than one thousand dollars. [Id.]

Art. 598. [663] Witness must testify.—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of another charged with violating any provision of the laws relating to fire insurance on the ground that it may incriminate him under the laws of this State; but no 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 testify or produce evidence under this law. [Acts 1910, p. 125; Acts 1913, p. 206.]

Art. 599. Failure to give bond.—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 of Insurance during the calendar year in which such policy may issue, or be authorized or caused to be issued, a bond with good and sufficient sureties, to be approved by such Commissioner, in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such insurance company. Any person violating 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 three nor more than twelve months, or both. [Acts 1909, p. 182.]

Art. 600. Exceptions.—The preceding article shall not apply to any person, firm or corporation or association doing an interinsurance, co-operative or reciprocal business. [Id.]

Art. 601. Mutual fire insurance companies.—Any person who shall transact the business of mutual fire insurance in this State without complying with the laws regulating such business shall be fined not less than fifty nor more than five hundred dollars. [Acts 1923, p. 396.]

CHAPTER 3.—WIFE AND CHILD DESERTION

Art.
602. Desertion of wife or child.
603. Jurisdiction.
604. Allowance for support.
605. Wife may testify.
606. Duty of commissioners' court.
606a. Bringing child into state for placing out or adoption without consent of State Board of Control.

Art. 602. Desertion of wife or child.—Any husband who shall willfully desert, neglect, or refuse to provide for the support and maintenance of his wife who may be in necessitous circumstances, or any parent who shall willfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under sixteen years of age, shall be confined in the penitentiary for not more than two years, or be confined in jail for not more than six months, or fined not less than Twenty-five ($25.00) Dollars nor more than Five Hundred ($500.00) Dollars, or be punished by both such fine and imprisonment in jail. [Acts 1913, p. 188; Acts 1929, 41st Leg., p. 427, ch. 195, § 1; Acts 1931, 42nd Leg., p. 479, ch. 276, § 1.]

The amendatory Act of 1929, cited to the text, was held invalid because of a defective caption. See Johnson v. State, 119 Cr.R. 104, 44 S.W.(2d) 372; Ex parte Heartsill, 118 Cr.R. 157, 38 S.W.(2d) 803.

Art. 603. Jurisdiction.—An offense under this chapter shall be held to have been committed in the county in which such wife, child or children may have been at the time such abandonment occurred, or in the county in which such wife, child or children shall have resided for six months next preceding the filing of the indictment or information. [Acts 1913, p. 188.]

Art. 604. Allowance for support.—The Court during its term, or Judge thereof in vacation after the filing of complaint against or after the return of indictment of any person for the crime of wife, or of child, or of wife and child desertion shall upon application of the complainant give notice to the defendant of such application and may upon hearing thereof enter such temporary orders as may seem just, providing for the support of deserted wives and children or both, pendente lite, and may punish for the violation or refusal to obey such order as for contempt. [Acts 1913, p. 188; Acts 1931, 42nd Leg., p. 58, ch. 38, § 1.]

Art. 605. Wife may testify.—No other or greater evidence to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, shall be required than is or shall be in a civil action. In no prosecution under this chapter shall any statute prohibiting disclosures of confidential communications between husband and wife apply to strictly relevant facts. Both husband and wife shall be competent and compellable witnesses to testify against each other to any relevant matter including the fact of such marriage, and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect, or refusal is wilful. [Acts 1913, p. 188.]

Art. 606. Duty of commissioners court.—The commissioners court of the county in which information or indictment under this chapter is filed shall furnish the funds necessary for arresting and returning to such county any defendant under this chapter who is not at the time in such county. [Id.]

Art. 606a. Bringing child into state for placing out or adoption without consent of State Board of Control.—Sec. 6. It shall be unlawful for any person, for himself or as agent or representative of another, to bring or send into this State any child below the age of sixteen (16) years for the purpose of placing him out or procuring his adoption without first having obtained the consent of the State Board of Control, which may be made by application directly to the Board of Control, or through the County Child Welfare Board. Said consent shall be given on a regular form to be prescribed by the Board of Control and no person shall bring any such child into this State without such permit and without having filed with the Board of Control a bond payable to the State, on a form to be prescribed by the Attorney General, and approved by the Board, in the penal sum of One Thousand ($1,000.00) Dollars, conditioned that the person bringing or sending such child into this State will not send or bring any child who is incorrigible or unsound of mind or body; that he will remove any such child who becomes a public charge or pay the expense of removal of such charge, who, in the opinion of the Board of Control, becomes a menace to the community prior to this adoption or becoming of legal age; that he will place the child under a written contract approved by the County Child Welfare Board and the Board of Control; and that the person with whom the child is placed shall be responsible for his proper care and training. Before any child shall be brought or sent into the State for the purpose of placing him in a foster home, the person so bringing or sending such child shall first notify the Board of Control of his intention and the Board of Control shall immediately notify the County Child Welfare Board, who shall make a report to [1] the Board of Control on the person whom it is indicated will have charge of the child, and shall obtain from the Board of Control a Certificate stating that such home is, and such person or persons in charge, are in the opinion of the Board of Control, suitable to have charge of such child. Such notification shall state the name, age and description of the child, the name and address of the person to whom the same is to be placed, and such other information as may be required by the Board of Control, and the same shall be sworn to by such person. The Board of Control shall require the person sending said child into this State, or the person who is in charge of the same after he has been brought here, to make a report at certain stated times, and in the event such reports are not made such Board shall be authorized to deport said child from this State and the expenses thereof shall be recovered under said bond; provided, however, that nothing herein shall be deemed to prohibit a resident of this State from bringing into the State a relative or child for adoption into his own family. The Board of Control and Child Welfare Boards shall not allow minors to come into and be brought into this State in violation of this Act.

Sec. 7. If any person shall bring into this State or direct, conspire, or cause to be brought into or sent into this State any child in violation of the foregoing section, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Twenty-five ($25.00) Dollars nor more than One Thousand ($1,000.00) Dollars, or by confinement in the County Jail not exceeding twelve months, or by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 323, ch. 194.]

[1] So in enrolled bill. Session Laws read "of".

Sections 1 to 5, and 8 to 12, of this Act are published as Rev.Civ.St. Art. 695a.

Transfer of child welfare services to Department of Public Welfare, see Rev.Civ.St., art. 695e.

CHAPTER 4.—VAGRANCY

Art.
607. "Vagrancy"; "prostitution" defined for purposes of article; accomplice's testimony.
607a. Punishment for violating Sections 15-20 of Article 607.
608. Punishment for vagrancy.
609. Duty of peace officers.

Art. 607. [634–635–636] "Vagrancy"; "prostitution" defined for purposes of article; accomplice's testimony.—The following persons are and shall be punished as vagrants, viz.:

(1) Persons known as tramps, wandering or strolling about in idleness, who are able to work and have no property to support them.

(2) Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.

(3) All persons able to work,[1] have no property to support them, and who have no visible or known means of a fair, honest and reputable livelihood. The term "visible or known means of a fair, honest and reputable livelihood," as used in this article, shall be construed to mean reasonably continuous employment at some lawful occupation for reasonable compensation, or a fixed and regular income from property or other investments, which income is sufficient for the support and maintenance of such person.

[1] So in enrolled bill. The word "who" should probably be inserted.

(4) All able-bodied persons who habitually loaf, loiter and idle in any city, town or village, or railroad station, or any other public place in this State for the larger portions of their time, without any regular employment and without any visible means of support. An offense under this subdivision shall be made out if it is shown that any person has no visible means of support, and only occasionally has employment at odd jobs, being for the most of the time out of employment.

(5) Persons trading or bartering stolen property.

(6) Every common gambler or person who for the most part maintains himself by gambling.

(7) All companies of gypsies, who, in whole or in part, maintain themselves by telling fortunes.

(8) Every able-bodied person who shall go begging for a livelihood.

(9) Every common prostitute.

(10) Every able-bodied person who lives without employment or labor, and who has no visible means of support.

(11) All persons who are able to work and do not work, but hire out their minor children, or allow them to be hired out, and live upon their wages, being without other means of support.

(12) All persons over sixteen years of age and under twenty-one, able to work and who do not work, and have no property to support them, and have not some known, visible means of a fair, honest and reputable livelihood, and whose parents, or those in loco parentis, are unable to support them, and who are not in attendance upon some educational institution.

(13) All persons who advertise and maintain themselves in whole or in part as clairvoyants or foretellers of future events, or as having supernatural knowledge with respect to present or future conditions, transactions, happenings or events.

(14) All male persons who habitually associate with prostitutes, or habitually loiter in or around houses of prostitution, or who, without having visible means of support, receive financial aid or assistance from prostitutes. [Acts 1909, p. 111.]

(15) All persons who invite, entice, or solicit any male person, or direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting, any male person to visit any bawdy house or disorderly houses or other place, for the purpose of unlawful sexual intercourse, knowing the purpose of such person in going to such house; or who meet any female at such bawdy house or disorderly house for the purpose of unlawful sexual intercourse.

(16) All persons who engage in prostitution, lewdness, or assignation.

(17) All prostitutes who solicit, induce, entice, or procure any male person to visit any bawdy house or disorderly house or other place with her for the purpose of unlawful sexual intercourse.

(18) All persons who reside in, enter or remain in any house, place, building or other structure, or who enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation.

(19) All persons who aid, abet, or participate in the doing of any of the acts herein prohibited.

(20) The term "prostitution" as used in this Act shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for indiscriminate sexual intercourse without hire. The term "lewdness" shall be construed to include any indecent or obscene act. The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(21) For any offense enumerated in Sections 15, 16, 17, 18 or 19 of this Article, a conviction may be had upon the unsupported evidence of an accomplice or participant in the unlawful act. [Added Acts 1943, 48th Leg., p. 253, ch. 154, § 1.]

Section 3 of the amendatory Act of 1943 repealed all conflicting laws and parts of laws.

Section 4 read as follows: "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 provision, if any."

Art. 607a. Punishment for violating Sections 15–20 of Article 607

Any person coming within the definitions and provisions of the foregoing Act[1] shall be punished as is now provided in Article 608 of the Penal Code of Texas of 1925. Acts 1943, 48th Leg., p. 253, ch. 154, § 2.

[1] Article 607.

Art. 608. [639] Punishment for vagrancy.—Each vagrant shall be fined not to exceed two hundred dollars. [Id.]

Art. 609. [637–638–640] Duty of peace officers.—It shall be the duty of every sheriff, deputy sheriff and constable in every county, and of the police, town marshal, deputy marshal, and like officials, in every county, city, town, or village in this State to make complaint, under oath to any officer empowered to issue criminal warrants, of all vagrants within their knowledge, or upon information, in their respective counties, cities, towns, and villages. If any such officer shall fail, refuse, or neglect to perform the duties herein required, he shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

CHAPTER 5.—PRIZE FIGHTING, ROPING CONTESTS, ETC.

Article 610. [1507] [1005] Pugilistic encounters prohibited.—Any person who shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull, or any other animal, for money or other thing of value, or for any championship, or upon the 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, shall be imprisoned in the penitentiary for not less than two nor more than five years. [Acts 1st C. S. 1895, p. 5.]

Art. 611. [1508] "Pugilistic encounter."—By the term "pugilistic encounter," as used herein, is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money, or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged. [Id.]

Art. 612. [1509] Moving pictures of prize fights.—No person, association, corporation, or any agent or employé of any person, association, corporation or receiver, partnership or firm, shall give or present to the public an exhibition of prize fights or glove contests, or of any obscene, indecent or immoral picture of any character whatsoever, by means of moving picture films, bioscopes, vitascopes, magic lanterns or other device or devices in moving picture shows, theaters, or any other place whatsoever.

Any person, or any agent or employé of any person, association, corporation or receiver violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than ten nor more than sixty days, or both. Each day's violation of any provision of this article shall be a separate offense. [Acts 1st C. S. 1910, p. 21.]

Art. 613. [1510] Matching cock fight, etc.—Any person who shall match or be concerned in matching any cock fight or who shall match or be concerned in matching or causing a fight between any animals or fowls, or who shall keep or be concerned in keeping any cock pit or other place for the purpose of matching fights between cocks or any animals or fowls, shall be fined not less than ten nor more than one hundred dollars. Each day such cock pit or other place as aforesaid shall be kept shall be a separate offense. [Acts 1907, p. 156.]

Art. 614. [1511] Engaging in roping contest.—Any person, who shall engage in a roping contest with other persons or alone, in which cattle or other animals are roped as a test or trial of skill of the person or persons engaged in such roping contest, for any money or prize of any character, or for any championship, for anything of value, or upon the result of which, any money or anything of value is bet or wagered, shall be fined not less than One Hundred ($100.00) Dollars nor more than Five Hundred ($500.00) Dollars. Each animal roped, or attempted to be roped, shall be a separate offense; provided however, that nothing in this Act, shall prevent roping contests without betting or wagering wherein calves or goats are roped as a test or trial of skill, so long as the contestant shall not throw or drag the calf or goat before dismounting from a horse. [Acts 1905, p. 69; Acts 1931, 42nd Leg., p. 352, ch. 209, § 1.]

Art. 614a. [Repealed by Laws 1934, 43rd Leg., 2nd C.S., p. 131, ch. 62, § 9.]

Article repealed was Acts 1931, 42nd Leg., p. 337, ch. 204.

Art. 614b. Endurance contests limited to twenty four hours; exception of school or college contests.

Contests limited

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 con-

trol, 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.]

Abating or enjoining nuisance

Sec. 8. Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, the Attorney General or the district attorney or county attorney under his direction, shall file in the name of the State in the county where the nuisance is alleged to exist against whoever maintains such nuisance to abate and enjoin the same. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendants from maintaining the same, and ordering the said house to be closed for one year from the 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 nor more than five thousand dollars, with 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 said house. On violation of any condition of such bond, 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 or county attorney of such county.

Partial invalidity

Sec. 10. If any section, sub-section, sentence, clause, word or phrase of this Act is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this Act, which are hereby declared distinct and severable. [Acts 1934, 43rd Leg., 2nd C.S., p. 131, ch. 62.]

Section 9 of this Act repeals Acts 1931, 42nd Leg., p. 337, ch. 204 (Pen.Code Art. 614a).

Art. 614—1. Boxing or sparring contests; Commissioner of Labor; jurisdiction and powers; Amateur associations and contests exempt. —(a) The promoting, conducting or maintaining of fistic combat or wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purses or prize equivalent to be received by the participants or contestants, or where an admission fee thereto or therefor is charged or received, shall be lawful in Texas, except on Sunday, subject to such supervision by the Commissioner of Labor Statistics as such Commissioner possesses over theatres and employees thereof other than performers and under the further provisions hereof; provided, however, that any such contests conducted by educational institutions and/or Texas National Guard units and/or duly recognized amateur athletic organizations shall be exempt from the provisions of this Act as specified under Paragraph (b) of this section.

Sole jurisdiction and authority is hereby vested in the Commissioner of Labor to enforce the provisions of this Act regulating the promoting, conducting or maintaining of fistic combats, wrestling matches, boxing or sparring contests or exhibitions for money remuneration, purse or prize equivalent to be received by the participants or contestants, or where an admission fee thereto or therefor is charged or received, and he is hereby given specific authority to promulgate such rules and regulations as shall become necessary in carrying out the purposes of this Act, and shall have the power of refusal of licenses or permits to boxers, wrestlers, managers, referees, match-makers, timekeepers, seconds or promoters if after investigation applicant or applicants are found to be of questionable character or not entitled to same under the provisions of this Act. The definition of the words "boxer," "wrestler," "manager," "referee," "matchmaker," "timekeeper," "second," "promoter," together with the phrases "fistic combat," "wrestling match," "boxing contest" as used in this Act shall be accepted as defined by the National Boxing Association and the National Wrestling Association, and the rules governing ring regulations of boxing and wrestling contests or sparring contests or exhibitions, their seconds and referees shall be in accordance with those set out by the National Boxing Association and the National Wrestling Association. The definition of the phrases "Amateur Contestant" and "Amateur Contests" shall be that as set forth by the National Amateur Athletic Union.

If any person, firm or corporation be dissatisfied with any order, ruling or decision of said Commissioner, such aggrieved party may within thirty (30) days from the entry of such order, ruling or decision, appeal therefrom to the District Court of Travis County, Texas, and such Court may hear and determine such appeal, in term time or vacation, by trial de novo. If the aggrieved party shall prevail by final judgment, a certified copy thereof shall be presented to the Commissioner who shall comply with the terms thereof upon the payment of all fees incurred under the terms of this Act.

(b) None of the provisions of this Act[1] shall be applicable to and enforced against:

(1) All nonprofit amateur athletic associations chartered under the laws of the State of Texas including their affiliated membership clubs throughout the State for the promotion of amateur athletics.

(2) Any contests or exhibitions between students of such institutions which are conducted by any college, school or university as part of the institution's athletic program.

(3) Contests or exhibitions between members of such units which are conducted by any troop, battery, company or units of the Texas National Guard or Texas Defense Guard. Provided, none of the participants in such contests or exhibitions receive a money remuneration or purse or prize equivalent for their performance or services therein.

Every person, club, organization or association of persons conducting or sponsoring amateur boxing or wrestling contests, except those specifically exempted, where an admission fee is charged shall be subject to the tax provision of this Act and shall conduct all wrestling matches, fistic combats, boxing or sparring contests of amateur standing under the conditions specified hereinafter.

(1) The sanction and approval of the Commissioner of Labor Statistics shall be secured at least seven (7) days prior to date of tournaments or contests, and all entries shall be filed with said amateur organization three (3) days prior to date of the tournaments or contests.

(2) Such amateur organization shall have the responsibility of determining and sanctioning the amateur standing or status of each and every contestant who performs or appears in such amateur contests or tournaments.

(3) Such amateur organization shall not be required to secure a license to conduct or promote amateur contests approved by the Commissioner of Labor Statistics.

(4) Such contests shall be subject to the supervision of the Commissioner of Labor Statistics and all profits derived from such contests be used in the development of amateur athletics.

(5) No one shall be permitted to act as referee in amateur contests except a person holding a license or permit from the Commissioner of Labor Statistics.

(6) All contestants shall be examined by a licensed physician within a reasonable time before they enter or engage in contests, and a licensed physician shall be in attendance at the ringside during the full course of the contests or tournaments.

(7) No boxer, wrestler or manager licensed under this Act shall participate in any capacity during any amateur show or exhibition and said participation shall be deemed sufficient grounds for having his professional license suspended or revoked by the Commissioner of Labor Statistics. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 1; Acts 1943, 48th Leg., p. 33, ch. 31, § 1.]

1 Articles 614—1 to 614—17c.

Art. 614—2. Boxing and wrestling fund; deposit of license and other fees.—The Commissioner of the Bureau of Labor Statistics shall deposit with the State Treasurer all moneys received by him from license and all other fees under the provisions of this Act, to be held in a separate fund, known as the "Boxing and Wrestling Enforcement Fund," and to be used to the amount herein authorized, for expenses incurred in supervising, inspecting and regulating all ring exhibitions, including fistic combats or wrestling matches, boxing or sparring contests, or exhibitions, for money remuneration, purses or prizes, printing blank license forms to be furnished applicants by the Commissioner of Labor Statistics, and the sum of Fifteen Thousand Dollars ($15,000.00) or so much thereof as may be necessary, and the same is hereby appropriated for said purposes, and all such expenditures shall be verified by the person to whom such payments are made. Upon the approval of such expenditures by the Commissioner of Labor Statistics, it shall be the duty of the Comptroller of Public Accounts to draw his warrant on the State Treasurer for the amount of such expenditures in favor of the person claiming the same, to be paid out of the "Boxing and Wrestling Enforcement Fund." The unexpended balance remaining in said fund at the end of the fiscal year shall be transferred to the General Fund. The Commissioner may appoint, and at pleasure remove, a Secretary to the Commissioner, the duties of which Secretary shall be to keep, or assist the Commissioner in keeping, a full and true record of all the proceedings of the Commissioner, to keep, or assist the Commissioner in keeping, the books and records in the general offices of the Commissioner, and to perform such other duties as the Commissioner may prescribe, the salary of which Secretary shall be Fifteen Hundred Dollars ($1500.00) per year, to be paid out of the above Fifteen Thousand Dollars ($15,000.00) herein appropriated. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 2; Acts 1934, 43rd Leg. 2nd C.S., p. 63, ch. 21, § 2.]

Art. 614—3. Promoter defined.—Each individual, firm, club, copartnership, association, company or corporation which conducts any fistic combat, boxing, sparring or wrestling match, contest or exhibition is a "promoter" within the terms of this Act; provided, that no individual, firm, club, copartnership, association, company or corporation, nor any member, shareholder, stockholder, officer, agent or representative of any firm, copartnership, association, company or corporation shall in any manner, either directly or indirectly, act as a promoter as herein defined before or prior to such person, member, shareholder, stockholder, officer, agent or representative becoming and being a bona fide inhabitant and citizen of the State of Texas, and each such officer, agent or representative of any such firm, club, copartnership, association, company or corporation shall likewise be a bona fide inhabitant and citizen of the State of Texas, and any person who shall aid or abet any person in endeavoring to act as or become such promoter, and any person so acting without being so qualified shall be deemed guilty of felony swindling and shall be punished accordingly, and the charter or any other business permit of any organization whose officer or officers, agents or representatives shall be so convicted shall thereby be forfeited and their right to conduct such promotion or contests terminated. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 3.]

Art. 614—4. Registration fee of promoter.—Before any individual, firm, club, copartnership, association, company, or corporation may act as a promoter of either boxing or wrestling as herein defined, such promoter shall file or cause to be filed with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by him a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where promoter will operate, and such other information as may be required by such printed forms when furnished, and the application filed with the Commissioner of Labor shall be accompanied with a registration or license fee, for which a permit or license may be issued by said Commissioner of Labor, for the type of license applied for, such remittance to be in such form as by law provided for other remittances to such officer, and such registration fee shall be Ten Dollars ($10) for Boxing Promoters License and Ten Dollars ($10) for Wrestling Promoters License in a city with a population not exceeding seven thousand, five hundred (7,500); Twenty Dollars ($20) in cities with a population of seven thousand, five hundred and one (7,501) to seventeen thousand, five hundred (17,500) inclusive; Thirty Dollars ($30) in cities with a population of seventeen thousand, five hundred and one (17,501) to twenty-five thousand (25,000), inclusive; One Hundred Dollars ($100) in cities with a population of twenty-five thousand and one (25,001) to seventy-five thousand (75,000), inclusive; and Two Hundred Dollars ($200) in a city of more than seventy-five thousand (75,000) inhabitants, and any person or group of persons acting as such promoter without so registering and remitting such license fee, and having in their possession a duly authorized permit, shall be deemed guilty of felony swindling and shall be punished accordingly. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 4; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 3; Acts 1941, 47th Leg., p. 625, ch. 377, § 1.]

Art. 614—5. Bond by promoter.—Before any individual, firm, club, copartnership, association, company, or corporation may conduct, hold or give any fistic combat, match, boxing, sparring, or wrestling contest or exhibition, such promoter shall execute and file with the Commissioner of Labor a good and sufficient surety bond in the sum of Three Hundred Dollars ($300) where the combat is to be held in a city of not more than seventy-five hundred (7500) population; Five Hundred Dollars ($500) where the combat is to be held in a city with a population from seven thousand, five hundred and one (7,501) to seventeen thousand, five hundred (17,500), inclusive; Seven Hundred and Fifty Dollars ($750) where the combat is to be held in a city whose population is between seventeen thousand, five hundred and one (17,501) and twenty-five thousand (25,000) inclusive; One Thousand Dollars ($1,000) in cities whose population is in excess of twenty-five thousand (25,000), subject to the approval of the Commissioner and conditioned for the payment of the tax hereby imposed, said bond to be in form and kind required of an administrator of an estate in Texas, and the Attorney General in a Court of competent jurisdiction in Travis County, Texas, or any other Court having jurisdiction, may institute suit upon such bond to recover any delinquent tax and the cost incurred in ascertaining the amount and recovery

of such tax; provided, if such promoter conducts such contests or exhibitions as a continuing enterprise or promotion, such bond shall be annual in effect and continue in force until the last day of the fiscal year in which same is filed and approved and shall run concurrent with the time for which license is issued, unless default be made by the principal thereof or the sureties thereon become insufficient in the judgment of the Commissioner of Labor. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 5; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 4; Acts 1941, 47th Leg., p. 625, ch. 377, § 2.]

Art. 614—6. Report of gross receipts; payment of tax.—Each individual, firm, club, copartnership, association, company or corporation which conducts any fistic combat, boxing, sparring or wrestling match, contest or exhibition wherein the contestants or participants receive a money remuneration, purse, or prize equivalent for their performance or services in same, and/or where an admission fee is charged or received, shall furnish to the Commissioner of Labor Statistics at Austin, Texas, within forty-eight (48) hours after the termination of such match, contest or exhibition, a duly verified report thereof showing the number of tickets sold, the various prices received therefor, and the amount of gross receipts for the total number of tickets sold therefor, and at the same time shall attach to the Commissioner of Labor's report legal tender or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for three per centum (3%) of the total gross receipts from the sale of tickets of admission to such contest, which tax shall be deposited to the credit of the "Boxing and Wrestling Enforcement Fund." No other fee or tax either general or local, than as herein provided, shall be assessed against or levied upon any such match, contest or exhibition, contestant or manager, or promoter thereof. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 6; Acts 1934, 43rd Leg., 2nd C. S., p. 63, ch. 21, § 5.]

Art. 614—7. Failure to report contest or remit gross receipt tax; penalty.—Whenever any such individual, firm, club, copartnership, association, company or corporation shall fail to make a report of any contest in the manner and within the time prescribed by this Act, and to pay or remit the gross receipts tax due thereunder pursuant to the provisions of this Act, and for a period of twenty (20) days after notice thereof to such delinquent persons, firm, club, copartnership, association, company or corporation by the State Commissioner of Labor, such delinquent individual, firm, club, copartnership, association, company or corporation and/or the officers thereof shall be deemed guilty of the theft of such tax and punished accordingly; provided further, that whenever any such report is unsatisfactory to the State Commissioner of Labor he may, by Court of Inquiry, examine or cause to be examined the books and records of such individual, firm, club, copartnership, association, company or corporation, and may subpœna or cause to be subpœnaed and examine or cause to be examined, under oath, such individual, copartners, or the officers of such firm, club, association, company or corporation, and other persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest or contests and the amount of the tax due pursuant to the provisions of this Act, which tax he may, upon, and as the result of such examination, fix and determine, and in case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, if a greater sum than reported and paid is so determined to be due, for a period of twenty (20) days after notice by the Commissioner of Labor to such delinquent individual, firm, club, copartnership, association, company or corporation, such individual, copartners, or the officers of such firm, club, association, company or corporation shall be deemed guilty of the theft of such tax and punished accordingly. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 7.]

Art. 614—8. Registration of boxer or performer; fee.—Before any person may perform or act as boxer, wrestler, or manager of such boxer or wrestler, or matchmaker for a promoter of boxing and wrestling contests or exhibitions, where such boxer, wrestler, manager, or matchmaker performs or renders service for money remuneration, purse or prize equivalent, or may appear or perform without remuneration in contests with or on the same card with licensed contestants, such person shall file with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by him a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where and party with whom filed if other than with the Commissioner of Labor at Austin, Texas, as is herein provided, and such other information as may be required by such printed forms, and the application shall be accompanied with a license fee, such remittance to be in such form as by law provided for other remittances to such officer, and such license fee shall be Five Dollars ($5) for each boxer or wrestler and Fifteen Dollars ($15) for each manager of a boxer or wrestler, and Fifteen Dollars ($15) for each matchmaker for a promoter of boxing and wrestling or otherwise for a boxer or wrestler; provided further that a license good for thirty (30) days only may, upon receipt of proper application, and when approved by the Commissioner of Labor, be issued to a boxer or a wrestler, for a fee of One Dollar ($1). And it is further provided that each manager shall file with the Commissioner of Labor a copy of each and every contract entered into with a boxer or wrestler, and any person acting or performing without so registering and remitting such license fee shall be deemed guilty of misdemeanor swindling and shall be punished accordingly.

It is further provided that before any person may perform or act as second to a boxer or wrestler, or timekeeper at a boxing or wrestling contest, or referee of boxing and wrestling contests or exhibitions, such person shall file with the Commissioner of Labor at Austin, Texas, on such form as may be furnished by said Commissioner, a verified declaration or application, setting forth the true name, age, present actual residence, and length of time thereof, place where and party with whom filed if other than with the Commissioner of Labor at Austin, Texas, as is herein provided, and such other information as may be required by such printed forms, and the application shall be accompanied with a license fee, such remittance to be in such form as by law provided for other remittances to such officer, and such license fee shall be Ten Dollars ($10) for such referee; provided, however, that a deputy commissioner of labor may appoint a referee for a single boxing or wrestling combat, and issue the license therefor, and said license fee shall be One Dollar ($1); and Two Dollars and Fifty Cents ($2.50) for each second and timekeeper, provided, however, that a deputy labor commissioner may appoint said second and timekeeper and other necessary local officials for any single boxing or wrestling combat and issue a license therefor without charge; and provided further that adequate provisions shall be made for some person of proper authority present at the match to appoint a substitute for any referee, second, timekeeper, or any other officiating person who fails to present himself at the time of the bout; and provided further that any person acting in any of the above named capacities or performing without registering and remitting such license fees as are herein required shall be deemed guilty of misdemeanor swindling and shall be punished accordingly. [Acts 1933, 43rd Leg., p. 843, ch.

241, § 8; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 6; Acts 1941, 47th Leg., p. 625, ch. 377, § 3.]

Art. 614—9. Registration fee for year.—All license fees herein provided shall be effective for one year after the date received or fixed as that of the first performance by the Commissioner of Labor Statistics, and a receipt for the license fee paid shall be evidence of the payment of same until said license is issued by the Commissioner of Labor Statistics; provided that any duly registered promoter may accept the application and license fee for such boxer, wrestler, manager, matchmaker, timekeeper, second or referee and issue his receipt therefor, and any duly registered promoter shall secure from such boxer, wrestler, manager, referee, matchmaker, timekeeper or second, who has not complied with Section 8 [1] of this Act, said registration or application and fee, and issue his receipt for the fee so collected, before permitting such boxer, wrestler, manager, referee, matchmaker, timekeeper or second to perform, act or appear in contests staged by said promoter, which receipt shall be sufficient until such time as the Commissioner of Labor Statistics may issue such license, such promoter to be liable under the bond herein provided for the remittance of all application fees so collected, and failure to remit the same to the Commissioner of Labor Statistics within ten (10) days after the receipt thereof shall cause him to be deemed guilty of theft thereof and punished accordingly. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 9; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 7.]

[1] Article 614—8, ante.

Art. 614—10. Exhibition buildings provided with fire exits.—All the buildings or structures used for the purpose of conducting such fistic combat matches, boxing, sparring or wrestling contests or exhibitions shall be ventilated and provided with fire exits and fire escapes in such manner as by law provided for buildings where public gatherings are held and shall conform to all laws, ordinances and regulations pertaining to such buildings in the city, town or village where situated; provided, nothing herein contained is to be construed to prevent the holding of fistic combat matches, boxing, sparring or wrestling contests or exhibitions in the open air or tents. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 10.]

Art. 614—11. Matters prohibited.—No individual, firm, club, copartnership, association, company or corporation shall:

(a) Hold or conduct any fistic combat match, boxing, sparring or wrestling contest or exhibition on Sunday; or,

(b) Knowingly permit any person under the age of eighteen (18) years to participate in any professional fistic combat match, boxing, sparring or wrestling contest or exhibition; or,

(c) Knowingly permit any person under the age of twenty-one (21) years to participate in any professional championship fistic combat match, boxing, sparring or wrestling contest or exhibition; or,

(d) Permit any gambling or betting or wagering of any character on the result of, or any contingency in connection with any fistic combat match, boxing, sparring or wrestling contest or exhibition, either before or during any such contests; or,

(e) Knowingly conduct or give or participate in or permit any sham or fake fistic combat match, boxing, sparring or wrestling contest or exhibition except it be as a burlesque; or,

(f) Knowingly permit any fistic combat match, boxing, sparring or wrestling contest or exhibition between any person of the Caucasian or "White" race and one of the African or "Negro" race; or,

(g) Permit any contestant for or participant in any fistic combat match, boxing, sparring or wrestling contests or exhibition to enter the same unless such contestant first shall have been examined, within two (2) hours prior to entering the ring, by a duly licensed and practicing physician who is a bona fide inhabitant and citizen of the State of Texas, nor then, if such physician finds the facts to be that such contestant is physically unfit to engage in such contest, and such physician shall so certify in writing if he finds the fact so to be, and the promoter of such contest shall deliver such report of examination to the Commissioner of Labor Statistics with the gross receipts tax report, and a duly licensed and practicing physician who is a bona fide inhabitant of the State of Texas shall remain in attendance during the entire time of such match, contest or exhibition; provided, in the event of an emergency in the nature of one or more of the contestants failing, refusing or otherwise being unable to perform as scheduled or agreed, nothing herein shall be construed to prevent the substitution of another contestant or contestants in place of those failing or refusing or being unable to perform as scheduled and any physical examination of a contestant required by this Act may thus be waived by such contestant upon the latter stating in writing that he is physically fit; or,

(h) Permit any fistic combat match, boxing or sparring contest or exhibition for more than ten (10) rounds duration, except in a championship match which shall not exceed fifteen (15) rounds; or,

(i) Permit one round of such match, contest or exhibition to extend for a longer period than three (3) minutes; or,

(j) Permit less than one minute intermission between each round; or,

(k) Permit any fistic combat match, boxing or sparring contest or exhibition without the use of padded gloves of standard make, weighing at least six (6) ounces each, or permit such gloves worn by each of the opposing contestants to be of other than equal weight; or,

(*l*) Knowingly sell or cause to be sold or issued for any fistic combat match, boxing, sparring or wrestling contest or exhibition more tickets or invitations or passes purporting to admit anyone to such match, contest or exhibition, or otherwise to admit to the same more persons than are admissible according to the authorized capacity of the building or the part thereof actually used for such purpose. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 11.]

Art. 614—12. Presence of Commissioner of Labor Statistics or deputy in counting gross receipts.—The Commissioner of Labor or any Deputy Commissioner of Labor Statistics may be present at any boxing or wrestling show or exhibition and may inspect any and all forms or documents to be executed as prescribed by this Act, and may assist in the counting of the gross receipts and the preparing of the report thereon as herein provided, and the original copy of such report together with physician's examination report shall be delivered or mailed to the General Office of the Commissioner of Labor, at Austin, Texas, by the Promoter. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 12; Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 8.]

Art. 614—13. False swearing in statement or reports.—Any person who in verifying or swearing to any statement or report required by this Act, makes or causes to be made therein any statement which is knowingly and wilfully false shall be deemed guilty of false swearing and punished accordingly. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 13.]

Art. 614—14. Penalty.—Any individual, copartner or officer of such firm, club, copartnership, association, company or corporation who violates any of the provisions of this Act, for which a penalty is not herein otherwise prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dol-

lars ($25.00) nor more than Two Hundred and Fifty Dollars ($250.00), and by the revocation of the license of such violator. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 14.]

Art. 614—15. Partial invalidity.—In case any section or part of section of this Act shall be declared unconstitutional, it shall not affect the validity of the remainder. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 15.]

Art. 614—16. Repeals.—All laws or parts of laws in conflict with this Act are hereby in all things expressly repealed. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 16.]

Art. 614—17. Commissioner of Labor to provide forms.—The Commissioner of Labor shall have the full power and authority to make and issue such forms governing all reports he shall believe expedient and necessary in carrying out the purpose of this Act; provided further, that the terms of this Act shall be a part of any contract between the individual, firm, club, copartnership, association, company or corporation promoter hereunder and the contestants or managers of the contestants, whether such contract be oral, written or printed. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 17.]

Art. 614—17a. Assignment of contract for exhibition invalid.—No contract or agreement for any exhibition or exhibitions under the term of this Act shall be transferred or assigned to any third person and shall only be valid and enforceable as between the original parties thereto. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 17a.]

Art. 614—17b. Provisions inapplicable to amateur non profit contests for entry into national or statewide tournaments.—Resolved by the House of Representatives of the State of Texas, the Senate of the State of Texas concurring, That the Commissioner of Labor Statistics of the State of Texas and all other officers charged with the enforcement of the provisions of House Bill Number 832, Chapter 241, Acts of the Regular Session of the Forty-third Legislature,[1] be directed and they are hereby directed to refrain from enforcing the provisions of said Act as against any person, firm, or association of persons conducting any exhibition of wrestling or boxing not for profit, or the participants therein, where such participants are not receiving any remuneration, when such exhibition is held solely for the purpose of qualifying the participants therein to enter any statewide, national or olympic tournament, even though admission may be charged in order to defray the necessary expense of holding such exhibition. [Acts 1933, 43rd Leg., 1st C.S., p. 382, H.C.R. No. 40.]

[1] Arts. 614—1 to 614—17a, ante.

Art. 614—17c. Commissioner of Labor to promulgate rules and regulations and revoke or suspend licenses.—The Commissioner of Labor is hereby empowered and it is hereby made his duty to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Law. Any such rules and regulations, however, which may be promulgated by the Commissioner of Labor before it shall become effective must be printed and filed as a public record in the office of the Commissioner of Labor, a copy of which shall be furnished by the Commissioner of Labor to any person applying therefor. The Commissioner of Labor is also vested and has the power and authority to revoke or suspend the license or permit of any boxer, wrestler, manager, referee, matchmaker, timekeeper, second or promoter for violation of any rule or regulation which may be promulgated by the Commissioner of Labor or for the violation of any provision of this Law wherein the penalty is not specifically provided. Said Commissioner of Labor is also to have the power and authority to forfeit the purse of any boxer, wrestler, manager or referee not to exceed Five Hundred Dollars ($500.00) for the violation of any rule or regulation promulgated by the Commissioner of Labor or any provision of this Law wherein the penalty is not specifically provided, said moneys to be deposited to the credit of the "Boxing and Wrestling Enforcement Fund." Any person who may be affected by any penalty imposed by the Commissioner of Labor, or is dissatisfied with the same, shall have the right to appeal to any District Court of Travis County, Texas; the trial shall be de novo and the procedure the same as other civil cases and upon such trial the Court shall have the same power as the Commissioner to impose the penalties herein provided for the violation of any reasonable rule of the Commissioner or any provision of this Act wherein a penalty is not specifically provided. [Acts 1933, 43rd Leg., p. 843, ch. 241, § 17b, as added Acts 1934, 43rd Leg., 2nd C.S., p. 63, ch. 21, § 9.]

CHAPTER 6.—GAMING

BETTING ON ELECTIONS, SPORTS AND RACING—Cont'd

BUCKET SHOPS

Article 615. [548–557] Playing cards.—Whoever shall play, or bet or wager any money or other thing of value, at any game of cards at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars. [Acts 1901, p. 26; Acts 1907, p. 108.]

Art. 616. [557] [388] Dominoes.—Whoever shall bet or wager any money or other thing of value at any game played with dominoes at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars. [Acts 1907, p. 108.]

Art. 617. [548–557] Exception.—The provisions of the two preceding articles which permit gaming at a private residence occupied by a family shall not apply in case such residence is one commonly resorted to for the purpose of gaming, nor where the game played is a banking game. [Id.]

Art. 618. [557] [388] Dice.—Whoever shall bet or wager any money or other thing of value at any game played with dice, whether the same be known as craps, high or low dice or die, poker dice, or by any other name, shall be fined not exceeding fifty dollars. [Id.]

Art. 619. [551] Keeping or exhibiting gaming table or bank, etc.—If any person shall directly, or as agent or employé for another, or through any agent or agents, keep or exhibit for the purpose of gaming, any policy game, any gaming table, bank, wheel or device of any name or description whatever, or any table, bank, wheel or device for the purpose of gaming which has no name, or any slot machine, any pigeon hole table, any jenny-lind table, or table of any kind whatsoever, regardless of the name or whether named or not, he shall be confined in the penitentiary not less than two nor more than four years regardless of whether any of the above mentioned games, tables, banks, wheels, devices or slot machines are licensed by law or not. Any such table, bank, wheel, machine or device shall be considered as used for gaming, if money or anything of value is bet thereon. [Acts 1907, p. 108; Acts 1913, p. 277.]

Art. 620. [552] [383] Table or bank includes, what.—It being intended by the foregoing articles to include every species of gaming device known by the name of table or bank, of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept or exhibited.

Art. 621. [553] [384] Games specifically enumerated.—The following games are within the meaning and intention of the two preceding articles, viz.: Faro, monte, vingt et un, rouge et noir, roulette, A. B. C., chuckaluck, keno and rondo; but the enumeration of these games shall not exclude any other properly within the meaning of the two preceding articles.

Art. 622. [554–555–571] Indictment and proof.—In any indictment for any offense named in the three preceding articles, it is sufficient to state that the accused kept a table or bank for gaming, or exhibited a table or bank for gaming, without giving the name or description thereof, and without stating that it was without any name or that the name was unknown. It shall be sufficient to prove that any game therein mentioned was played, dealt or exhibited, without proving that money or other article of value was won or lost thereon. [Acts 1907, p. 110.]

Art. 623. [556] [387] "Exhibited."—The word "exhibited" is intended to signify the act of displaying the bank or game for the purpose of obtaining bettors.

Art. 624. [557–560] Miscellaneous betting.—If any person shall bet or wager at any gaming table or bank or shall bet or wager any money or other thing of value at any of the following games, viz.: muggins, crack-loo, crack-or-loo, or the game of matching money or coins of any denomination for such coins or for any other thing of value, or at any table or bank, by whatsoever name the same may be known, or whether named or not, and without reference as to how the same may be played, constructed or operated, or shall bet or wager upon anything in any place where people resort for the purpose of betting or wagering, he shall be fined not exceeding fifty dollars. When it is alleged and proven that the betting was on any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. [Acts 1907, p. 108.]

Art. 625. [559] [388] Keeping.—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, or to gamble with cards, dice or dominoes, or to keep or to exhibit for the purpose of gaming, any bank, table, alley, machine, wheel or device whatsoever, or as a place where people resort to gamble, bet or wager upon anything whatever, he shall be confined in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, machines, wheels or devices, or things are licensed by law or not. Any place or device 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 thereon, or if the same is resorted to for the purpose of gaming or betting. [Id.]

Art. 626. [559–573] Renting.—Whoever shall rent to another any premises, building, room or place for any purpose mentioned in the preceding article, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 627. [559] Permitting premises to be used for gaming.—Whoever knowingly permits property or premises of which he is owner, or which is under his control, to be used for any purpose mentioned

in the two preceding articles, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 628. [572] [389] Permitting intermittent playing.—Whoever permits any game prohibited by the preceding articles of this chapter to be played in his house, or a house under his control, or upon his premises, or upon premises under his control, the said house being a public place, or the said premises being appurtenances to a public place, shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1881, p. 17.]

Art. 629. [561] Equipping gaming house.—If any person shall, in any manner aid in equipping or furnishing any gaming house, or place where people resort for the purpose of gaming, wagering or betting, he shall be imprisoned in jail not less than thirty nor more than ninety days. [Acts 1907, p. 109.]

Art. 630. [562] Permitting device on premises.—If any person shall knowingly permit any gaming paraphernalia, table, or device or equipment of a gaming house, of any character whatever to remain in his possession or on premises under his control or of which he is owner and to be used for gaming purposes, he shall be imprisoned in jail not less than thirty days nor more than one year. [Id.]

Art. 631. [563] Going in gaming house.—If any person shall go into or remain in any gambling house, knowing the same to be such, or shall remain in any place where any game prohibited by the preceding articles of this chapter is within his knowledge being played, dealt or exhibited, he shall be fined not exceeding fifty dollars. Gambling house and gaming house, as used in this article is meant any place where people resort for the purpose of gaming, betting or wagering. [Id.]

Art. 632. [564] Officers to suppress.—Whenever it comes to the knowledge of any sheriff or other peace officer, by affidavit of a reputable citizen, or otherwise, that any provision of the preceding articles of this chapter is being violated, such officer shall immediately avail himself of all lawful means to suppress such violation; and he shall be authorized, by any search warrant that is issued by virtue of this law, to enter any house, room or place to be searched, using such force as may be necessary to accomplish such purpose. [Id.]

Art. 633. [565] Justice to issue search warrant.—Upon the filing with any justice of the peace, or any other magistrate, of an affidavit made by a reputable citizen that gaming, betting or wagering, as prohibited by the preceding articles of this chapter is being conducted in any building, room, premises or place, describing the same sufficiently for identification, such officer with whom said affidavit is filed shall immediately issue a warrant commanding the peace officer to whom same is directed to immediately enter and search such building, room, premises or place, and in the event the same is a gaming house, as defined in this chapter, to arrest all parties found therein or making their escape therefrom, and to take possession of any gambling paraphernalia, device or equipment found therein and such officer shall immediately take the persons arrested before the nearest magistrate, and lodge the proper complaint against each person so arrested. [Id.]

Art. 634. [566] Gambling house public nuisance.—The existence of any gambling house or gaming table or bank or gaming paraphernalia or device of whatever kind or character, and all equipments of such gambling house, is hereby declared to be against public policy and a public nuisance. No suit shall be brought or maintained in any court of this State for the recovery of same or for any insurance thereon, or for damages by reason of any injury to, or for the destruction of same. [Id.]

Art. 635. [567] Use terminates lease.—The use of any house, property or premises, by any tenant or lessee for any purpose made unlawful by the preceding articles of this chapter shall terminate all rights and interests of such tenant or lessee in same, and shall entitle the owner thereof to the immediate possession of said house, property or premises. [Id.]

Art. 636. [568] Officers to seize gaming tables.—It shall be the duty of every sheriff, or other peace officer by virtue of the warrant authorized by this chapter to seize and take into his possession all gaming tables, devices and other equipments or paraphernalia of gambling houses, the existence of which has come to his knowledge and to immediately file with the justice of the peace, county judge, or district judge, a written list of the property seized designating the place where same was seized, and the owner of same, or the person from whom possession was taken. Thereupon said justice of the peace, county or district judge shall note the same upon his docket and issue, or cause the clerk of the court to issue a written notice to the owner or person in whose possession the articles seized were found, commanding him to appear at a designated time, not earlier than five days from the service of such notice, and show cause why such articles should not be destroyed. If personal service cannot be had upon the person to whom same is directed, a copy of said notice shall be posted for not less than five days, either upon the court house door of the county where the proceedings are begun or upon the building or premises from which the property seized was taken. [Id.]

Art. 637. [569] Destroyed by order of court.—Section 1. If upon hearing of the matter referred to in the preceding Article, the Justice of the Peace, County Judge or District Judge, before whom the cause is pending, shall determine that the property seized is a gaming table or bank or is used as equipment or paraphernalia for a gambling house, and was being used for gaming purposes, he shall order same to be destroyed, but any part of same may, by order of the Court be held as evidence to be used in any case until the case is finally disposed of. Property not of that character and not so used shall be ordered returned to the person entitled to possession of the same. The officer, within not less than fifteen (15) nor more than thirty (30) days from the entry of said order shall destroy all property the destruction of which has been ordered by the Court, unless the owner, lessee or person entitled to possession under this law shall, before the destruction of said property, file suit to recover same. [Acts 1907, page 110.]

Sec. 2. If upon a hearing of the matter referred to in Article 636, Penal Code of Texas (1925), the Justice of the Peace, County Judge or District Judge before whom the cause is pending shall determine that the property seized, or any part thereof, is not gambling paraphernalia per se, but that the same or any part thereof was used as equipment or paraphernalia for a gambling house and was being used for gaming purposes and that said property is capable of being used for some legal purposes, he may, in his discretion, by order of the Court, declare the same confiscated and cause the same to be delivered to the State of Texas, or any political subdivision thereof, or to any State institution to be kept by it for its own use and benefit. The officer shall show by his return the disposition of the property made by him, which shall be in compliance with the orders of the Court.

Sec. 3. If upon a hearing of the matter referred to in Article 636, Penal Code of Texas, the Justice of the Peace, County Judge or District Judge before whom the cause is pending, shall determine that the property seized is a gaming table, bank or gambling paraphernalia and equipment per se, or if the Justice of the Peace, County Judge or District Judge shall

determine that the same, or any part thereof, was in fact used as equipment or paraphernalia for a gambling house or was being used for gaming purposes, then any money or coins seized in or with said equipment or paraphernalia shall, by order of the Court, be declared confiscated, and the Court shall cause the same to be delivered to the State of Texas or any political subdivision thereof, or to any State institution to be used by it for its own use and benefit, or the Court may in its discretion order such money or coins to be delivered to the Grand Jury of the County in which such equipment or paraphernalia was seized, to be used by said Grand Jury for the purpose of investigating the violation of the gaming laws of this State or for the purpose of investigating violations of any of the provisions of the Penal Code of this State. At the end of the term of each Grand Jury and before the discharge of the same, the Grand Jury shall report to the District Judge impanelling the same the amount of money received under the provisions of this Section and an accounting of all funds expended, and the balance of such funds, if any, shall be turned over to the Clerk of said District Court, to be held by said Clerk until the next Grand Jury is impanelled, at which time such money will be turned over and delivered to such succeeding Grand Jury.

Sec. 4. If there is now in the hands and possession and custody of the Grand Jury, or any County official of any County in this State, money or coins seized in and with a gambling table, bank, gambling paraphernalia and equipment, or with any equipment or paraphernalia in fact used for gaming purposes, which said paraphernalia, equipment, tables and banks have been declared confiscated, or which have been ordered destroyed under the provisions of the present statute, such money or coins may be declared confiscated, and appropriated and used as provided in Section 3 for money or coins hereinafter seized; provided that all persons claiming any right, interest and title in the coins and money heretofore seized and now held by such Grand Jury, or such County official, may, within sixty (60) days from the effective date of this Act, file suit in any Court of this State having jurisdiction of the sum of money or coins involved, to establish his right, title, claim or interest in and to such money and coins. No suit shall be brought by any person or persons claiming any right, title, claim or interest in and to said money or coins after sixty (60) days from the effective date of this Act. [Acts 1907, p. 110; Acts 1935, 44th Leg., p. 490, ch. 203, § 1; Acts 1941, 47th Leg., p. 353, ch. 192, § 1.]

Section 2 of the amendatory Act of 1941 read as follows: "If any part or parts of this Act be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provisions of this Act."

Section 3 of the amendatory Act of 1941 repealed all conflicting laws and parts of laws insofar as they conflict with the provisions of this Act.

Art. 638. [570] Persons interested in, rights of.—Any person having interest in or entitled to possession of any property so seized shall have the right at any time before the destruction of such property, as in ordinary civil cases, to try the issue of whether or not such property is a gaming table, or bank or device or was used as equipment or paraphernalia of any gambling house and to recover the possession of the same, and to maintain any other character of suit not inconsistent with this law; and it shall be the duty of the officer having said property in his possession after notice of the pendency of said suit to safely keep said property, pending the same. [Acts 1907, p. 110.]

Art. 639. [574] [391] Procedure in gaming cases.—Any court, officer or tribunal having jurisdiction of any offense enumerated in this chapter, or any district or county attorney, may subpœna persons and compel their attendance as witnesses to testify as to the violation of any provision of the foregoing articles of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify. For any offense enumerated in said foregoing articles a conviction may be had upon the unsupported evidence of an accomplice or participant.

Art. 640. [583] [392] [368] Failing to prosecute.—If any justice of the peace, or recorder shall know the fact that an offense against the gaming laws has been committed by any person, and shall fail or neglect to cause such person to be arrested and prosecuted for the same, he shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 641. [584] [393] [369] Peace officer failing to inform.—If any peace officer shall know that any person has committed an offense against the gaming laws, and shall neglect or fail to give information thereof to some justice of the peace, or recorder having jurisdiction to try such offense, he shall be punished by fine not less than twenty-five nor more than one hundred dollars.

Art. 642. [585] [394] [370] "Offense against gaming laws."—By the term "offense against the gaming laws," as used in the two preceding articles, is meant any offense included within the provisions of the preceding articles of this chapter.

BETTING ON ELECTIONS, SPORTS AND RACING

Art. 643. [586] [395] [371] Betting on election.—If any person shall, whether before or after the happening of any public election held under authority of law within this State, or within any town, city, county, district, precinct or any other political subdivision within the State for any purpose whatever, wager or bet in any manner whatever upon the result of any such election, he shall be fined not less than twenty-five nor more than one thousand dollars or be confined in jail for not less than twenty nor more than sixty days, or both such fine and imprisonment. [Acts 1858, p. 167; Acts 1915, p. 37; Acts 1921, p. 103.]

Art. 643a. Wagers by election judges or officers prohibited.—If any judge or other officer of any election or primary election shall bet or wager on the election or nomination of any person, to any office, or shall bet or wager on the number of votes polled or cast, or to be polled or cast, in the voting precinct or voting box in which he is serving, he shall be guilty of a felony, and upon conviction, shall be confined in the State Penitentiary not less than two (2) years nor more than five (5) years. [Acts 1933, 43rd Leg., p. 69, ch. 38, § 1.]

Art. 644. [587] [396] [372] "Public election."—A public election, within the meaning of the preceding article, is any election held under authority of law within this State, or within any town, city, district, county, precinct or any other sub-division within this State for any purpose whatever. [Acts 1858, p. 167; Acts 1915, p. 37; Acts 1921, p. 103.]

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. 646. [575] Betting at baseball or football.—No person in this State shall enter into an agreement with another, either orally, written or implied, whereby either one or both shall bet or wager money or anything of value, or otherwise become a

party to any gambling scheme based upon the final result or outcome of any play or portion thereof of a game of baseball or football. Nothing herein shall prohibit contesting baseball or football teams, or their duly authorized agents or managers from entering into an agreement as to the manner of disposition of gate receipts derived from such games. Any person violating this law shall be fined not less than five nor more than one hundred dollars. [Acts 1907, p. 222.]

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.]

Art. 647. [577] Pool selling or bookmaking.—No person, or any agent of any association of persons or any corporation, shall at any place in this State, engage or assist in pool selling or bookmaking on any horse race or by means of any pool selling or bookmaking, take or accept any bet or aid any other person in betting or taking or accepting any bet upon any horse race to be run, trotted or paced in this State. [Acts 1909, p. 91.]

Art. 648. [578] Betting on horse racing.—No person or any agent of any association of persons or corporation, at any place in this State, by pool selling or bookmaking or by means of telegraph, telephone or otherwise, shall aid or assist any other person in wagering, betting or placing a bet or in offering to wager, bet or place a bet of anything of value on any horse race to be run, trotted, or paced at any place in this State or elsewhere. [Id.]

Art. 648—1. Horse racing, betting on.—Sec. 2. From and after the passage of this Act[1] 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 contributed 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. 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.]

[1] This article and arts. 645, 648—2, 655a.
Section 1 repealed L.1933, 43rd Leg. 1st C.S., ch. 10. Sec. 3 amended Pen.Code, art. 645. Section 4 is published as Pen.Code, art. 648-2.

Art. 648—2. Penalty for betting on horse races.—Whoever violates any provision of this Act[1] 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.]

[1] This article and arts. 645, 648—1, 655a.

Art. 649. [579] Using place for pool selling.—No owner, agent or lessee of any property in this State shall permit the same to be used as a place for selling pools or bookmaking or wagering or receiving or assisting any person in placing any bet or in receiving or transmitting any offer to bet anything of value on any horse race to be run, trotted or paced at any place in this State or elsewhere. [Acts 1909, p. 91.]

Art. 650. [580] Penalty for three preceding articles.—Whoever violates any provision of the three preceding articles shall be fined not less than two hundred nor more than five hundred dollars, and be imprisoned in jail not less than thirty nor more than ninety days. [Id.]

Art. 651. [581] Buying pools.—Whoever shall buy pools or otherwise wager anything of value on any horse race to be run, trotted or paced, at any place in this State or elsewhere, or offers to wager, or offers to place any money or other thing of value

with any other person to be transmitted to any other place to be wagered on any such horse race, shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 652. [582] Evidence sufficient to convict.—A conviction for the violation of any provision of the five preceding articles may be had upon the unsupported evidence of an accomplice or participant. Such accomplice or participant shall be exempt from prosecution for any offense under this law about which he may be required to testify. [Id.]

Art. 652a. Bookmaking; definition; penalty.

Accepting or placing wagers; punishment

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 five (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.]

Art. 653. Operating pool hall.—Whoever shall operate or maintain a pool hall, as that term is defined by the laws of this State, shall be fined not less than twenty-five nor more than one hundred dollars or be confined in jail not less than one month nor more than one year. Each day of such violation shall be a separate offense. [Acts 1919, p. 10.]

Art. 654. [533—4] Lottery.—If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall sell, offer for sale or keep for sale any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars.

Art. 655. [535] [375] [353] Raffle.—If any person shall establish a raffle for or dispose by raffle of any estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall establish a raffle for or shall dispose by raffle of any estate, real or personal, of the value of five hundred dollars or less, he shall be fined not less than five nor more than two hundred dollars. Whoever shall offer for sale or keep for sale any chance, ticket or part ticket, in any raffle of any estate, real or personal of any value whatever shall be fined not less than ten nor more than fifty dollars. [Acts 1909, p. 98.]

Art. 655a. Texas Racing Commission; horse racing and exhibitions authorized; licenses [Repealed in part.]

Sec. 1.

Omitted provisions made appropriation.

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." [Acts 1933, 43rd Leg., p. 428, ch. 166, § 1, subsec. 5; Acts 1933, 43rd Leg., 1st C.S., p. 32, ch. 10; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3 § 5; 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 (¼) 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 (¼) of the revenue from said gross receipts tax shall be credited to the Available School Fund, and three-fourths (¾) 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 embezzlement, 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.]

Subsec. 7. All Jacks and Stallions purchased for the State of Texas, under the terms and provisions of Acts of the Regular Session, Forty-third Legislature, Chapter 163, Page 433, as amended Acts of the 43rd Legislature, First Called Session, Chapter 10, Page 32, shall be by and through the Board of Control, and shall be paid for by warrants drawn upon the Special Racing Fund from the Jack and Stallion Account, and the State Treasurer is hereby authorized and empowered to pay such warrants.

The titles of such animals so purchased shall be in the State of Texas. The Board of Control shall keep appropriate written records showing the price paid for each animal, from whom, and where purchased, and obtain a bill of sale for each animal purchased, showing the age and breeding of such animal. The Commissioner of Agriculture shall keep records of the location and the custodian from time to time of such animal. The Commissioner of Agriculture shall also procure from time to time a report from the County Agent or County Judge of the county where such animal is located, as to the condition and the use made of such animal, and the number of colts foaled in the calendar year in that county.

For the service of such animals so distributed, the Commissioner of Agriculture is authorized to make a reasonable charge of not less than Seven Dollars and Fifty Cents ($7.50) nor more than Ten Dollars ($10) for colts foaled. The amounts so collected by the Commis-

sioner of Agriculture shall be remitted, by him, through the State Comptroller to the State Treasurer in the Special Racing Fund, and shall be deposited to the credit of the Stallion and Jack Account, to be used by the Commissioner of Agriculture for the purchase, through the Board of Control, of additional stallions and jacks, and for the maintenance of all State owned stallions and jacks. Provided the Commissioner of Agriculture is hereby authorized to make refunds of such service charges when the animal served has not been foaled by such service, upon affidavit and due proof thereof being made to the Commissioner of Agriculture, and approved by the Board of Control, on such forms prescribed by the Commissioner of Agriculture. The Treasurer is hereby authorized to pay warrants drawn by the Comptroller upon such Jack and Stallion Account in The Special Racing Fund, upon vouchers issued therefor by the Commissioner of Agriculture and approved by the Board of Control. Immediately after the effective date of this Act, the Comptroller is commanded and empowered to transfer all monies, or cause to be transferred all monies held in the State Department of Agriculture Departmental Suspense Fund, Jack and Stallion Breeding Fee Suspense Account, in the State Treasury, to the Special Racing Fund, to the credit of the Jack and Stallion Account.

The Commissioner of Agriculture shall adopt and carry out reasonable rules and regulations, with respect to the distribution, care, use and maintenance of such animals. All expenditures thus authorized shall be paid upon accounts approved by the Commissioner of Agriculture and with approval of the Board of Control, and warrants drawn by the Comptroller on the State Treasurer.

In allotting or distributing said stallions and jacks, the Commissioner of Agriculture shall request and give consideration to the recommendations of the Commissioners Court of the particular counties seeking the distribution of such animals.

The Commissioner of Agriculture annually, in the month of November, shall make and file with the Governor and the Racing Commission a written report showing prices paid for animals purchased under this Act, from whom, and where purchased, with a copy of the bill of sale on each animal, showing the age and breeding of each respective animal, and the location of such animal, and the name of the then custodian thereof, the amount collected by him as service charges on animals, and the amount paid out in the way of maintenance expense of animals and to whom paid. [Acts 1933, 43rd Leg., p. 428, ch. 166; Acts 1933, 43rd Leg., 1st C. S., p. 32, ch. 10; Acts 1935, 44th Leg., p. 804, ch. 344, § 3.]

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.

House Concurrent Resolution No. 37 filed in the Department of State March 11, 1935 (Acts 1935, 44th Leg., p. 1264), makes the calendar year the basis for the distribution of said funds and all sums due the Public Free School Fund, the Jack and Stallion Fund, and/or any of the other provisions of said Chapter including the sum due the counties of this State are intended to be paid as soon thereafter as possible.

Art. 655b. Funds available to Department of Agriculture from Special Racing Fund.—Sec. 1. That from and after the effective date of this Act, all funds now on hand and hereafter accruing to the benefit of the State Department of Agriculture out of the Special Racing Fund created under the terms and provisions of Acts of the Regular Session, Forty-third Legislature, Chapter 162[1], Page 433, as amended Acts of the Forty-third Legislature, First Called Session, Chapter 10, Page 32, shall become available to and for the use of the State Department of Agriculture as collected and deposited in State Treasury, in making expenditures currently out of the Jack and Stallion Fund for the purpose for which such Fund is created, as such funds accrue. The State Comptroller is hereby authorized and empowered to draw warrants upon said Special Racing Fund and the State Treasurer is hereby authorized and empowered to pay such warrants in accordance with the provisions of this Act and with the general provisions of law.

Sec. 2. Nothing in this Act shall be construed either to increase or diminish the amounts of the appropriations heretofore made, or hereafter to be made, for the operating expenses of the State Department of Agriculture. Nor shall this Act be construed in any manner to affect or change the proportion of the proceeds of the said Special Racing Funds allocated to the State Department of Agriculture, it being the purpose and intent of this Act merely to provide that the Jack and Stallion Fund of the State Department of Agriculture shall receive its proportionate share of said funds as same are collected and deposited with the State Treasurer and may be paid out currently only for the purpose hereinafter set forth.

Sec. 3b. All contracts for transportation, and/or delivery, and all necessary expenses incurred in transportation and/or delivery of jacks and stallions, made by the Commissioner of Agriculture, shall be approved by the Board of Control, and paid out of Jack and Stallion Account, upon vouchers issued therefor by the Commissioner of Agriculture, and approved by the Board of Control. [Acts 1935, 44th Leg., p. 804, ch. 344.]

[1] So in enrolled bill. Should read "166".

BUCKET SHOPS

Art. 656. Defining bucket shops and cotton exchanges and regulating contracts for future deliveries of cotton and grain.—That for the purpose of this Act, the term "Contract of Sale" shall be held to include sales, purchases, agreements of sale, agreements to sell, and agreements to purchase; that the word "person" wherever used in this Act shall be construed to import the plural or singular as the case demands, and shall include individuals, associations, partnerships, and corporations.

Art. 657. Future Contracts Valid.—All contracts of sale for future delivery of cotton, grain, stocks, or other commodities, (1) made in accordance with the rules of any board of trade, exchange, or similar institution, and (2) actually executed on the floor of such board of trade, exchange, or similar institution, and performed or discharged according to the rules thereof, and (3) when such contracts of sale are placed with or through a regular member in good standing of a cotton exchange, grain exchange, board of trade, or similar institution, organized under the laws of the State of Texas or any other State, shall be and they hereby are declared to be valid and enforceable in the courts of this State, according to their terms; provided, that contracts of sale for future delivery of cotton in order to be valid and enforceable as provided herein, must not only conform to the requirements of clauses 1 and 2 of this section, but must also be made subject to the provisions of the United States Cotton Futures Act, approved August 11, 1916, and any amendments thereto; provided, further, that if this clause should for any reason be held inoperative, then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirements of clauses 1 and 2 of this section; provided further, that all contracts as defined in Section 1 hereof where it is not contemplated by the parties thereto that there shall be an actual delivery of the commodities sold or bought shall be unlawful.

Art. 658. Future Contracts Invalid.—Any contract of sale for future delivery of cotton, grain, stocks, or other commodities where it is not the bona-fide intention of parties that the things mentioned

therein are to be delivered but which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange, or other similar institution, without any actual bona fide execution and the carrying out of such contract upon the floor of such exchange, board of trade or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this State, and no action shall be maintainable thereon at the suit of any party.

Art. 659. Bucket shop defined.—A bucket shop is hereby defined to be and mean any place of business wherein are made contracts of the sort or character denounced by the preceding Section 3 of this Act, and the maintenance or operation of a bucket shop at any point in this State is prohibited.

Art. 660. Shall furnish copy of contract.—Every person shall furnish upon demand to any principal for whom such person has executed any contract for the future delivery of any cotton, grain, stocks, or other commodities, a written instrument setting forth the name and location of the exchange, board of trade, or similar institution, upon which such contract has been executed, the date of the execution, of the contract, and the name and address of the person with whom such contract was executed, and if such person shall refuse or neglect to furnish such statement upon reasonable demand, such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Art. 658, and that the person who executed it was engaged in the maintenance and operation of a bucket shop, within the provisions of Article 661 hereof.

Art. 661. Penalty.—Any person, either as agent or principal, who enters into or assists in making any contracts of sale of the sort or character denounced in the preceding Art. 658 for the future delivery of cotton, grain, stocks, or other commodities, or who maintain a bucket shop, as that term is defined in Art. 659, shall be guilty of a felony, and upon conviction, shall be imprisoned in the penitentiary not exceeding two years.

Art. 662. Permitting exchanges.—There may be organized in any city, town, or municipality in the State of Texas, voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade, or similar institutions, to receive and post quotations on cotton, grain, stocks, or other commodities, for the benefit of its members and other persons engaged in the production of cotton, grain, or other commodities. Such associations shall be composed of members and shall adopt a uniform set of rules and regulations not incompatible with the laws of Texas and of the United States. They shall open their books to inspection of all proper courts and officers when required so to do.

Art. 663. Repealing clause.—Articles 536 and 537 of Chapter 2, Title 11, and Articles 538 to 547 inclusive of Chapter 3, Title 11, of the Revised Penal Code of the State of Texas, of 1911, and all laws and parts of laws regulating or prohibiting dealings in future contracts, or in conflict or inconsistent herewith, be and the same are hereby repealed.

Art. 664. Constitutionality.—If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect,[1] impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, or paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered; and any contract valid under and satisfying the remaining clauses, sentences, paragraphs, or parts of this Act shall be valid and enforceable in the courts of this State. [Acts 1925, p. 38.] [39th Leg., ch. 15, §§ 1–9.]

[1] So in enrolled bill. Should probably read "affect".

Art. 665. [Omitted from the amended Act.]

CHAPTER 7.—INTOXICATING LIQUORS

Arts. 666–694. [Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 49.]

Article 689 was amended by Acts 1931, 42nd Leg., p. 233, ch. 138, § 1.

Art. 694a. [Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 1.]

Article repealed was Acts 1933, 43rd Leg., p. 288, ch. 116.

CHAPTER 8.—TEXAS LIQUOR CONTROL ACT

I. INTOXICATING LIQUORS

I. INTOXICATING LIQUORS—Cont'd

II. MALT LIQUORS

II. MALT LIQUORS—Cont'd

I. INTOXICATING LIQUORS

Art. 666—1. Texas Liquor Control Act.—This Act may be cited as the "Texas Liquor Control Act." [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 1.]

Art. 666—2. Exercise of police power.—This entire Act shall be deemed an exercise of the police power of the State for the protection of the welfare, health, peace, temperance, and safety of the people of the State, and all its provisions shall be liberally construed for the accomplishment of that purpose. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 2.]

Art. 666—3. "Open saloon" defined; operation of saloons; possession of certain liquors.—(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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 1; Acts 1943, 48th Leg., p. 509, ch. 325, § 1.]

Sections 26 of the Act of 1943, provided that the repeal or amendment of any Section or any portion of a Section of the Texas Liquor Control Act by the enactment of the act should 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 should take effect.

Section 27 provided that partial invalidity should not affect the remaining portions.

Section 28 repealed all conflicting laws and parts of laws in conflict herewith.

In view of fact that offense of possession of whiskey on premises where beer is sold under a permit is defined by subd. (c) of this article and by art. 667—15 and that subd. (d) of this article and art. 667—26 imposed a different penalty, the statutes are so indefinite as to be inoperative under arts. 3 and 6, and a judgment of conviction under one of such statutes would be reversed. Moran v. State, 135 Cr.R. 645, 122 S.W.2d 318.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 3-a; Acts 1937, 45th Leg., p. 1053, ch. 448, § 2.]

Art. 666—4. Manufacture, sale, or possession of liquor unlawful; consumption in public place.—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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 4; 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 orders for, 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 having procured a permit of the class required for such privilege. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 4; Acts 1937, 45th Leg., p. 1053, ch. 448, § 5; Acts 1943, 48th Leg., p. 509, ch. 325, § 2.]

(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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 4; Acts 1937, 45th Leg., p. 1053, ch. 448, § 5.]

(c) (1) It shall be unlawful for any person to consume any alcoholic beverage in any public place, or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 a. m. and 1:00 o'clock p. m., and on all other days at any time between the hours of 12:15 a. m. and 7:00 o'clock a. m.

(2) Any alcoholic beverage possessed in violation of this Section is declared to be an illicit beverage and may be seized without warrant to be used as evidence of a violation of law, and any person in possession thereof or who otherwise violates any provision of this Section may be arrested without warrant.

(3) Any person who violates any provision of this Section shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Fifty Dollars ($50). [Added Acts 1943, 48th Leg., p. 339, ch. 221, § 1.]

(d) Proof that an alcoholic beverage is possessed in violation of preceding Section 4(c) shall require evidence that the defendant has, on the date of the offense charged, consumed an alcoholic beverage in vio-

lation of said Section. [Added Acts 1943, 48th Leg., p. 339, ch. 221, § 1.]

Section 6 of the Act of 1943, p. 339, ch. 221 provided that the amendment of any section or any portion of a section of the Texas Liquor Control Act by the enactment of this Act should not affect nor impair any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any cause before such amendment should take effect.

Section 7 provided that partial invalidity should not affect the remaining portions of the Act.

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 [1] 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 5; Acts 1937, 45th Leg., p. 1053, ch. 448, § 5½.]

[1] 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.[1] 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 cooperate 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 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 and enforce rules and regulations governing labeling and advertising of all liquors sold in this state; 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; to adopt and enforce rules and regulations to standardize the size of containers in which liquors may be sold in this state, as well as to any representations required or allowed to be displayed or shown thereon or therein; provided that in respect to the sale of wine to retail dealers the maximum size of container shall be one (1) gallon, and as to all types of liquor the minimum size container shall be as otherwise provided in this Act.[1]

(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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 6; Acts 1937, 45th Leg., p. 1053, ch. 448, § 6; Acts 1943, 48th Leg., p. 509, ch. 325, § 10.]

1 Articles 666—1 et seq., 667—1 et seq.

Art. 666—7. Subpœnas for attendance of witnesses; contempt.—The Board, the Administrator and any inspector under the direction of the Board, shall, for the purposes contemplated by this Act, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records, documents, and testimony.

If a witness in attendance before the Board or one of its authorized representatives refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce a book, record, or paper when ordered to do so by the Board, the Board may apply to the Judge of the District Court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the Judge who made the order, or any other District Judge of said county, why he should not be punished for contempt; upon the return of such order the Judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the Judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

Subpoenas shall be served and witness fees and mileage paid as in civil cases in the District Court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Board shall be paid their fees and mileage by the Board out of funds herein appropriated. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 7.]

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.[1] [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 7a, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 7.]

1 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, 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 9.]

Art. 666—8. Importation.—No person shall import into this State any liquor, in excess of one (1) quart, from any source unless a permit be first obtained from the Board, and any person so purchasing or importing liquor in violation of this Section shall be subject to the penalties as hereinafter provided. In addition to the penalties hereafter provided, any person violating the provisions of this section shall forfeit the liquor so imported to the Board as herein provided. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 8.]

Art. 666—9. Unnecessary to negative exceptions in indictment.—It shall not be necessary for any information, complaint or indictment to negative any exception contained in this Act concerning any prohibited Act; provided, however, that any such exception made herein may be urged as a defense by any person charged by such complaint, information, or indictment. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 10; Acts 1937, 45th Leg., p. 1053, ch. 448, § 10.]

Art. 666—11. Refusal of permit; grounds; discretion as to renewal.—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 or caused to be violated any provision of this Act or any rule or regulation of the Board during the twelve-month period preceding the date of his application.

(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 [1] or by any rule or regulation of the Board.

(5). That the applicant is not of good moral character, that his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad, or that he is under twenty-one (21) years of age.

(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 reason to believe that the applicant will sell or knowingly permit any agent, servant, or employee to unlawfully sell liquor in dry area or in any other manner contrary to law.

(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.

(10). It is hereby declared that the provisions of this Section are required to be applied only to applicants who are newly engaging in the liquor business or whose permits or licenses have been cancelled under any authority contained in this Act. As to those applicants seeking renewal of permits, the Board or Administrator shall be vested with discretionary authority to refuse or grant such permits under the restrictions of this Section. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 11; Acts 1937, 45th Leg., p. 1053, ch. 448, § 11; Acts 1943, 48th Leg., p. 509, ch. 325, § 11.]

[1] Articles 666—1 et seq., 667—1 et seq.

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.[1]

(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 permittee 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch.

467, Art. 1, § 12; Acts 1937, 45th Leg., p. 1053, ch. 448, § 12; Acts 1943, 48th Leg., p. 509, ch. 325, § 12.]

1 Articles 666—1 et seq., 667—1 et seq.

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. Period of permit; permit as personal privilege; inspection of premises.—(a). Any permit granted under this Act, except Wine and Beer Retailer's Permits issued to other than a railway dining, buffet, or club car, shall be good for the year in which issued and ending on August 31st of each year at twelve o'clock midnight.

(b). Any permit or license granted under the terms of either Article I [1] or Article II [2] of this Act shall be a purely personal privilege, revocable in the manner

and 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 or licensee; provided, however, that the board shall prescribe rules and regulations whereby a new permit or license may be applied for and issued without requiring the payment of additional permit or license fees as to unexpired periods of affected permits or licenses upon death of the holder of any such license or permit, or of any person having an interest therein, or upon the dissolution of any partnership, or under conditions involving receivership or bankruptcy, to the end that the value or cost of the unexpired portion of the permit or license shall not be lost to the successors in interest of any business involved, and that the conduct of said business may be continued without interruption; but further provided that such privilege shall not be extended to the purchaser, in whole or in part, of any business operating under an existing permit or license; and further providing that as to such application as may be filed with the County Judge a fee shall be required to be paid as in the case of an original application for a beer license; and further provided that any successor in interest must meet all requirements of law applicable to the holder of a permit or license under the terms of this Act, except that the executor, administrator, trustee or receiver acting under any judicial proceedings shall not be required to be domiciled in the county in which the business is located.

(c). It is further provided that the Board may, by rule and regulation, provide for the manner and time, not exceeding thirty (30) days, in which the successor in interest of any deceased, insolvent, or bankrupt permittee or receiver, or of any person whose permit or license has been cancelled, may dispose in bulk of alcoholic beverages left on hand at the termination of the use of any affected permit or license.

(d). It is expressly provided that the acceptance of a permit or license issued under either Article I [1] or Article II [2] 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 any peace officer shall have at all times the right and privileges 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 13; Acts 1937, 45th Leg., p. 1053, ch. 448, § 14; Acts 1943, 48th Leg., p. 509, ch. 325, § 3.]

[1] Article 666—1 et seq.
[2] Article 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 14; 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.]

(9). Agent's Permit. An Agent's Permit shall authorize the holder thereof to:

(a). Represent only the holders of permits within this state, other than retail permittees, authorized to sell liquor to retail dealers in Texas;

(b). Solicit and take orders for the sale of liquor from only authorized permit holders.

No such permit shall be granted to any person until he shall show to the satisfaction of the Board that he has been employed or authorized to act as an agent for the holder of a permit required by this Act.[1]

It is not intended that an Agent's Permit shall be required of the employee of a permit holder who sells liquor but who remains on the licensed premises in making such sale.

No person holding an Agent's Permit shall be entitled to a Manufacturer's Agent's Permit.

It shall be unlawful for the holder of an Agent's Permit to transport or carry liquor as samples; provided that nothing herein shall restrict such person from carrying or displaying empty sample containers.

The annual fee for such permit shall be Five ($5.00) Dollars. [As amended Acts 1943, 48th Leg., p. 509, ch. 325, § 13.]

1 Articles 666—1 et seq., 667—1 et seq.

(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.

It shall be unlawful for any carrier to hold or store any liquor consigned to the holder of a medicinal permit for a period of time exceeding seventy-two (72) hours from the time of receipt, at any terminal or storage place where such liquor is to be received by the consignee.

The annual fee shall be Five Dollars ($5). [As amended Acts 1941, 47th Leg., p. 471, ch. 298, § 3.]

Effect of amendatory act of 1941, cited to the text, see section 4 of the act, set out in note under subsec. 18 of this article.

Partial invalidity of the Act of 1941, cited to the text, effect of, see section 5 of the Act, set out in note under subsection 18 of this article.

(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 [1] 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 Permits shall also be subject to all provisions of Section 22,[2] 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 [3] 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 [4] 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.]

[1] Article 667—1 et seq.
[2] Article 667—22.
[3] Article 667—15.
[4] 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. The owner of a pharmacy properly qualified as a pharmacy under the laws of this State shall be entitled to receive a medicinal permit and to buy and dispense liquor at such pharmacy for medicinal purposes only. And such pharmacy must be a bona fide pharmacy, continuously operated and continuously located for a period of not less than two (2) years in the particular justice precinct, incorporated town or city in which located at the time a permit is sought; provided, however, no pharmacy which has moved within two (2) years immediately preceding the date of application into an incorporated town or city shall be entitled to a permit, and such pharmacy for which a permit is sought must, for a continuous period of two (2) years immediately preceding the date of application for a permit, have been registered with the State Board of Pharmacy and have had for such time employed in its service at all times a registered pharmacist. No permit shall be issued to any pharmacy previously holding a medicinal permit which had been cancelled after the effective date of this Act within a period of two (2) years from the date such cancellation had become effective.

Each and every applicant for a permit must present with such application a certificate issued by the State Board of Pharmacy, showing the registration record with that Board during the preceding two (2) years.

A pharmacy permit shall be cancelled by the Board of Administrator if the pharmacy for which the permit was issued moves into an incorporated town or city wherein such pharmacy has not been continuously located for a period of two (2) years or moves from the particular justice precinct in which the permit was issued.

It shall be unlawful for any holder of a medicinal permit, or the agent, servant, or employee thereof, to:

(a) Sell or dispense any liquor except upon a prescription issued by the holder of a physician's permit as required by this Act.

(b) Sell or dispense any liquor upon a prescription which does not meet the specifications required by this Act.

(c) Sell or dispense any liquor more than once on any prescription required by this Act.

(d) Sell or dispense any liquor upon a prescription bearing a date more than three (3) days prior to the date upon which the prescription is presented for filling.

(e) Sell or dispense any liquor not meeting the standards established by the United States Pharmacopoeia.

(f) Sell or dispense any liquor upon a prescription with knowledge of the fact that such prescription was written without physical examination of the patient by the physician prescribing such liquor.

(g) Sell or dispense any liquor to any person with knowledge of the fact that the name of the person to whom the prescription was issued is other than the true name of such person.

(h) Sell or dispense any liquor for any other than medicinal purposes.

(hh) Permit any liquor to be consumed on the premises.

(i) Sell or dispense more than one pint of liquor to any one person in any one day.

(j) Sell or dispense any liquor to any person without having first obtained physical possession of the prescription for such liquor.

(k) Sell or dispense any liquor upon a prescription bearing any false statement or information.

(l) Sell or dispense any liquor without first carefully examining the prescription upon which such sale is made.

(m) Prepare any prescription for liquor.

(n) Have in physical possession more than ten (10) gallons of liquor at any one time.

(o) Fail to preserve and keep for a period of two (2) years for inspection of any representative of the Board, or any peace officer or county or district attorney, at all times, any prescription upon which liquor has been sold.

(p) Fail to make or keep and to produce upon demand of any representative of the Board, or any peace officer or county attorney or district attorney, for a period of two (2) years, any other records required by the Board to be made and kept.

(q) Fail to make any report to the Board within the time required for such report to be made.

(r) Make or cause to be made to the Board any report required to be made which is false in any particular.

(s) Fail or refuse to divulge to any representative of the Board or to any peace officer or to any county or district attorney any information concerning the purchase, storage, or disposal of liquor.

(t) Compensate in any manner any physician in this State for writing a prescription; or to guarantee to any physician any income, more or less, for the writing of prescriptions for liquor.

(u) Sell or dispense liquor in any one week, beginning Sunday at midnight, upon prescriptions exceeding in number prescriptions filled for other medicines, excluding narcotics.

(v) Fail to affix to any container of liquor sold a label bearing in the English language the full name and address of the pharmacy making the sale, name and address of the physician prescribing, the full name and address of the patient to whom the sale is made, directions for use, and the signature of the pharmacist filling the prescription; or to fail to place on such label the number of the prescription being filled.

(w) Purchase or acquire stocks of liquor from any other person except the holder of a wholesaler's permit in Texas.

(x) Sell or dispense any liquor, with or without a prescription, to any person under the age of twenty-one (21) years, unless such person presents with such prescription a written consent of a parent or guardian upon which liquor may be prescribed and sold to such person; or to fail to file written consent with the prescription for such liquor.

(y) Sell or dispense any liquor, with or without a prescription, to any person showing evidence of intoxication.

(z) Fail to produce prescriptions for each container of liquor disposed of or unaccounted for.

The Board shall have the right by rule and regulation to require the keeping of records and the making of reports such as it may deem necessary and to pass rules and regulations governing permit holders in order to properly enforce the provisions of this Act.

The annual permit fee for a medicinal permit for pharmacies in dry areas shall be Ten Dollars ($10), and in wet areas the annual fee shall be the same as the annual fee for a package store permit. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15; Acts 1937, 45th Leg., p. 1053, ch. 448, § 16; Acts 1941, 47th Leg., p. 471, ch. 298, § 1.]

Section 4 of the Act of 1941 provided that the amendment of any section or any portion of a section of the Texas Liquor Control Act by the enactment of the bill should not affect nor impair any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any cause before such amendment should take effect.

Section 5 provided that partial invalidity should not affect the remaining portions of the Act.

(19) Physician's Permits. A physician licensed by the State Board of Medical Examiners, authorizing the administration of internal medicine to human beings, may obtain a physician's permit. Such permit shall qualify such physician to write prescriptions for medical purposes, subject to restrictions herein contained.

No person who has been convicted for any violation of this Act, or who has had any permit provided by this Act cancelled within two (2) years preceding the date of filing an application for a permit, shall be entitled to a physician's permit.

Each applicant for a permit must present with the application a certificate issued by the State Board of Medical Examiners showing qualification to hold a permit under the terms of this Act.

The annual fee for such permit shall be One Dollar ($1).

It shall be unlawful for any physician to:

(a) Prescribe liquor for any purpose unless he be the holder of a physician's permit.

(b) Prescribe liquor for any other than medicinal purposes.

(c) Issue prescriptions for liquor to any person without first having made a physical examination of the patient's person for the purpose of determining the disease or ailment afflicting such person.

(d) Issue to any person a prescription which does not bear thereon in the English language all of the information required by the specifications for prescriptions as defined by this Act.

(e) Accept any sort of compensation or guarantee as to income or material benefit from any holder of a medicinal permit for writing a prescription, or prescriptions, for medicinal liquor.

(f) Prescribe more than one pint of liquor to any one person in any one day.

(g) Prescribe liquor to any person showing evidence of intoxication.

(h) Knowingly prescribe liquor to any person under any name other than the true name of the person for whom such liquor is intended.

(i) Prescribe liquor for any person under the age of twenty-one (21) years, unless with the written consent of such person's parent or guardian.

(j) Fail or refuse to make and keep for a period of two (2) years any record of prescriptions issued for liquor as may be required by the Board; or to fail to make any reports as and when required by the Board; or to fail to divulge any information or to produce any records as to the issuance of prescriptions when called upon to do so by any representative of the Board, or any peace officer, or by any county or district attorney.

(k) Issue in the aggregate of more than one hundred (100) prescriptions in any period of ninety (90) days, beginning from the date designated by such physician in any order placed with the Board for such prescriptions.

Forms for prescriptions as referred to herein shall be only those forms prescribed and furnished by the Board in such form and manner as the Board may by rule and regulation determine. Such prescriptions, when issued, must bear thereon the date of issuance; the name and address of the issuing physician; the name, address, sex, and age of the patient; diagnosis of the disease or ailment of the patient; amount and type of liquor prescribed; directions as to the use by the patient; and the signature of the issuing physician. The prescribing of liquor on any form not obtained from the Board or in any manner not meeting the requirements herein specified shall be in violation of this Act. The Board shall have authority to adopt such regulations as to the printing of and issuance of prescription blanks, the keeping of records of prescriptions issued, the making of reports, and the disposal of unused, mutilated, or defaced blanks, as it may deem necessary to require physicians to strictly conform to the provisions of this Act. [Added Acts 1941, 47th Leg., p. 471, ch. 298, § 2.]

Partial invalidity of the Act of 1941, cited to the text, effect of, see section 5 of the act, set out in note under subsection 18 of this article.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15a; Acts 1937, 45th Leg., p. 1053, ch. 448, § 20½.]

For section 15a as added to Article I of Acts 1935 by Acts 1937, 45th Leg., p. 1053, ch. 448, § 17, see art. 666—15a1, post, 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 years; 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 (1) 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 or permit shall for any reason be made by the Board, except when the permittee is prevented from continuing in business by reason of the result of a local option election, or upon the rejection of an application for a permit by the Board or Administrator. So much of the proceeds derived from permit fees under the provisions of this Article as may be necessary are hereby appropriated for the purpose. [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; Acts 1943, 48th Leg., p. 509, ch. 325, § 4.]

Art. 666—15c. Application for permits other than wine and beer retailer's permits; renewals; change of location.—(1) All permits provided for in Article I [1] 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, Manufacturer's 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, except where such notice is waived in writing by the County Judge. Such notices shall be given by the Board. 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.

(2) No applicant for renewal of permit shall be required to publish notice of such application for renewal. Applications for renewal of permits shall be made under oath and shall contain all information required of the applicant by the Board or Administrator showing such applicant is not disqualified from holding a permit under this Act. Such application shall be accompanied by proper bond and remittance of required fee. Upon finding that such applicant is qualified under the terms of this Act, the Board or Administrator is authorized to issue the permit sought to be renewed. All application forms shall be furnished by the Board.

(3) In the event any person holding a permit under the terms of this Article shall desire to change the location of his place of business, he may file his application for such change with the Board on a form to be prescribed by the Board, and the Board or Administrator may deny such application upon any grounds for which an original may be denied. Any such application may be subject to protest and hearing as though it were an application for a new 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; Acts 1943, 48th Leg., p. 509, ch. 325, § 5.]

1 Article 666—1 et seq.

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 [1] or Article II [2] 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 20.]

1 Article 666—1 et seq.
2 Article 667—1 et seq.

Art. 666—15½. Non-resident Seller's and Manufacturer's Agent's Permit.—A. (1) Non-resident Seller's Permit: A Non-resident Seller's Permit shall be required of all distilleries, wineries, importers, brokers, and others who sell liquor to the holders of permits authorizing the importation of liquor into Texas, regardless of whether such sales are consummated within or without the State. Such permit shall authorize the holder thereof to:

(a). Solicit or take orders for liquor from only the holders of permits authorized to import liquor into this state;

(b). Ship, or cause to be shipped, liquor into Texas only in consummation of sales made to the holders of permits authorized to import liquor into Texas.

(2). No permit shall be granted to an applicant for a Non-resident Seller's Permit until it shall have been shown by the applicant that he has first filed with the Secretary of State a certificate certifying that he has appointed an agent, resident within this state, together with the street address and business of such agent. All notices of hearing for refusal, cancellation, or suspension may be served upon the designated agent as required herein, or upon the permittee, or if a corporation, upon any officer thereof, or upon any other agent of the non-resident seller authorized as such to sell liquor in this state, and all proceedings as to such hearings shall be as is otherwise provided by this Act.[1] Service of notice in such manner shall constitute due process; provided further, that if any permittee shall have failed to maintain within this state a designated agent for service as herein required, service may be had on the Secretary of State, and it shall be the duty of the Secretary of State to send any citation served on him to the holder of the permit by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service upon the permittee.

(3). The Board shall promulgate and enforce rules and regulations requiring the filing of monthly reports supported by copies of invoices relating to liquor sold or purported to be sold to all persons within this state by the holders of Non-resident Seller's Permits. Such report form shall be prescribed and furnished by the Board.

(4). It shall be unlawful for any person holding a Non-resident Seller's Permit, or for any officer, director, agent or employee thereof, or for any affiliate,

whether corporate or by management, direction or control to:

(a). Hold or have an interest in the permit, business, assets or corporate stock of any person authorized to import liquor into this state for the purpose of resale; provided that such restrictions shall not be applicable to any such interest acquired on or before January 1, 1941.

(b). Fail to make and file a report with the Texas Liquor Control Board in Austin, Texas, as and when required by any authorized rule and regulation of the Board.

(c). Sell liquor for resale within this state which does not meet the standards of quality, purity, and identity of regulations adopted by the Board.

(d). Advertise any liquor contrary to the laws of this state, or of the regulations of the Board, or to sell liquor for resale in Texas contrary to the labeling and advertising regulations of the Board.

(e). Sell liquor for resale in Texas or to cause liquor to be brought into this state in any size container prohibited by law or regulations of the Board.

(f). Solicit or take orders for liquor from any person not authorized to import liquor into Texas for the purpose of resale.

(g). Induce, persuade or influence any person, or to conspire with any person, or to attempt to induce, persuade or influence any person, to violate this Act or any regulation of the Board.

(h). Violate any provision of Section 17, Article I, of this Act.[2]

(i). Exercise any privilege conveyed under a Non-resident Seller's Permit during the pendency of an order of suspension imposed by the Board or Administrator.

(5). All liquor and the containers thereof sold, imported or shipped into this state, or possessed, stored or transported in violation of the restrictions contained in this Section are hereby declared illicit and subject to seizure and forfeiture as otherwise provided for "illicit beverages".

(6). In event of cancellation or suspension of any Non-resident Seller's Permit, the Board shall give immediate notice thereof in writing to all holders of permits authorized to import liquor into this state.

(7). Every holder of a Non-resident Seller's Permit shall permit any state officer to make examination of all books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said permittee as often as may be deemed necessary by such officer. A written request shall be made to the permittee or his duly authorized manager or representative, or, if a corporation, to any officer thereof, at the time such officer desires to examine the business of said permittee. It shall be the duty of the person to whom said request is presented to immediately permit the said officer to inspect and examine all the said books, records, and other documents of such permittee, and to answer under oath any questions propounded by such officer with reference thereto. The said officer shall have the power and authority to make investigation into the organization, conduct, and management of any person holding a Non-resident Seller's Permit and he shall have authority to inspect and examine any of its books, records, and other documents and to take such copies thereof as in his judgment may show or tend to show that said permittee has been or is engaged in violation of its rights and privileges or in violation of any law of this state. No such state officer as herein provided shall make public or use documents or information derived in the course of examination of records or documents, except in the course of some proceeding in which the Board or the state is a party, either judicial in nature or in an action instituted to suspend or cancel the permit or to collect taxes due or penalties for violation of the laws of this state, or for the information of any officer of this state charged with the enforcement of its laws. If any permittee or his duly authorized representative shall fail or refuse to permit examination of records as herein provided or shall refuse to answer any questions propounded by such officer incident to the examination or investigation in progress, or shall refuse to permit a state officer to take copies of any of said books, records, or other documents, whether same be situated within or without this state, his permit shall be subjected to suspension or cancellation as provided in this Act.[1]

"State Officer" as used in this Section shall mean and include any representative of the Texas Liquor Control Board, the Attorney General of Texas, or any assistant or representative of such Attorney General.

(8) All holders of Non-resident Seller's Permits shall be required to designate in such manner and on such forms as may be required by the Board those persons authorized as agents to represent such permit holder in this state, and any failure to do so shall constitute a violation of this Act.

(9) No fee shall be paid for a Non-resident Seller's Permit.

B. Manufacturer's Agent's Permit. A Manufacturer's Agent's Permit shall authorize the holder thereof to:

(a) Represent only the holders of Non-resident Seller's Permits;

(b) Solicit and take orders for the sale of liquor from only the holders of permits authorized to import liquors for the purpose of resale.

No such permit shall be granted to any person until he shall show to the satisfaction of the Board that he has been duly authorized to act as agent of the principal he proposes to represent.

No person holding a Manufacturer's Agent's Permit shall be entitled to an Agent's Permit.

It shall be unlawful for the holder of a Manufacturer's Agent Permit to transport or carry liquor as samples; provided that nothing herein shall restrict such person from carrying or displaying empty sample containers.

The annual fee for such permit shall be Five ($5.00) Dollars. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 15½, added Acts 1943, 48th Leg., p. 509, ch. 325, § 14.]

1 Articles 666—1 et seq., 667—1 et seq.
2 Article 666—17.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 16; 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; provided, that it shall not be unlawful for a person holding a Wine-Only Package Store Permit to also hold a Beer Retail Dealer's Off-Premise License.

(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 thing of value, or to guarantee the fulfillment of any financial obligation of any retailer;

(c). To make 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 to any retail dealer any equipment, fixtures, or supplies to be used in the selling or dispensing of alcoholic beverages;

(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, or the agent, servant, or employee of either.

(4). It shall be unlawful for any person operating under a permit under Article I [1] of this Act to refuse to allow the Board, or any authorized representative of the Board, or any peace officer, upon request to make a full inspection, investigation, or search of any licensed premise or vehicle.

(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 [1] 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.

(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 stamps have not been mutilated or defaced.

(8). It shall be unlawful for any person to break or open any container containing liquor, or to possess such opened container of liquor on 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 on 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 [2] 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, to transport, manufacture, or sell 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 (½) pint; provided however, that in the case of malt or vinous liquor 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.[2]

(17). It shall be unlawful for any person to manufacture, import, sell, or possess for the purpose of sale any alcoholic beverages made from dried grapes, dried fruits, and dried berries, or any compounds made from synthetic materials, substandard wines or from must concentrated at any time to more than eighty (80°) degrees Balling.

(18). It shall be unlawful for any person to import or to transport into this state from any place outside the state any liquor, in excess of one (1) quart, in containers to which have not been affixed proper state tax stamps, consigned to, intended for delivery to, or being transported to any person or place located within the state boundaries, unless the same shall be consigned to the holder of a Wholesaler's Permit authorizing the sale of such liquor and at his place of business.

(19). It shall be unlawful for any person to use, display, or to exercise any privilege granted by a permit except at the place, address, premises, or location for which the permit is granted.

(20). It shall be unlawful for any person to consent to the use of or to allow his permit to be displayed by or used by any person other than the one to whom the permit was issued.

(21). It shall be unlawful for any holder of either an Agent's Permit or a Manufacturer's Agent's Permit to solicit or take orders for the sale of liquor, or to represent himself as an agent of any person, other than the person designated in the application for permit as being represented.

(22). It shall be unlawful for the holder of a Wholesaler's Class B Wholesaler's, or Wine Bottler's Permit, or any agent, servant or employee thereof, to sell or deliver liquor to any person who is not the holder of a permit authorizing the re-sale of liquor in this state.

(23). It shall be unlawful for any retail dealer, or any agent, servant, or employee thereof, to conspire with any person to violate any of the provisions of this Section or to accept the benefits of any act prohibited by this Section.

(24). It shall be unlawful for the holder of any permit provided for in this Act authorizing the importation of liquor, or the agent or employee of such

person, to purchase from, order from, or give an order to, any person who is not the holder of a Non-resident Seller's Permit, or any holder of a Non-resident Seller's Permit during the period of any suspension ordered by the Board or Administrator against any such Non-resident Seller's Permit after such authorized importer has received notice of such suspension. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. I, § 17; added Acts 1937, 45th Leg., p. 1053, ch. 448, § 22; as amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, §§ 5, 6; Acts 1943, 48th Leg., p. 509, ch. 325, § 15.]

1 Article 666—1 et seq.
2 Articles 666—1 et seq., 667—1 et seq.
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—18. Qualifications of permittees.—No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit shall be issued to a corporation unless the same be incorporated under the laws of the State and unless at least fifty-one (51%) per cent of the stock of the corporation is owned at all times by citizens who have resided within the State for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic corporations, or to foreign corporations that were doing business in this State under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this Act which shall violate any provision hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file a suit for such cancellation in a District Court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. [Acts 1935, 44th Leg., 2nd C. S., p. 1795, ch. 467, Art. 1, § 18.]

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 19; 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 [1] 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 25.]

1 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—20a. Tax on liquor prescriptions.—(a) There is hereby levied a tax upon every prescription for liquor, when the same is filled by a pharmacist, in the sum of twenty-two (22) cents.

(b) The tax herein levied shall be paid by the affixation of a tax stamp to each prescription before the liquor prescribed thereon is sold or dispensed by the pharmacist.

(c) The Texas Liquor Control Board shall by rule and regulation require the keeping of such records and the rendering of such reports as it may deem advisable in order to enforce compliance with this Article.

(d) The tax herein levied shall be a liability upon the owner or owners of the pharmacy or drug store selling liquor upon the prescription of a doctor, and unless such tax is paid it may be recovered by suit filed by the Texas Liquor Control Board in Travis County, Texas, against any person liable for the payment of tax. Failure to pay any tax due shall constitute grounds for revocation of any permit authorizing the sale of liquor on prescription.

(e) Tax stamps herein required shall be prescribed by the Texas Liquor Control Board, and upon requisition of the Board shall be printed under the direction of the Board of Control and furnished to the State Treasurer. The State Treasurer shall furnish such stamps only to the holders of medicinal permits in Texas. Such stamps shall have printed thereon such serial number or other means of identification as the Texas Liquor Control Board may require, and each stamp shall be in duplicate counterparts so that one of each such counterparts may be affixed to the container of liquor and to the prescription upon which such liquor is sold. The Texas Liquor Control Board is hereby authorized to promulgate such regulation as may be deemed necessary as to the affixation of stamps, the cancellation thereof, and the accounting therefor.

(f) It shall be unlawful for any person to sell any liquor upon a prescription therefor until and unless there shall first be affixed to such prescription the tax stamp herein required. It shall be unlawful for any person to sell any liquor upon a prescription therefor unless and until there shall first be affixed to such container of liquor the counterpart of a tax stamp as herein required. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 20a, added Acts 1941, 47th Leg., p. 269, ch. 184, Art. IX, § 1.]

Section 2 of Article IX of the amendatory Act of 1941, cited to the text, provided that the funds derived from the prescription stamp tax therein levied shall be allocated as provided in such act. See Rev.Civ.St., Article 7083a.

Section 3 read as follows:

"Sec. 3. Before allocation of funds derived from the prescription stamp tax herein levied, there are hereby appropriated therefrom, to be available to the Texas Liquor Control Board, such funds as may be necessary for the printing of tax stamps herein provided, for the payment of salaries and expenses of four (4) auditors, to be paid at a rate of salary not exceeding salaries for auditors as provided in the General Appropriation Bill for such services, and for other expenses incurred in the printing of forms, preparation of records, and adoption of regulations such as this Article may require."

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 One Dollar and Twenty-eight Cents ($1.28) per gallon on each gallon of distilled spirits, provided the minimum tax on any package of distilled spirits shall be eight (8) 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 rule 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 21; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3; Acts 1937, 45th Leg., p. 1053, ch. 448, § 26; Acts 1941, 47th Leg., p. 269, ch. 184, Art. VII, § 1.]

Section 6a of Article VII of the amendatory Act of 1941, cited to the text, appropriated not exceeding $2500 derived from the sale of liquor tax stamps before the proceeds of the sales were allocated to defray the costs of printing additional liquor stamps.

Section 7 provided that the amendment of 1941 to Articles 666—21 and 666—21d should be effective and become law at twelve o'clock midnight May 31, 1941, anything in the Act of 1941 to the contrary notwithstanding.

Acts 1941, 47th Leg., p. 269, ch. 184, Art. VII, §§ 2–6 are published as Vernon's Rev.Pen.Code, art. 666—21d.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 21a; 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, 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 1[1] 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 29, amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 7.]

1 Article 666—1 et seq.

Art. 666—21d. Stamps; allocation of tax; application of tax; inventory; rules and regulations; appropriation for printing.

Discount

Sec. 2. Stamps for distilled spirits evidencing the tax levied in subdivision (a) of Section 1 of this Article shall be supplied by the Treasurer to all authorized to purchase them at a discount of two (2) per cent of the face value thereof when purchased in lots of Five Hundred Dollars ($500) or more.

Costs of administration

Sec. 3. The tax levied in subdivision (a), Section 1 of this Article of this Act shall be allocated as hereafter provided in this Act; providing that such tax shall, before allocation, bear a proportionate amount of the costs of administration and enforcement of the Texas Liquor Control Act as now provided in the General Appropriation Act. The other taxes levied in this Article shall be allocated as heretofore provided by law. Any laws in conflict herewith are repealed to the extent of such conflict only.

Application of tax; inventory

Sec. 4. It is further provided that the tax herein levied shall apply and attach to all liquor which shall be in storage or in the possession of any person for the purpose of sale, and that all persons having possession of any liquor for the purpose of sale shall on the effective date hereof render and submit to the Texas Liquor Control Board at Austin, Texas, a true and correct sworn inventory of all such liquors, setting forth in detail the size of containers and the quantity thereof. Such inventory shall be rendered upon a form to be prescribed and furnished by the Board. Such inventory must be placed in the United States mail, addressed to the Texas Liquor Control Board at Austin, Texas, within twenty-four hours of the effective date hereof, and a true, correct, and exact copy thereof must be retained by the person making such report. Failure or refusal to render such inventory shall be deemed sufficient grounds for the cancellation of any permit or license by the Board, and, in addition thereto, any such person 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 any term not more than one (1) year, or by both such fine and imprisonment.

Supplies of stamps; liquors declared illicit

Sec. 5. It is further provided that the Texas Liquor Control Board shall have printed and supplied to the State Treasurer, and the State Treasurer shall have on demand, tax stamps of such values as will enable any person having possession of liquors with legal and valid Texas tax stamps affixed of a

lower rate of assessment than is herein provided to affix an additional stamp on each container so that the added amount of tax paid, as represented by such additional stamp together with the one originally affixed, will equal the amount of tax herein levied. All liquors in containers to which have not been affixed proper tax stamps, or stamps in the aggregate to show payment of tax as herein levied, are hereby declared to be illicit beverages and subject to seizure and forfeiture as otherwise provided by law, and any person in possession thereof shall be prosecuted for the possession of illicit beverages as provided by law.

Rules and regulations

Sec. 6. The Texas Liquor Control Board is hereby authorized to promulgate and enforce rules and regulations requiring the filing of inventories and the issuance and distribution of stamps through its representatives, and for the inspection of liquor stocks wherever they may be in this State, such as may be deemed necessary to enforce compliance with this Article. [Acts 1941, 47th Leg., p. 269, ch. 184, Art. VII.]

Section 7 of Article VII of the amendatory Act of 1941 provided that the amendment of 1941 to Articles 666—21 and 666—21d should be effective and become law at twelve o'clock midnight May 31, 1941, anything in the Act of 1941 to the contrary notwithstanding.

Acts 1941, 47th Leg., p. 269, ch. 184, art. VII, § 1, amended Article 666—21.

Art. 666—22. [Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.]

The article repealed was Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 22.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 23; 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 [1] or Article II of this Act,[2] 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 31.]

1 Article 666—1 et seq.
2 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—24. City charter restrictions.—In any city where the sale of liquor as herein defined is prohibited by its charter from being sold in its residence section, or any part thereof, such charter amendment shall remain valid and continue effective until such time as said charter provision may be repealed or amended as provided by law. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 24.]

Art. 666—25. Sale regulations.—It shall be unlawful for any person to sell or deliver any liquor:

(a) Between 10:00 o'clock p. m. of any day and 9:00 a. m. of the following day of any day except Sunday.

(b) On any general primary or general election day between the hours of 9:00 o'clock a. m. and 8:00 o'clock p. m.

(c) On Sundays. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 25; Acts 1937, 45th Leg., p. 1053, ch. 448, § 32; Acts 1943, 48th Leg., p. 339, ch. 221, § 2.]

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, 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 26; 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 demand. 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 27; 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 issued, 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 subpœna 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 28; Acts 1937, 45th Leg., p. 1053, ch. 448, § 36.]

Art. 666—29. Common nuisances, places of illegal manufacture, sale, possession or consumption as.—(a) Any room, building, boat, structure, or place of any kind where alcoholic beverages are sold, bartered, manufactured, stored, possessed or consumed in violation of this Act, or under conditions and circumstances contrary to the purposes of this Act, and all such beverages and all property kept and used in any such place, hereby are declared to be a common nuisance; and any person who maintains or assists in maintaining such common nuisance shall be guilty of a violation of this Act. The County Attorney or the District Attorney in the county wherein such nuisance exists or is kept or maintained, or the Attorney General, may maintain an action by injunction in the name of the State of Texas to abate and temporarily and permanently enjoin such nuisance. Such proceedings shall, except as otherwise herein provided, be guided by the rules of other injunction proceedings. The plaintiff shall not be required to give bond in such action and the final judgment shall constitute a judgment in rem against the property as well as a judgment against the defendant. Upon such final judgment the court shall order that said room, house, building, structure, boat, or place of any kind shall be closed for a period of one year, or closed for a

part of said time and until the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety to be approved by the court making the order in the penal sum of not less than One Thousand Dollars ($1,000), payable to the State and conditioned that alcoholic beverages will not thereafter be manufactured, bartered, possessed, stored, or sold, or otherwise disposed of therein, or kept thereon or therein, with the intent to sell or otherwise dispose of contrary to law, that the provisions of this Act will not be violated, that no person shall be permitted to resort thereon or therein for the purpose of drinking alcoholic beverages in violation of the provisions of this Act, and that the owner, lessee, tenant, or occupant thereof will pay all fines, costs, and damages assessed against him for any violation of this Act. If any condition of such bond is violated by either the owner, lessee, tenant, or occupant thereof, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

(b) Upon any appeal from the judgment of the District Court such judgment shall not be superseded except upon the posting of an appeal-pending bond in the penal sum of not more than Five Hundred Dollars ($500), in addition to bond for costs of such appeal.

(c) "Appeal-pending bond" as used in this Section shall mean a bond to be approved by the District Court, required to be posted before the judgment of the trial court may be superseded on appeal, and conditioned that in the event the judgment of the trial court is finally affirmed it may be forfeited in the same manner for any of the causes for which a bond required upon final judgment may be forfeited as to any acts committed during the pendency of appeal. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 29; Acts 1943, 48th Leg., p. 339, ch. 221, § 4.]

Art. 666—30. Beverages and property forfeited to state; sale; destruction; ceiling prices during emergency; reports.—(a). All alcoholic beverages and the containers thereof, equipment, and other property forfeited to the state as nuisances, unless otherwise herein provided, and all illicit beverages and the containers thereof forfeited to the state, shall be turned over to the Board for public or private sale in such place or manner as it may deem best; provided, that the Board shall exercise diligent effort to obtain the best available price for anything thus sold; provided, further, that any bill of sale executed by the Board or Administrator shall convey a good and valid title to the purchaser as to any such property sold. The Board shall sell alcoholic beverages only to the holders of qualified permits or licenses. No alcoholic beverages unfit to be sold for public consumption, or of illicit manufacture, may be sold by the Board, but are declared a nuisance per se and may be destroyed by the Board. The certificate of any qualified chemist shall be accepted by the Board as evidence of unfitness of such alcoholic beverages.

In the event the United States Government shall provide any plan or method whereby illicit alcoholic beverages and other property belonging to or forfeited to the state as nuisances shall be sold at ceiling prices during a national emergency, the Board shall have the right to comply with Federal law or regulations in the sale or disposal of such illicit alcoholic beverages or other property, even to the extent of partially or wholly abrogating any provisions hereof which may be in conflict with the Federal law or regulations.

(b). All moneys derived from the sale of any beverages or property shall be placed in a separate fund in the State Treasury to be designated as the Confiscated Liquor Fund. Twenty per centum (20%) of said Confiscated Liquor Fund shall be available to the Board to defray the expenses of purchasing and accumulating evidence as to violations of and for the purpose of enforcing the provisions of this Act and to defray the expenses incurred in assembling, storage, transportation, sale and accounting for such confiscated liquor and property. Any balance remaining in said fund on September 1st of each biennium shall be transferred and deposited in the General Fund of the State of Texas.

As to liquors confiscated by representatives of the Board, or any peace officer, it shall be incumbent upon the officer making the seizure to list each and every item or items so confiscated and the place and name of owner, operator, or person from whom such seizure is made. Such report shall be made in quadruplicate, two copies of which shall be verified by oath; one verified copy shall be retained in the permanent files of the Liquor Control Board or other agency making the seizure, and one verified copy shall be filed with the Comptroller of the State of Texas, which shall constitute a permanent file, and both of which shall be subject to inspection by any member of the Legislature or any duly authorized law-enforcement agency of the State of Texas, and one copy shall be delivered to the owner, operator, or person from whom such seizure is made. A false statement of said confiscated liquor, beer, wine, or other personal property shall be punishable as now provided for false swearing. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 30; Acts 1937, 45th Leg., p. 1053, ch. 448, § 37; Acts 1943, 48th Leg., p. 509, ch. 325, § 6; Acts 1945, 49th Leg., p. 144, ch. 95, § 1.]

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 31; Acts 1937, 45th Leg., p. 1053, ch. 448, § 38.]

Art. 666—32. Local option election.—The Commissioners Court of each county in the state upon its own motion may order an election wherein the qualified voters of any county or of any justice precinct or incorporated town or city may by the exercise of local option determine whether or not the sale of alcoholic beverages of one or more of the various types and alcoholic content shall be prohibited or legalized within the prescribed limits of such county, justice precinct, or incorporated town or city; and local option elections shall be called by the Commissioners Court upon proper petition as herein provided. Upon the application of any one or more qualified voters of any county, justice precinct, or incorporated town or city, the county clerk of such county shall issue to the applicant or applicants a petition to be circulated among the qualified voters thereof for the signatures of those qualified voters in such area who desire that a local option election be called therein for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic content shall be prohibited or legalized within the prescribed limits of such county, justice precinct or incorporated town or city. The petition so issued shall clearly state the issue or issues to be voted upon in such election; each such petition shall show the date of its issue by the county clerk and shall be serially numbered, and each page of such petition shall bear the same date and serial number, and shall bear the seal of the county clerk. The county clerk shall deliver as many copies of said petition as may be required by the applicant and each copy shall bear the date, number and seal on each page as required in the original. The county clerk

shall keep a copy of each such petition and a record of the applicants therefor. When any such petition so issued shall within one hundred twenty (120) days after the date of issue be filed with the clerk of the Commissioners Court bearing the actual signature of as many as ten (10%) per cent of the qualified voters in any such county, justice precinct, incorporated town or city, together with a notation showing the residence address of each of the said signers, taking the votes for Governor at the last preceding general election at which time Presidential electors were elected as the basis for determining the qualified voters in any such county or political subdivision, it is hereby required that the Commissioners Court at its next regular session shall order a local option election to be held upon the issue or issues set out in such petition. It shall be the duty of the county clerk to check the names of the signers of any such petition and the voting precincts in which they reside to determine whether or not the signers of such petition are in fact qualified voters of the county or political subdivision at the time such petition is presented, and to certify to the Commissioners Court the number of qualified voters signing such petition. No signature shall be counted where there is reason to believe that it is not the actual signature of the purported signer. The minutes of the Commissioners Court shall record the date any such petition is presented, the names of the signers thereof, and the action taken with relation to the same. No subsequent election upon the same issue in the same political subdivision shall be held within one (1) year from the date of the preceding local option election in any county or political subdivision thereof. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 32; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

Proceedings commenced and rights vested before 1943 amendment, see article 666—3 note.

Art. 666—33. Place of holding election.—When the Commissioners Court shall order an election as herein provided for, it shall be the duty of said court to order such election to be held at the voting places within such county or subdivision thereof, upon a day not less than twenty (20) nor more than thirty (30) days from the date of said order, and the order thus made shall state the issue or issues to be voted upon in such election, and said order shall be held to be prima facie evidence that all provisions necessary to give it validity or to clothe the court with jurisdiction to make it valid, have been duly complied with; provided that such court shall appoint such officers to hold such elections as are now required to hold general elections. [Acts 1935, 44th Leg., 2nd C. S., p. 1795, ch. 467, Art. 1, § 33; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

Art. 666—34. Posting notice of election.—The Clerk of said Court shall post or cause to be posted at least one copy of said order in each election precinct in such political subdivision or county affected, for at least six (6) days prior to the day of election, which election shall be held and the return thereof made in conformity with the provisions of the General Laws of the State, and by the election officers appointed and qualified under such laws. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 34.]

Art. 666—35. Official ballot; requisites.—(a) At said election the vote shall be by official ballot which shall have printed or written thereon at the top thereof in plain letters the words "Official Ballot". Said ballot shall have also written or printed thereon the issue or issues appropriate to the election order as provided in Section 40 of this Act,[1] and the clerk of the court shall furnish the presiding officer of each voting box within such subdivision or county with a number of such ballots, to be not less than twice the number of qualified voters at such voting boxes, and the presiding officer of each voting box shall write his name on the back of each ballot before delivering the same to the voter, and each person offering to vote at each election shall, at the time he offers to vote, be furnished by such presiding officer with one such ballot; and no voter shall be permitted to depart with such ballot and shall not be assisted in voting by any person except such presiding officer or by some officer assisting in the holding of such election, under the direction of such presiding officer when requested to do so by such voter.

(b). In elections to legalize the sale of alcoholic beverages those in favor of such legalization shall erase the words "Against legalizing the sale of, etc." by making a pencil mark through same; and those who oppose such legalization shall erase the words "For legalizing the sale of, etc." by making a pencil mark through same.

In elections to prohibit the sale of alcoholic beverages those who favor such prohibition shall erase the words "Against prohibiting the sale of, etc." by making a pencil mark through same; and those who oppose such prohibition shall erase the words "For prohibiting the sale of, etc." by making a pencil mark through same. No ballot shall be received or counted by the officers at such elections that is not an official ballot, and that has not the name of the presiding officer of such election written thereon in the handwriting of such presiding officer as provided by this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 35; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

1 Article 666—40.

Art. 666—36. Conformity to general election laws.—The officers holding such election shall, in all respects not herein specified, conform to the General Election Laws in force regulating elections and after the polls are closed proceed to count the votes and within three (3) days thereafter make due report of said election to the aforesaid Court. The provisions of the General Election Laws shall be followed in calling and conducting said election where not inconsistent herewith. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 36.]

Art. 666—37. Canvass of votes.—Said court shall hold a special session on the fifth day after the holding of said election, or as soon thereafter as practicable, for the purpose of canvassing the votes and certifying the results, and if a majority of the voters favor the issue "For prohibiting the sale, etc." or "Against legalizing the sale, etc." as to any alcoholic beverages of the various types and alcoholic content, said court shall immediately make an order declaring the results of said vote and absolutely prohibiting the sale of such prohibited type or types of alcoholic beverages within the political subdivision after thirty (30) days from the date of declaring the results thereof, and thereafter until such time as the qualified voters therein may thereafter at the legal election held for such purpose by a majority vote decide otherwise; and the order thus made shall be held as prima facie evidence that all provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 37; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

Art. 666—38. Posting order prohibiting sale of liquor.—The order of said court declaring the result and prohibiting the sale of any or all types of alcoholic beverages shall be published by the posting of said order at three (3) public places within the county or the political subdivision in which the election was held, which fact shall be entered by the county judge on the minutes of the Commissioners Court. An entry thus made or a copy thereof certified under the hand and seal of the clerk of the court shall be prima facie evidence of such posting. [Acts 1935, 44th

Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 38; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

Art. 666—39. Sale or distribution lawful on vote for sale.—If a majority voting at such election favor the issue "For legalizing the sale, etc." or "Against prohibiting the sale, etc." as to any alcoholic beverages of the various types and alcoholic content, the court shall make an order declaring the results and have the same entered of record in the office of the clerk of said court, whereupon it shall be lawful in such political subdivision to manufacture, sell or distribute such type or types of alcoholic beverages as may be favored in the election in accordance with the terms of this Act, until such time as the qualified voters therein may thereafter, at a legal election held for that purpose, by a majority vote decide otherwise, and the order thus made shall be held prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election and counting and returning the votes and declaring the results thereof. It shall be the duty of the county clerk within three (3) days after the results of any such election have been declared to certify such results to the Secretary of State at Austin. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 39; Acts 1943, 48th Leg., p. 509, ch. 325, § 7.]

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,[1] 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%) percentum by weight."

(b). "For legalizing the sale of malt and vinous beverages that do not contain alcohol in excess of fourteen (14%) percentum by volume" and "Against legalizing the sale of malt and vinous beverages that do not contain alcohol in excess of fourteen (14%) percentum 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%) percentum by weight" and "Against prohibiting the sale of all beverages that contain alcohol in excess of four (4%) percentum 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%) per centum by weight," and "Against prohibiting the sale of beer containing alcohol not exceeding four (4%) per centum 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." [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 40; Acts 1937, 45th Leg., p. 1053, ch. 448, § 30a; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 8.]

[1] 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. 1, § 40a, 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 this Act [1] for which a specific penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction be punished by fine of not less than One Hundred ($100.00) Dollars and not more than One Thousand ($1,000.00) Dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 41; Acts 1937, 45th Leg., p. 1053, ch. 448, § 39; Acts 1943, 48th Leg., p. 509, ch. 325, § 8.]

[1] Articles 666—1 et seq., 667—1 et seq.
Proceedings commenced and rights vested before 1943 amendment, see article 666—3 note.

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, added, Acts 1937, 45th Leg., p. 1053, ch. 448, § 40.]

Art. 666—42. Seizure of liquors; suit for forfeiture; intervention by claimants; sale.—(a) All alcoholic beverages declared by this Act [1] to be a nuisance, and all illicit beverages as defined by this Act, may be seized with or without a warrant by an agent or employee of the Texas Liquor Control Board, or by any peace officer, and any person found in the possession or in charge thereof may be arrested without a warrant. No alcoholic beverages or articles so seized shall be replevied, but shall be stored by the Board, or by the sheriff of the county wherein the seizure was made, to be held for final action of the court as hereafter provided.

(b) It shall be the duty of the Attorney General, the District Attorney, and the County Attorney, or any of them, when notified by the officer making the seizure, or by the Texas Liquor Control Board, that such seizure has been made, to institute a suit for forfeiture of such alcoholic beverages and property, such suit to be brought in the name of the State of Texas in any court of competent jurisdiction in the county wherein such seizure was made. Notice of pendency of such suit shall be served in the manner prescribed by law and the case shall proceed to trial as other civil cases. If upon the trial of such suit it is found that alcoholic beverages or property are a nuisance or were used or kept in maintaining a nuisance, under the terms of this Act,[1] or that the alcoholic beverage is illicit, as defined by this Act, then the court trying said cause shall render judgment forfeiting the same to the State of Texas and ordering the same disposed of as provided for by Section 30 [2] of this Article. The costs of such proceedings shall be paid by the Board, out of funds derived under the provisions of said Section 30, or from any other fund available to the Board for such purpose.

(c) As to any property or articles upon which there may be a lien, by a bona fide lien holder, the holder of such may intervene to establish his rights and shall be required to show such lien to have been granted in a bona fide manner and without knowledge of the fact at the time of creation of the lien, that any article or property upon which such lien exists had been used or was to be used in violation of this Act.[1] If the holder of any such lien shall intervene, then the court trying said cause shall render judgment forfeiting the same to the State of Texas, and authorizing the issuance of an order of sale directed to the sheriff or any constable of the county wherein the property was seized, commanding such officer to sell said property in the same manner as personal property is sold under execution. The court may order such property sold in whole or in part as it may deem proper and the sale shall be conducted at the courthouse door. The money realized from the sale of such property shall be applied first to the payment of the costs of suit and expenses incident to the sale and after such expenses have been approved and allowed by the court trying the case, then the further proceeds of such sale shall be used to pay all such liens according to priorities, and any remaining proceeds shall be paid to the Board to be allocated as provided in Section 30 [2] hereof. All such liens against property sold under this Section shall be transferred from the property to the proceeds of its sale.

(d) The sheriff executing said sale shall issue a bill of sale or certificate to the purchaser of said property, and such bill of sale or certificate shall convey valid and unimpaired title to such property. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 42; Acts 1937, 45th Leg., p. 1053, ch. 448, § 41; Acts 1943, 48th Leg., p. 509, ch. 325, § 9.]

[1] Articles 666—1 et seq., 667—1 et seq.
[2] Article 666—30.
Proceedings commenced and rights vested before 1943 amendment, see article 666—3 note.

Art. 666—43. [Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.]

The article repealed was Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 43; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3a.

Art. 666—43A. No permit or license issued, when.—No permit or license applied for under the terms of this Act [1] may be issued to any person upon an application, either for an original license or permit, or for any license or permit sought to be transferred from another location, when the premises for which the permit or license is sought is licensed under any permit or license against which an order of suspension by the Board or Administrator is pending or unexpired, or against which existing permit or license the Board has initiated action to cancel or suspend. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 43-A, added Acts 1943, 48th Leg., p. 509, ch. 325, § 14.]

[1] Articles 666—1 et seq., 667—1 et seq.

Art. 666—43B. Citizen defined.—When the terms "citizen of Texas" and "citizen of this state"

are used in this Act, they shall mean not only citizenship in Texas, as required by this Act,[1] but shall also require citizenship in the United States. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 43-B, added Acts 1943, 48th Leg., p. 509, ch. 325, § 14.]

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 44; 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 [1] and II [2] 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 liquor stamps may be made by the Board from the revenue derived from the sale of such stamps before the same has been allocated, and so much of such funds as may be necessary is hereby appropriated for that purpose. A refund may be made by the Board in all cases where stamped liquor is returned to the distillery or manufacturer upon certification by an Inspector for the Board who inspected the shipment. The Board may also make a refund to any person who has been authorized to purchase stamps and who is in possession of unused liquor stamps upon discontinuation of business. In either instance it must be shown that the stamps for which a refund is asked were purchased from the State Treasurer. No other refunds for liquor stamps shall be allowed. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 45; Acts 1937, 45th Leg., p. 1053, ch. 448, § 43; Acts 1943, 48th Leg., p. 509, ch. 325, § 16.]

[1] Article 666—1 et seq.
[2] Article 667—1 et seq.

Art. 666—46. Disposition of receipts.—After allocation of funds to defray administrative expenses as provided in the current Departmental Appropriation Act, receipts from the sale of distilled spirits, wine, and malt liquor tax stamps shall be deposited in the State Treasury as follows: One-fourth (¼) to the credit of the Available School Fund, and three-fourths (¾) to the credit of the Clearance Fund. All revenues derived from the collection of permit fees provided for under Article I [1] shall be deposited to the credit of the Clearance Fund.

The "Clearance Fund" as referred to herein is the fund created by the provisions of Section 2, Article XX, House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature,[2] and funds allocated to such Clearance Fund shall be used for the purposes expressed in that Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 46; Acts 1936, 44th Leg., 3rd C.S., p. 2040, ch. 495, Art. 3, § 3c; Acts 1937, 45th Leg., p. 1053, ch. 448, § 44; Acts 1943, 48th Leg., p. 509, ch. 325, § 25-A.]

[1] Article 666—1 et seq.
[2] Rev.Civ.St., art. 7083a.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 47; 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,[1] as may be deemed necessary. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 1, § 48; Acts 1937, 45th Leg., p. 1053, ch. 448, § 46.]

1 Articles 666—1 et seq. and 667—1 et seq.

Art. 666—50. [Repealed by Acts 1937, 45th Leg., p. 1053, ch. 448, § 47.]

The article repealed was Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, art. 1, § 50, added Acts 1937, 45th Leg., p. 43, ch. 32, § 1.

Present provisions relating to searches and search warrants, see article 666—20.

Art. 666—51. Saving clause.—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 1% or more of alcohol by volume and not more than 4% 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 (1) barrel, one-half (½) barrel, one-quarter (¼) barrel, one-eighth (⅛) 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, or any agent, servant, or employee thereof.

(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 (1) barrel, one-half (½) barrel, one-quarter (¼) barrel, or one-eighth (⅛) 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, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 1; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 17.]

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,[1] 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,[2] 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,[2] 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 2; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

1 Article 694a, now repealed.
2 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 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 other places of business in any counties wherein the sale of beer is legal for the distribution of beer upon obtaining a Branch License for each such place of business 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 ($50.00) Dollars; 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 and 25/100 ($4.25) Dollars 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 the county in which the application is filed 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.

If, by local option election, the holder of a Branch License shall be prevented from selling beer in the county of his residence and for such reason his primary license becomes void, nevertheless he shall not be denied the right of lawfully selling beer under any existing Branch License until the normal expiration thereof; it further being provided that any such manufacturer or distributor may, upon the expiration of any such Branch License, immediately thereafter obtain in any county wherein a Branch License has been held a primary Manufacturers or Distributor's License without the necessity of qualifying as a resident of the county in which such primary license is sought. [As amended Acts 1943, 48th Leg., p. 509, ch. 325, § 18.]

(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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 3; 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, 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49, amended 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 deposited in the Clearance Fund provided by Section 2, Article XX of House Bill No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature,[1] to be used as provided in that Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 4; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 25-B.]

1 Rev.Civ.St., art. 7083a.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 5; 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 arti-

cle 2 of the Act of 1935 by the Act of 1937, cited to the text.

Art. 667—5A. Restrictions as to residence inapplicable, when.—The restrictions as to residence in the county in which a Retail Dealer's License is applied for shall not be applicable to any retail dealer who may have qualified by law and obtained a Retail Dealer's License in the county of his residence, when such retail dealer also seeks to obtain a Retail Dealer's License in any other county. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, § 5-A, added Acts 1943, 48th Leg., p. 509, ch. 325, § 19.]

Art. 667—6. Hearing upon application.—(a) 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.

(b) Upon the filing of any application for a license, the county clerk shall give notice thereof by posting at the court house 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.

(c) 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 not 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 collector 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, 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, or that there are other legal reasons why a license should not be issued. Upon any 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.

(d) 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 the violation of the law or likely to result in any jeopardy to the peace, morals, health, or safety of the general public. There shall be sufficient legal reason to deny a license if it is found that the place, building, or premises for which the license is sought has theretofore been used for selling alcoholic beverages in violation of law at any time during the six (6) months immediately preceding the date of application, or has during that time been a place operated, used, or frequented in any manner or for any purpose contrary to the provisions of this Act,[1] or, so operated, used or frequented for any purpose or in any manner that is lewd, immoral or offensive to public decency. 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.

(e) In the event the county judge, Texas Liquor Control Board or Administrator denied 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 term-time or vacation and under the same rules and procedure as provided in Section 14, Article I, of this Act.[2] In the event the judgment of the district court shall be favorable to the applicant and an appeal is taken, 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. In the event the license is finally issued upon orders of the district court, and, upon appeal, the order of the district court be reversed, then the mandate of the appellate court shall, without further proceedings, invalidate and make void the license authorized by order of the district court, and the holder thereof shall, upon application therefor, be entitled to a refund of the proportionate amount of unexpired fees. So much of the proceeds collected for license fees under this Article as may be necessary for refunds herein provided for are appropriated for that purpose. Any person appealing from a judgment or order under the provisions of this Section 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; provided, however, no such bond shall be required upon appeals filed on behalf of the state.

(f) 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 ($5.00) Dollars, 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.[1]

(g) 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 6; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1943, 48th Leg., p. 509, ch. 325, § 20.]

1 Articles 666—1 et seq., 667—1 et seq.
2 Article 666—14.
Proceedings commenced and rights vested before 1943 amendment, see article 666—3 note.

Art. 667—7. Expiration and renewal of licenses; assignability; refund; duplicate; second license for same location.—(a). Any license issued under the terms of this Article, except Branch

Licenses and Temporary Licenses specifically provided for, shall terminate one (1) year from the date issued, and no license shall be issued for a longer term than one (1) year. 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 nor less than five (5) 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 required of the applicant by the Board showing such applicant is not disqualified from holding a license under this Act,[1] 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 ($2.00) Dollars, which 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 assigned by the holder thereof to any 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 upon a form prescribed by the Board to the county judge and receiving his consent or approval, but further providing that the county judge may deny such application for change in the place of business for any cause for which an original application may be denied. Any such application may be subject to protest and hearing as though it were an original application. No additional license fees for the remaining unexpired term of the license shall be required of the applicant for change of location.

(e). No license shall obtain any refund upon the surrender or non-use of any license for the manufacture, distribution, importation, or sale of beer except as otherwise provided in this Article.

(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,[1] 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.

(i). If any license as provided in this Act [1] shall have been issued to any person for a premises, location, or place of business, and said license is still in effect no other license shall be issued to an applicant therefor unless the holder of the existing license shall have made showing in a manner prescribed by the Board that any privilege conveyed by the existing license will no longer be exercised by the holder thereof at such premises, location, or place of business. If the holder of such license desires to transfer the license to another location, such transfer may be applied for as herein provided. In the event the holder of such license makes any declaration required by the Board that the license is no longer to be used, then, and in that event it shall be unlawful for the holder thereof to manufacture, sell, or possess for the purpose of sale any beer unless and until he shall have made application to reinstate the use of the license in the manner and procedure required in making application for an original license, and re-use of the license may be denied by the County Judge before whom the application for re-use shall be filed, or by the Texas Liquor Control Board or the Administrator for any cause for which a license applied for in an original application may be denied. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 7; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, §§ 13, 14; Acts 1943, 48th Leg., p. 509, ch. 325, § 22.]

[1] Articles 666—1 et seq., 667—1 et seq.
Proceedings commenced and rights vested before 1943 amendment, see section 666—3 note.

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,[1] 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 8; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

[1] 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 reason-

able office hours, or to make any false entry or fail to make any entry as herein provided. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 9; 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:

(1) On Sunday at any time between the hours of 1:00 o'clock a. m. and 1:00 o'clock p. m.

(2) On any day except Sunday at any time prior to 7:00 o'clock a. m. [As amended Acts 1943, 48th Leg., p. 339, ch. 221, § 3.]

(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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 10; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

Art. 667—10½. 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 amendment 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 designate 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. All incorporated cities and towns are hereby authorized in adopting charter amendments or ordinances to distinguish between retailers selling beer for consumption on the premises where sold and those retailers, manufacturers, or distributors selling not for consumption on the premises where sold, and to provide for separate and distinct regulations. Nothing herein shall authorize any incorporated town or city to extend by ordinance or charter the hours of sale as fixed by State law. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 10½, added Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 16; amended Acts 1943, 48th Leg., p. 339, ch. 221, § 5.]

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 11; 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 12; 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[1] to contribute any money or other thing of value toward the campaign expenses of any candidate for office. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 13; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

[1] 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 14; 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 15; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

In view of the fact that the offense of possession of whiskey on the premises where beer is sold under a permit is defined by subd. (c) of article 666—3 and by this article and that subd. (d) of art. 666—3 and art. 667—26 impose a different penalty, the statutes are so indefinite as to be inoperative under Penal arts. 3 and 6, and a judgment of conviction under one of such statutes would be reversed and the prosecution dismissed. Moran v. State, 135 Cr.R. 645, 122 S.W.2d 318.

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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 16; 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.[1] [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 17; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

[1] Article 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 adop-

tion 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 18; 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[1] 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[2] 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[3] 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)[4] of Article I of this Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 19; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 17.]

1 Articles 666—1 et seq., 667—1 et seq.
2 Article 667—24.
3 Article 667—26.
4 Article 666—17.

Term "offensive to public decency" in this article is not sufficiently defined and is too indefinite for enforcement. Irven v. State, 138 Cr.R. 368, 136 S.W.2d 608.

Art. 667—19A. Suspension of license in lieu of cancellation.—As to any causes for cancellation of licenses herein provided, in lieu of such cancellation, the Board or Administrator shall have the discretionary power and authority to suspend any such license for a period not to exceed sixty (60) days. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 19-A, added Acts 1943, 48th Leg., p. 509, ch. 325, § 19.]

Art. 667—19B. Lewd or immoral conduct; conduct offensive to public decency.—For the purposes contemplated by this Act,[1] conduct by any person at a place of business where the sale of beer at retail is authorized that is lewd, immoral, or offensive

to public decency is hereby declared to include but not be limited to the following prohibited acts; and it shall be unlawful for any person engaged in the sale of beer at retail, or any agent, servant, or employee of said person, to engage in or to permit such conduct on the premises of the retailer:

(a) The use of or permitting the use of loud and vociferous or obscene, vulgar, or indecent or abusive language.

(b) The exposure of person or permitting any person to expose his person.

(c) Rudely displaying or permitting any person to rudely display a pistol or any other deadly weapon in a manner calculated to disturb the inhabitants of such place.

(d) Solicitation of any person for coins to operate musical instruments or other devices.

(e) Solicitation of any person to buy drinks or beverages for consumption by the retailer or his employees.

(f) Becoming intoxicated on licensed premises or permitting any intoxicated person to remain on such premises.

(g) Permitting entertainment, performances, shows, or acts that are lewd or vulgar.

(h) Permitting solicitation of persons for immoral or sexual purposes or relations.

(i) Failing to comply with or failure to maintain the retail premises in accordance with existing sanitary and health laws of this state or any sanitary or health provision of a city ordinance. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 19-B, added Acts 1943, 48th Leg., p. 509, ch. 325, § 19.]

1 Articles 666—1 et seq., 667—1 et seq.

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 [1] of this Article. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2 § 20; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 18.]

1 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 21; 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 [1] 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. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 22; Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 19.]

1 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 rebottling 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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

Art. 667—23½. Proceeds of sale of beer tax stamps—disposition.—After allocation of funds to defray administrative expenses as provided in the current Departmental Appropriation Act, all funds derived from the sale of beer tax stamps shall be deposited in the State Treasury as follows:

(a) One-fourth to the Available School Fund.

(b) Three-fourths to the Clearance Fund as provided in Section 2, Article XX of H. B. No. 8, Chapter 184, Acts of the Regular Session of the 47th Legislature,[1] for the purposes designated by such Act. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 23½, added Acts 1943, 48th Leg., p. 509, ch. 325, § 23.]

1 Rev.Civ.St., art. 7083a.

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 manufacture 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 to any person engaged or about to engage in selling brewery products for consumption on or off the premises where sold, or to any such person for the use, benefit, or relief of said person, or to guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged or about to engage in selling beer at retail.

(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 retail dealer for an advertising or distribution service.

(g). Prizes and Premiums: To offer any prize, premiums, gift, or other inducement 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 liquor 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 allusion or suggestion to the alcoholic strength of the product or to any manufacturing process, ageing, analysis, or scientific matter of 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", "pre-war 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.

(n). Administrative Authority to Relax: It is hereby specifically provided that the Board may by rule and regulation relax the restrictions contained in subdivisions (c), (e), and (g) of this sub-section in respect to the sale or gift of novelties advertising the products of the manufacturer or distributor; as to gifts made to civic, religious, or charitable organizations; as to cleaning and maintenance of coil connections for dispensing draught beer; as to the lending of equipment for special occasions; and as to acts of a courtesy nature only; provided that such regulations shall establish definite limitations not inconsistent with the general provisions of this Section.

(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[1] 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 regulations 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; added Acts 1937, 45th Leg.,

p. 1053, ch. 448, § 49; amended Acts 1943, 48th Leg., p. 509, ch. 325, § 24.]

1 Articles 666—1 et seq., 667—1 et seq.

Art. 667—24a. Outdoor advertising.—1. Definitions. Outdoor Advertising. The term "outdoor advertising" as used herein shall mean any sign bearing any words, marks, description or other device and used to advertise the alcoholic beverage business of any person engaged in the manufacture, sale or distribution of alcoholic beverages, or in the advertisement of any beverage containing alcohol in excess of one-half of one (½ of 1%) per cent by volume, when such sign is displayed anywhere outside the walls or enclosure of any building or structure where there exists a license or permit to sell alcoholic beverages. The term "outdoor advertising" shall not be inclusive of any advertising appearing in a newspaper, magazine, or other literary publication published periodically. Any such sign erected inside a building and within five (5) feet of any exterior wall of such building facing a street or highway and so placed that it may be observed by a person of ordinary vision from outside the building, shall be deemed outdoor advertising. For the purposes of this Section the word "sign" shall not include any identifying label affixed to any container as authorized by law.

Billboard. The word "billboard" as used herein shall mean a structure directly attached to the land, or to any house or building, and having one or more spaces used for displaying thereon a sign or advertisement of the alcoholic beverage business of any person engaged in the manufacture, sale or distribution of alcoholic beverages, or for the advertisement of any beverage containing alcohol in excess of one-half of one (½ of 1%) per cent by volume, whether or not such structure or sign be illuminated by artificial means. The term "billboard" shall not be inclusive of any wall or other part of any structure used as a building, fence, screen, front or barrier.

Electric Sign. The term "electric sign" as used herein shall mean a structure or device, other than an illuminated billboard, by means of which artificial light created through the application of electricity is utilized for the advertisement of the alcoholic beverage business by any person engaged in the manufacture, sale or distribution of alcoholic beverages, or for the advertisement of any beverage containing alcohol in excess of one-half of one (½ of 1%) per cent by volume.

2. All outdoor advertising as herein defined is hereby prohibited within the State of Texas except as herein expressly provided:

(a). The use of billboards or electric signs as herein defined having a surface of not less than one hundred eighty (180) square feet is hereby authorized unless located or to be located in a manner contrary to the limitations imposed by this Act.[1]

(b). The holders of retailers' licenses or permits are authorized to erect or maintain at their respective places of business one sign only containing the words:

If a Beer Retailer, the word "Beer".

If a Wine and Beer Retailer, the word or words "Beer", "Beer and Wine", or "Beer, Wine and Ale".

If the holder of a Package Store Permit, the word or words "Package Store", "Liquors" or "Wines and Liquors".

If the holder of a Wine Only Package Store Permit, the word "Wines".

Such sign may be placed within or without the place of business so as to be visible to the general public. No such sign shall contain letters of greater height than twelve (12) inches, and no such sign shall contain any wording, insignia or device representative of the brand or name of any alcoholic beverage or the manufacturer of any alcoholic beverage. The Board or Administrator is hereby authorized to expand this provision to the extent of permitting a licensee to erect or maintain one such sign at each entrance or side of a building occupied by a licensee and facing more than one street or highway.

(c). The use of billboards, electric display signs or other signs to designate the firm name or business of any holder of a permit or license authorizing the manufacture, rectification, bottling or wholesaling of alcoholic beverages, when displayed at the place of business of such person is hereby authorized.

(d). The use of printed or lithographed advertising material inside a premise where there exists a permit or license to sell alcoholic beverages at retail, when used as part of a temporary window display of alcoholic beverages for sale on the licensed premise, is hereby authorized, provided advertising material so used may not be placed within eighteen (18) inches of any window or opening facing upon a street or highway.

(e). The Board shall have the power and authority and it is hereby made its duty to adopt rules and regulations authorizing such use of business cards, menue cards, stationery, and service equipment or delivery equipment bearing advertisement of alcoholic beverages as the Board may find not to be in conflict with the purposes of this Act.[1]

3. It shall be unlawful for any person to erect or maintain any billboard or electric sign in violation of any ordinance of an incorporated city or town.

It shall be unlawful for any person to erect or maintain any billboard or electric sign within an area or zone where the sale of alcoholic beverages is prohibited by law.

It shall be unlawful for any person to erect or maintain any billboard or electric sign within two hundred (200) feet of where there exists a permit or license to sell the advertised beverage at retail, except by express permission of the Administrator, given after determination by the Administrator that the erection of any such billboard or electric sign does not serve to advertise or direct patronage to any particular place of business licensed to sell any alcoholic beverage at retail.

4. It shall be unlawful for any person to erect or maintain any billboard or electric sign within two hundred (200) feet of any place where there exists a permit or license to sell the advertised beverage at retail after the effective date of this Act, without first securing from the Texas Liquor Control Board a permit to erect or maintain such billboard or electric sign, provided no such permit shall be required for billboards or electric signs having a surface of one hundred eighty (180) square feet, or more, if not located within two hundred (200) feet of any place where there exists a license to sell the advertised beverage at retail. Application for any such permit shall be addressed to the Board or Administrator upon such form as may be prescribed and containing such information as may be deemed necessary by the Board or Administrator. The application shall be made under oath and shall state in addition to such other information as may be required by the Board, that the erection or maintenance of any such billboard or electric sign will not serve to advertise or direct patronage to any particular place of business licensed to sell any alcoholic beverage at retail.

The Board or Administrator shall refuse to issue a permit for the erection or maintenance of any billboard or electric sign if it finds any statement in the application therefor to be false; and the Board or Administrator shall grant the permit for erection or maintenance of any such billboard or electric sign if it finds all statements in the application therefor to be true, and if it finds that the erection or maintenance thereof would not be contrary to this Act or any lawful rule or regulation of the Board.

All billboards and electric signs authorized by this Act shall be subject to all applicable provisions of Section 24, Article II of the Texas Liquor Control Act.[2]

It shall be unlawful for any person to erect, maintain or display any outdoor advertising, billboard, or electric sign not conforming in all respects to the provisions of this Act; and any billboard or electric sign displayed contrary thereto is hereby declared illegal equipment and subject to seizure and forfeiture as provided for such action in respect to illicit beverages and other illegal equipment under the provisions of this Act.

The owner of any outdoor advertising, the erection, maintenance or display of which would be in violation of the provisions of this Section, shall be responsible for the removal thereof from public view within one hundred twenty (120) days from the effective date of this Section, and failure so to remove shall be a violation of this Act. The Board or Administrator shall have authority to grant a further time extension of one hundred (120) days in any case where removal within the one hundred twenty (120) day period may in the judgment of the Board or Administrator be impracticable.

5. Declaration of Policy. It is hereby declared that the excessive or indiscriminate display of outdoor advertising for alcoholic beverages, and the display of such advertising at retail establishments, is detrimental to the public interest, and that the use of billboards or electric signs of smaller surface than therein authorized encourages the excessive and indiscriminate use of outdoor advertising, and should be prohibited by law. [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 24-a, added Acts 1941, 47th Leg., p. 684, ch. 427, § 1, amended Acts 1943 48th Leg., p. 509, ch. 325, § 25½-A.]

1 Articles 666—1 et seq., 667—1 et seq.
2 Article 667—24.
Proceedings commenced and rights vested before 1943 amendment, see article 666—3 note.

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. [Act 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2, § 25, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

(c) Common carriers shall be privileged to deliver beer in dry areas only when consigned to the holder of a local or general distributor's license, and when such distributor has previously declared his intention to transport the same to a licensed place of business in a wet area. The transportation of beer received by a distributor from a common carrier in a dry area shall be in strict accordance with the requirements of this section. [Added Acts 1943, 48th Leg., p. 509, ch. 325, § 25.]

Art. 667—26. Penalty.—Conviction upon criminal prosecution for any violation of this Article shall require assessment of penalty or penalties as provided in Section 41, Article I of this Act.[1] [Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, Art. 2 § 26; Added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49; As amended Acts 1937, 45th Leg., 1st C.S., p. 1760, ch. 13, § 20; Acts 1943, 48th Leg., p. 509, ch. 325, § 21.]

1 Article 666—41.
In view of the fact that the offense of possession of whiskey on premises where beer is sold under a permit is defined by subd. (c) of art. 666—3 and by art. 667—15 and that subd. (d) of art. 666—3 and this article imposed a different penalty, the statutes are so indefinite as to be inoperative under penal arts. 3 and 6. Moran v. State, 135 Cr.R. 645, 122 S.W.2d 318.

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, added Acts 1937, 45th Leg., p. 1053, ch. 448, § 49.]

TITLE 12—PUBLIC HEALTH

CHAPTER 1.—ACTS INJURIOUS TO HEALTH

Article 695. [694] [423] Nuisances.—Whoever shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or suffer any substance which has that effect to remain on premises in his possession, shall be fined not less than ten nor more than one hundred dollars. Each day is a separate offense.

Art. 696. [696] [425] Leaving dead animal.—Whoever shall leave the carcass of any animal, which died in the actual possession of such person, within five hundred yards of any private residence, or in any public road or highway, or in any street or alley of any town or city, or within fifty yards of such public road, highway, street or alley, shall be fined not less than five nor more than one hundred dollars. [Acts 1913, p. 155.]

Art. 696a. Dumping refuse near highway.

Definitions

Section 1. The following terms, as herein defined, shall control in the construction and enforcement of this Act:

(a) The term "refuse" shall include garbage, rubbish and all other decayable and non-decayable wastes except sewage from all public and private establishments and residences.

(b) The term "garbage" shall include all decayable wastes, except sewage and body wastes, including vegetable and animal offal and carcasses of dead animals, but excluding industrial by-products, and shall include all such substances from all public and private establishments and from all residences.

(c) The term "rubbish" shall include all non-decayable wastes, except ashes, from all public and private establishments and from all residences.

(d) The term "junk" shall include all worn out, worthless and discarded material, in general, including, but not limited to, odds and ends, old iron or other metal, glass, paper, cordage or other waste or discarded materials.

(e) The term "public highway" shall mean and include the entire width between property lines of any road, street, way, thoroughfare or bridge in this State not privately owned or controlled when any part thereof is opened to the public for vehicular traffic and over which the State has legislative jurisdiction under its police power.

Unlawful acts

Sec. 2. It shall be unlawful for any municipal corporation, private corporation, firm or person to dump, deposit, or leave any refuse, garbage, rubbish or junk on any public highway in this State or permit the same to remain within or nearer than three hundred (300) yards on any public highway in this State, whether the refuse, garbage, rubbish or junk being dumped, deposited or left, or the land upon which refuse, garbage, rubbish or junk is dumped, deposited or left, belongs to the person or persons so dumping, depositing or leaving it or not; provided, however, that the provisions of this Act shall not affect farmers in the handling of anything necessary in the growing, handling and care of livestock, or the erection, operation and maintenance of any and all such improvements that may be necessary in the handling, thrashing and preparation of any and all agricultural products.

Punishment; injunction; enforcement

Sec. 3. Any violation of this Act by any person, firm or private corporation, shall upon conviction, subject the offender to a fine of not less than Ten Dollars ($10) and not more than Two Hundred Dollars ($200), and each day of any such violation shall be treated as a separate offense. In the event of any threatened or probable violation of this Act by any public corporation, municipality, city, town or village, it shall be the duty of the County or District Attorney in the county in which such violation is threatened, to bring suit for injunction to prevent such theatened or probable violation. Any person affected or to be affected by any such threatened or probable violation shall have the right to enjoin such violation or threatened violation. The enforcement of the remedy hereinabove provided by injunction shall not prevent the enforcement of the other penalties provided in this Act.

Repeal

Sec. 4. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

Liberal construction

Sec. 5. This Act and all of the terms and provisions herein shall be liberally construed to effect the purposes set forth herein.

Partial invalidity

Sec. 6. If any provision of this Act or the application thereof to any person or substance shall be held to be invalid, the remainder of this Act and the application of such provisions to other persons or substances shall not be affected thereby. [Acts 1927, 40th Leg., 1st C.S., p. 153, ch. 53; Acts 1947, 50th Leg., p. 328, ch. 188, § 1.]

Arts. 697–698a. [Repealed by Acts 1943, 48th Leg., p. 418, ch. 285, § 7.]

Art. 698b. Pollution of public bodies of surface water prohibited.

Pollution of waters unlawful

Section 1. It shall be unlawful for any person, firm, corporation, association, town, city or other political subdivision of this State, or any agent, officer, employee or representative of any person, firm, corporation, association, town, city or other political subdivision of this State to pollute any public body of surface water of this State.

"Pollute" defined

Sec. 2. "Pollute" is hereby defined to be the throwing, discharging or otherwise permitting to reach or to be introduced into any public body of surface water of this State any substance, material or thing in such quantity that the said water is thereby rendered unfit for one or more of the beneficial uses for which such water was fit or suitable prior to the introduction of such substance, material or thing, or is thereby rendered harmful to public health, game birds or game animals, fish or other edible aquatic animals, or endangers any wharf, or endangers or hinders the operation of any boat, or renders insanitary or unclean any bathing beach.

"Public body of surface water of this State" defined

Sec. 3. The term "public body of surface water of this State" shall include all surface creeks, rivers, streams, bayous, lagoons, lakes and bodies of surface waters that are fed by a stream or are subject to overflow from or into a stream which are the property of the State of Texas or any subdivision thereof, and all portions of the Gulf of Mexico within the gulfward boundary of the State of Texas and all inland waters of the State of Texas in which the tide ebbs and flows.

Application

Sec. 4. The provisions of this Act shall not be applicable to any municipal corporation which discharges its sewerage into the tide waters of the State of Texas at a point where the tide ebbs and flows, provided that such discharge does not render such water harmful to public health, oyster beds, fish life or bathing places in such waters.

Punishment

Sec. 5. Any person, firm, corporation, association, city, town or other political subdivision of this State, or any agent, officer, employee, or representative of any person, firm, corporation, association, town, city, or other political subdivision of this State who violates any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than One Hundred Dollars ($100), nor more than Two Hundred Dollars ($200); and each day that such a violation is committed shall constitute a separate offense. [As amended Acts 1945, 49th Leg., p. 373, ch. 240, § 1.]

Enforcement; disposition of fines and fees

Sec. 6. In so far as concerns the protection of fish and other edible aquatic animals, the Game, Fish and Oyster Commission, or the duly authorized deputies thereof, are especially charged with enforcement of this Act, and all fines imposed for violation of this Act, and any fees of the arresting officers, shall be remitted to the Game, Fish and Oyster Commission, and shall be deposited in the State Treasury to the credit of the General Fund. [Acts 1943, 48th Leg., p. 418, ch. 285.]

Section 7 of the Act of 1943 repealed articles 697, 698 and 698a.

Section 8 provided that partial invalidity should not affect the remaining portions of the Act.

Art. 699. Pure drinking water.—The authorities of all cities and towns and villages having a population of five thousand inhabitants or less and all other companies, persons, corporations or receivers, who are supplying drinking water through a water works system to the public, shall, before supplying the same to the public use for drinking water, first cause the supply of water to be chemically tested for any contaminated infusion of sand, dirt or filth, or dangerous bacteria or disease-bearing germs. This test shall be made according to the direction of the county or city health officers, or both such health officers. Said water as above supplied shall be subject to such test at any time, and the county and city health officer where such water supply is furnished shall make such tests at least once a year and oftener where there is an outbreak of any disease that might be induced through use of impure or unclean water. All authorities of any such city or town or persons, firms, or the officers and agents of all incorporated companies or receivers supplying water for such public use, in such cities or towns, shall provide proper strainers for all wells and all other sources of supply so that sand and dirt shall not be carried into the water for such public use, and cause all of the conduits and drain pipes conveying said water to be thoroughly washed out and flushed so as to clean the same at least one time every ninety days. Any such authorities, persons, firms or receivers or their agents, when any such drinking water as furnished is pronounced unfit or infectious or impregnated with sand, or dirt, or filth, or unclean and dangerous to the public use by the health officers of any such city or county as the case may be, shall immediately take steps to purify, clean or sanitize the same. In any case where the authorities of any city, or town or village, or any person or officer, agent or receiver of any firm, or corporation or company furnishing drinking water to such cities or towns or villages shall fail or refuse to carry out the provisions of this article and shall furnish for public use, drinking water that is contaminated, impure and unclean, he shall be fined not to exceed $500.00 for any such offense. [Acts 1919, p. 247.]

Art. 700. [Repealed by Acts 1937, 45th Leg., p. 667, ch. 333, § 8.]

Art. 700a. [Repealed by Acts 1939, 46th Leg., p. 234, § 8.]

The Article repealed was Acts 1937, 45th Leg., p. 667, ch. 333; 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 confectionary, 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 (a) 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 (3) minutes, or two (2) minutes at 180°F.; or (b) be immersed for at least two (2) minutes in a lukewarm chlorine bath containing at least 50 ppm of available chlorine if hypochlorites are used, or a concentration of equal bacteriacidal strength if chloramines are used. The bath shall be made up at a strength of 100 ppm or more of hypochlorites and shall not be used after its strength has been reduced to 50 ppm.

Chlorine solutions once used shall not be reused for bacteriacidal treatment on any succeeding day.

Where chlorine treatment is used a three-compartment vat shall be required, the first compartment to be used for washing, the second for plain rinsing, and the third for chlorine immersion; provided that for existing installations the second or rinsing compartment may be omitted if a satisfactory rinsing or spraying device is substituted. Upon removal from the hot water or chlorine solution all glasses, dishes, silverware, and other receptacles and utensils shall be stored in such a manner as not to become contaminated. 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 which use electrically operated dishwashing and glasswashing machines, that accomplish these purposes mechanically. [As amended Acts 1947, 50th Leg., p. 564, ch. 328, § 1.]

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.]

Art. 701. Maternity home.—Any person, manager, keeper, or officer of any corporation, firm or association who shall keep or conduct any "Baby Farm," lying-in hospital, hospital ward, maternity home or place for the reception, care or treatment of pregnant women without first having obtained a license from the State Board of Health as provided by law shall be fined not less than fifty nor more than five hundred dollars and in addition thereto may be confined in jail not to exceed twelve months. [Acts 1921, p. 147.]

Art. 701a. Children's nurseries.—Any person, association or corporation, who shall attempt to operate without a license as herein provided, or who shall violate any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than 30 days or by a fine of not less than $25.00 nor more than $500.00; and if operating under a license such license may be revoked by the State Board of Health. [Acts 1929, 41st Leg., p. 444, ch. 204, § 7.]

Sections 1-6 of this Act are published as Rev.Civ.St. Art. 4442a.

Section 8 repeals all conflicting laws and parts of laws, except Rev.Civ.St. Art. 4442, and Pen.Code, Art. 701. Sec-

tion 9 provides that, if any provision is held invalid, the remainder shall continue in force.

Art. 701b. Convalescent homes.—Any person who violates any provision of Section 1 of this Act,[1] and any officer, director or agent of any corporation who shall consent to such violation, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200) for each offense; and each day's violation of any such provision shall constitute a separate offense. [Acts 1945, 49th Leg., p. 577, ch. 342, § 3.]

1 Rev.Civ.St. art. 4442b.
Sections 1, 2, 4–6 of the Act of 1945 are published as Rev.Civ.St. art. 4442b.

Art. 702. Private disease posters.—Any person who shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner, or who shall permit, placards or posters to be or remain on buildings, outhouses or premises controlled by him, containing an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness or emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person from whom or place at which information, treatment or condition may be obtained shall be fined not more than two hundred dollars. [Acts 4th C. S. 1918, p. 195.]

Art. 703. Exceptions.—The preceding article shall not apply to didactic or scientific treatises which do not advertise or call attention to any person from whom or any place at which information, treatment or advice may be obtained, nor to advertisements or notices issued by a municipal or county department of health or by the State Board of Health. [Id.]

Art. 704. Venereal diseases.—Whoever violates any provision of this article shall be fined not less than five nor more than fifty dollars:

1. No person infected with a venereal disease shall knowingly expose another to infection with any venereal disease, or perform an act which exposes another person to infection with such disease.

2. No local health officer, employé, inspector, physician, nurse, or superintendent of a clinic or hospital shall fail to perform any duty required of him by the laws of this State relating to venereal diseases and requiring reports in such cases.

3. Whoever sells any drug or preparation of any kind used for or believed by the seller to be intended to be used for the treatment of syphillis, gonorrhea, or chancroid shall keep a record of the name and address of such purchaser and mail a copy of such record each week to the local health officer. [Acts 4th C. S. 1918, p. 179.]

Art. 705. [Repealed by Acts 1937, 45th Leg., p. 707, ch. 356, § 3.]

Arts. 705a, 705b. [Repealed by Acts 1945, 49th Leg., p. 559, ch. 340, § 29.]

Art. 705b—1. Perpetual care.—It shall be unlawful for any person, firm, association, corporation, or municipality, or any officer, agent, or employee thereof, to sell, offer for sale, or advertise any cemetery plot or the exclusive right of sepulture therein under the representation that such plot is under perpetual care, before a perpetual care fund as provided for by law has been established for the cemetery in which such property so sold, offered for sale, or advertised is situated; or to engage in or transact any of the businesses of a cemetery within this State other than by means of a corporation organized for such purpose, except as otherwise provided by law; or to fail to refuse to comply with the requirements of the law as to the filing of a statement concerning the perpetual care fund with the Secretary of State, or to fail or refuse to publish said statement as provided for by law, or to fail or refuse to post the notices with reference to perpetual care required by law; or to invest perpetual care funds otherwise than as provided by law; or to fail or refuse to keep the records of interment required by law; or to sell or offer for sale or advertise for sale cemetery lots or the exclusive right of sepulture therein for purposes of speculation or investment; or to represent through advertising or printed matter that a retail department will later be established for the resale of cemetery lot purchasers that specific improvements will be made in the cemetery or that specific merchandise or service will be furnished the lot owner, unless adequate funds or reserves have been created by the operator of the cemetery for each such purpose; or for any officer, agent, or employee of any cemetery or cemetery association, to pay or offer to pay any commission, rebate, or gratuity to any funeral director or employee thereof, or for any cemetery association or any officer or employee thereof to offer a free lot or lots either in a drawing or lottery or in any other way except for actual immediate burial of indigent persons. Any person, firm, or corporation violating any of the provisions of this Section shall be guilty of misdemeanor, and on conviction therof shall be fined not more than Five Hundred Dollars ($500) or, if a person, imprisoned not exceeding six (6) months in a county jail, or punished by both such fine and imprisonment. Any corporation organized for cemetery purposes which shall violate the provisions of this Act[1] shall unless such violation is corrected within ninety (90) days after notice of such violation served upon it by the Attorney General of this State, thereby forfeit its charter and right to do business in this State; and when such violation shall be brought to the attention of the Attorney General of this State it shall be his duty to serve such notice, and, after the expiration of ninety (90) days without correction of such violation, to institute suit or quo warranto proceedings in any county in this State where such violation might occur, in the District Court of such county, for the forfeiture of the charter of such offending corporation and the dissolution of its corporate existence; and for such purposes venue is hereby conferred upon the District Courts in this State. [Acts 1945, 49th Leg., p. 559, ch. 340, § 27.]

1 This article and Rev.Civ.St. articles 912a—1 to 912a—27.
Sections 1–26, 28 of the Act of 1945 are published as Rev. Civ.St. arts. 912a—1 to 912a—27.

Art. 705c. Sanitary employees; physical examination and health certificate required of employees handling or dispensing food or drink.

Employment of infected persons forbidden; certificate of physician

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; Acts 1939, 46th Leg., p. 231, § 1.]

CHAPTER 2.—UNWHOLESOME FOOD, DRINK OR MEDICINE

Article 706. Adulterated or misbranded food or drug.—No person, firm or corporation, shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopœia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Acts 1911, p. 76.]

Art. 707. "Adulterated."—For the purposes of this chapter an article shall be deemed to be adulterated:

(a) In the case of drugs:

(1) if, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopœia or in such United States Pharmacopœia as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein;

(2) if, when sold under or by a name not recognized in the eighth decennial revision of the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work;

(3) if its strength, quality or purity falls below the professed standard under which it was sold.

(b) In the case of confectionery; if it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound, or narcotic drug.

(c) In the case of food;

(1) if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

(2) if any substance has been substituted wholly or in part for the article;

(3) if any valuable constituent of the article has been wholly or in part abstracted, or if the product be below that standard of quality, quantity, strength or purity represented to the purchaser or consumer.

(4) if it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed;

(5) if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption;

(6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

"Filthy" defined.—The term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [Id.]

Art. 708. "Misbranded."—The term "misbranded," as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular.

An article shall also be deemed to be misbranded:

(a) in the case of drugs;

(1) if it be an imitation of or offered for sale under the name of another article;

(2) if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, phenocetice, opium, cocaine, heroin, alpha or beta eucaine, chloroform cannabis indica, chloral hydrate, or acetanelid, or any derivative or preparation of any such substances contained therein;

(b) in the case of food;

(1) if it be an imitation of or offered for sale under the distinctive name of another article;

(2) if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin alpha or beta eucaine, phenacetin chloroform, cannabis indica, chloral hydrate or acetanelid, or any derivative or preparation of any of such substances contained therein;

(3) if in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package;

(4) if the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular, provided that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First, in case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends. The term "blend," as used herein, shall be held to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only. Nothing in this law shall be construed as re-

quiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except in so far as the provisions of this law require to secure freedom from adulteration or misbranding. [Acts 1911, p. 76.]

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, abrastol, beta naphthol, flourine 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. [Acts 1911, p. 76; Acts 1937, 45th Leg., p. 540, ch. 266, § 1.]

Art. 710. Baking powder compound to be labeled.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. [Acts 1911, p. 76.]

Art. 711. Self-rising flour.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language containing the name and domicile of the manufacturers or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent. by weight of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated.

Self-rising Flour is defined to be a combination of flour, salt and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be, Bicarbonate of Soda and either Calcium Acid Phosphate, Sodium Aluminum Sulphate, Cream of Tartar, Tartaric Acid or combinations of the same. [Acts 1923, p. 96.]

Art. 712. [706] Milk.—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious disease[s]. [Acts 1911, p. 76.]

Art. 713. [706] Skim milk.—Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly painted in letters not less than one inch in length. [Id.]

Art. 713a. Manufacture and sale of filled milk; penalty.—Sec. 1. That where used in this Act:

(a) The word person shall mean any individual, firm, copartnership, or corporation.

(b) Filled milk shall include any milk, cream, or skimmed milk whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added or which has been blended or compounded with any fat or oil other than milk fat so that the resulting product is in imitation or semblance of milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated. Provided, that this definition shall not be construed to include any distinctive proprietary food compound prepared, and designated for feeding infants and young children, and customarily used on the order of a physician.

Sec. 2. It shall hereafter be unlawful to handle for use, manufacture, or sale within this State any form of filled milk. It is declared that filled milk is an adulterated article of food injurious to the public health, and its sale constitutes a fraud upon the public. It shall be unlawful for any person to manufacture within this State or to ship or deliver for shipment in intrastate commerce any filled milk.

Sec. 3. Any person violating any of the provisions of this Act, whether as owner, agent, manager, clerk, or employee, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than One Hundred Dollars ($100), nor more than One Hundred and Fifty Dollars ($150) for each offense, or shall be confined in the County Jail for not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment; and each transaction and violation of this Act shall constitute a separate offense.

Sec. 4. The State Health Officer, by himself or his assistants, chemists, inspectors, deputies, or agents, shall be charged with the enforcement of this Act, and he shall have full rights of ingress and egress to and on the premises of any person handling or selling or offering for sale any milk or milk products in this State, and shall have the authority and right to demand and have free access to the books and records of such persons at any and all reasonable times, and shall have the right and authority to demand and have sworn statements and reports as he may deem necessary to the enforcement of this Act. [Acts 1935, 44th Leg., p. 717, ch. 310.]

Art. 714. [708] Dealer not to be prosecuted, when.—No dealer shall be prosecuted under this chapter when he can establish a guaranty signed by the wholesaler, manufacturer, or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such article to such dealer, and in such case said party shall be amenable to the fines and other penalties which would attach in due course to the dealer under the provisions of this chapter. [Acts 1911, p. 76.]

Art. 715. [709] Certificates of purity.—The State Health Department or any employé thereof shall not furnish to any individual, firm or corpora-

tion any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug or in the preparation of food or drugs.

Art. 716. [710] Obstruction of officers.—No person shall wilfully hinder or obstruct the director of the food and drug division of the State Board of Health, or his inspector or other person duly authorized by him, in the exercise of the powers conferred upon him by the laws of this State.

Art. 717. [711] Penalty for violating pure food laws.—Whoever shall do any act or thing prohibited, or neglect or refuse to do any act or thing enjoined by the preceding articles of this chapter, or in any way violate any provision thereof, shall be fined not less than twenty-five nor more than two hundred dollars. It shall not be necessary for the indictment to allege or for the State to prove that the act or omission was knowingly done or omitted. [Acts 1911, p. 76.]

Art. 718. [714] Mixed or adulterated cereals.—Whoever shall knowingly sell or exchange or offer for sale or exchange, whether in single packages or lots, any product composed of mixed cereals of any kind, or any cereal adulterated in any manner, unless the word "adulterated" is plainly marked, printed or stenciled diagonally across the other marks or brands, if any, on the hogshead, box, bale, cask, sack or package containing the same, or in case there are no marks thereon, then across such container in a conspicuous place in large legible letters and figures not less than two inches in size, shall be fined not less than twenty-five nor more than one thousand dollars. [Acts 1905, p. 227.]

Art. 719. Bakeries and bakers.—Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars:

Rule 1. Bakery Building.—Any building occupied or used as a bakery wherein is carried on the business of the production, preparation, storage or display of bread, cakes, pies, and other bakery products intended for sale for human consumption, shall be clean, properly lighted, drained and ventilated. Every such bakery shall be provided with adequate plumbing and drainage facilities including suitable wash sinks, toilets and water closets. All toilets and water closets shall be separated and apart from the rooms in which the bakery products are produced or handled. All wash sinks, toilets and water closets shall be kept in a clean and sanitary condition, and shall be in well lighted and ventilated rooms. The floors, walls and ceilings of the rooms in which the dough is mixed and handled, or the pastry prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled or stored, shall be kept and maintained in a clean, wholesome and sanitary condition. All openings into such rooms, including windows and doors, shall be kept properly screened or otherwise protected to exclude flies. No working rooms shall be used for purposes other than those directly connected with the preparing, baking, storage and handling of food, and shall not be used as washing, sleeping, or living rooms, and shall, at all times, be separated and closed from the living and sleeping rooms. Rooms shall be provided for the changing and hanging of wearing apparel apart and separate from such work rooms and such rooms as to be provided for the changing and hanging of wearing apparel shall be kept clean at all times.

Rule 2. Sanitation.—No employé or other person shall sit or lie upon any table, bench, trough or shelf which is intended for the dough or bakery products. No animals or fowls shall be kept or allowed in any bakery or other place where bread or other bakery products are produced or stored. Before beginning the work of preparing, mixing and handling the ingredients used in baking, every person engaged in the preparation or handling of bakery products shall wash his hands and arms thoroughly, and for this purpose sufficient wash basins and soap and clean towels shall be provided. No employé or other person shall use tobacco in any form in any room where bakery products are manufactured, wrapped or prepared for sale. No master baker, person or any employé who is affected with any contagious or infectious disease shall be permitted to work in any bakery or be permitted to handle any product therein, or delivered therefrom.

Rule 3. Clean condition.—The wagons, boxes, baskets and other receptacles in which bread, cake, pies or other bakery products are transported, shall be kept in a clean condition at all times and free from dust, flies and other contamination. All show cases, shelves or other places where bakery products are sold, shall be kept well covered, properly ventilated, well protected from dust and flies, and shall be kept in a clean and wholesome condition at all times. Boxes or other receptacles for the storing or receiving of bread and other bakery products, before and after the retail stores and selling places are open, shall be constructed and placed so as to be free from the contamination of streets, alleys and sidewalks, and shall be raised at least ten inches from the sidewalk or street, and shall be kept clean and sanitary, and no bread shall be placed in any box along with any other articles of food than bakery products. All such boxes shall be provided with private locks and shall be locked at all times except when open to receive or remove bread or other bakery products and when being cleaned.

Rule 4. Ingredients must be good.—All material used in the production or preparation of bakery products shall be stored, handled and kept in a way to protect them from spoiling and contamination, and no material shall be used which is spoiled or contaminated, or which may render the bread or other bakery products unwholesome or unfit for food. The ingredients used in the production of bread and other bakery products and the sale or offering for sale of bread and other bakery products shall comply with the provisions of the laws against adulteration and misbranding. No ingredients shall be used which may render the bread or other bakery products injurious to health.

Rule 5. Weight of bread.—Bread to be sold by the loaf made by bakers engaged in the business of wholesaling and retailing bread, shall be sold based upon any of the following standards of weight and no other, namely: a loaf weighing one pound or 16 ounces, a loaf weighing 24 ounces or a pound and a half, and loaves weighing two pounds or 32 ounces, and loaves weighing three pounds, or some other multiple of one pound or 16 ounces. These shall be the standard of weight for bread to be sold by the loaf. Variations, or tolerance, shall not exceed one ounce per pound over or under the said standard within a period of 24 hours after baking. [Acts 1921, p. 129.]

Art. 719a. Marketing citrus fruit unfit for consumption.

Definitions

Section 1. That as used in this Act the word "person" shall extend to and include persons, partnerships, associations and corporations; and the word "box" refers to standard size containers now in common use in this State in the packing and shipping of citrus fruit; and the words "Citrus fruit" shall extend and include only the fruits of citrus grandis, osbeck, commonly and hereafter called grapefruit or pomelo, and citrus siensis, osbeck, commonly called sweet or round oranges, and hereinafter called oranges; and the words "packing house" shall extend to and include any structure or place prepared for and used for packing and otherwise preparing citrus fruit for market or transportation; the word "grove" to extend to and include any yard, garden, orchard or any separate or integral unit or area where citrus

fruit is grown; and the words "distributing house" shall extend to and include any structure, railroad, car, truck, or place used for carrying, receiving, or distributing citrus fruit shipped from any other State into Texas; and the words "out of State" shall extend to and include any citrus fruit produced outside of Texas and shipped into this State. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Immature fruit; period of marketing fruit; certificates

Sec. 2. It shall be unlawful for any person to sell, or offer for sale, any citrus fruit that is immature, unripe, overripe, frozen or frost damaged, or otherwise unfit for consumption, or to transport, prepare, receive or deliver for transportation or market any citrus fruit between the first day of September and the next succeeding December 15th, both dates inclusive, in any year, unless such fruit is accompanied by a stamp or stamps as provided herein to evidence the certificate of inspection and maturity thereof as defined in this Act, issued by a duly authorized citrus fruit inspector, or special citrus fruit inspector, or by a duly authorized inspector of the United States Bureau of Agricultural Economics.

The certificates of inspection and maturity mentioned in this Act shall be of such number, form, size and character as the Commissioner of Agriculture of this State may by rule or regulation prescribe, and shall be used in such manner as to identify the fruit to which they relate. All inspections shall be made in the groves where the fruit is grown. Any person desiring inspection shall be entitled to have such inspection made by the State Inspectors in the grove or such part of a defined area of a grove as desired under such rules and regulations as the Commissioner of Agriculture may prescribe. If upon inspection, as to the citrus fruit in such grove which passes the required test, the owner of such citrus fruit shall be entitled to a clearance certificate permitting him to have the fruit identified in such clearance certificate removed from the trees.

The maturity stamps as mentioned herein shall be delivered to such owner or shipper at the packing house as provided herein upon the payment of the fee as hereinafter provided in accordance with the number of boxes of fruit to be shipped.

Provided, that it shall be unlawful during the remaining period of from December 16th to August 31st, following, both dates inclusive, when inspection is not required by this Act, for any person to sell, offer for sale, transport, deliver or prepare for sale or transportation, any citrus fruit which is immature or otherwise unfit for consumption, or for any person to receive such fruits under a contract of sale, or for the purpose of sale, offering for sale, transportation or delivery for transportation thereof. Provided further, that the provisions of this Act shall not apply to sales of citrus fruits "on the trees," nor to common carriers or their agents when the fruit accepted for transportation or transported by such common carrier is accompanied by a proper certificate of maturity and inspection of such fruits, as hereinafter provided, or when accepted by them for transportation between the 16th day of December in any year and the 31st day of August next thereafter, both dates inclusive, or transportation of the fruit from the grove to the packing house located within this State. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Determination of maturity

Sec. 3. That within the purpose and meaning of this Act, pomelos (Grapefruit) shall be deemed to be mature only when the ratio of total soluble solids of the juice thereof to anhydrous citric acid is as follows:

(a) When the total soluble solids of the juice is not less than nine per cent (9%), the minimum ratio of total soluble solids to the anhydrous citric acid shall be seven and two-tenths to one (7.2-1).

(b) When the total soluble solids of the juice is not less than ten per cent (10%), the minimum ratio of total soluble solids to the anhydrous citric acid shall be seven to one (7-1).

(c) When the total soluble solids of the juice is not less than eleven per cent (11%), the minimum ratio of total soluble solids to the anhydrous citric acid shall be six and eight-tenths to one (6.8-1).

(d) When the total soluble solids of the juice is not less than eleven and one-half per cent (11.5%), the minimum ratio of total soluble solids to the anhydrous citric acid shall be six and one-half to one (6.5-1).

(e) That within the meaning and purpose of this Act, oranges shall be deemed to be mature when the juice thereof contains not less than eight per centum (8%) of the total soluble solids to each part of the anhydrous citric acid.

(f) In determining the total soluble solids, the Brix hydrometer shall be used and the reading of the hydrometer corrected for temperature 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.

(g) All citrus fruit not conforming to the above standards shall be deemed and held to be immature within the meaning of this Act. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1; Acts 1935, 44th Leg., p. 131, ch. 53, § 1.]

Additional requirements

Sec. 3a. It is provided, however, that in addition to the above maturity requirements and standards set out in Section 2 above, the Commissioner of Agriculture may prescribe additional seasonal requirements from time to time to the end that citrus fruit shall at all times be fit for human consumption before being offered for sale. [As added, Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Registration of packing houses

Sec. 4. The owner, manager, or operator of each packing house or place at which it is intended to pack or prepare citrus fruit for market, or transportation during the then present or next ensuing citrus fruit-shipping season, shall register annually such packing house and its location, shipping points, and his Postoffice address with the Commissioner of Agriculture of this State not less than ten (10) days before packing or otherwise preparing any citrus fruit for sale or transportation in or at such packing house; and shall, in addition to such registration, give the said Commissioner of Agriculture not less than seven (7) days' written notice of the date on which the packing or other preparation for sale or transportation between October 15th and December 16th, both dates inclusive, of the current or next ensuing season's crop to be begun. It shall be unlawful for any person to operate a citrus fruit packing house or to pack or otherwise prepare for sale or transport any citrus fruit in such packing house without having previously registered said packing house and given notices herein required; provided, that no certificate of inspection and maturity of any fruit shall be issued by any authorized inspector to any packing house or the agents or representatives thereof which has not been registered with the Commissioner of Agriculture of this State during the then current year, or has not given to said Commissioner of Agriculture the notices as required by this Act,

nor until after the payment of any inspection fee required by this Act.

(b) When the Commissioner of Agriculture has reason to believe that citrus fruit from States other than Texas is green he is authorized herein to test such fruit; however, the standard for the testing of such out of State fruit shall be on the same basis as that used in the State wherein such citrus fruit is grown; provided that where such State has no maturity standard then the Texas maturity standard shall apply. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Fee payable by vendor or shipper

Sec. 5. Any vendor or shipper of citrus fruit between the dates of September 1st and December 15th, both dates inclusive, each year shall pay the Commissioner of Agriculture of this State a fee of not more than two and one-half (2½) cents for each box of citrus fruit by him or them sold or transported or delivered for transportation; or when such fruit is sold or transported in one-half boxes, baskets or other containers less than half the standard size containers the fee shall be not more than one and one-half (1½) cents for each such basket, container or half box, or when such fruit is sold or transported in bulk, the fee shall be not more than two and one-half (2½) cents for each eighty (80) pounds or fraction thereof of such fruit. The amount of the fees referred to in this Section shall be reduced by the Commissioner to a figure commensurate with the amount of surplus in the fund which shall be taken into consideration by the Commissioner in estimating the amount of fees to be assessed for the administration of this Act for the following shipping season. It is the intention of this section that such fees shall be fixed as nearly as possible with reference to the cost of the administration of this Act.

Such fee shall be due and payable when the fruit is prepared for market or transportation and payment thereof shall be evidenced by stamps, as hereinafter provided. And it shall be unlawful to sell, deliver, transport, or deliver for transportation, or receive for transportation, any citrus fruit, payment of the fee for which is not evidenced by proper stamps to be provided by the Commissioner of Agriculture. Provided, however, that the provisions of this section shall not apply to the transportation or carriage of fruit from groves to packing houses within this State. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1; Acts 1935, 44th Leg., p. 131, ch. 53, § 2.]

Stamps for packages

Sec. 6. It shall be the duty of the Commissioner of Agriculture to furnish vendors and shippers of citrus fruits with such stamps to be attached to packages of fruit prepared for sale or delivery for transportation, or to be affixed to the bill of lading where shipment is in bulk. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Attachment of stamps to packages

Sec. 7. It shall be the duty of any vendor or shipper of citrus fruit to properly and securely affix and attach to each package of citrus fruit prepared for sale or delivery for transportation, or to the bill of lading or other shipping receipt therefor when shipment is in bulk, the necessary stamp or stamps to evidence payment of the inspection fee herein provided. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

False certificates by inspectors

Sec. 8. It shall be unlawful for any authorized inspector to make or issue any false certificate as to inspection, maturity, or payment of inspection fees. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Unfit fruit as nuisance

Sec. 9. All citrus fruit prepared for sale or transportation, or which is being prepared for such purposes, or is being delivered for sale or transportation, that may be found to be immature or otherwise unfit for consumption upon inspection and testing, is hereby declared to be a public nuisance, detrimental to the public health, and the sale thereof declared to be a fraud upon the public and shall be seized and destroyed by Citrus Fruit Inspectors, or by the Sheriff of the county where found; provided that the owner of such citrus fruit that is immature or otherwise unfit for consumption may be allowed to retain possession of the same, subject to such regulations as the Commissioner of Agriculture may prescribe for the disposition thereof. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Inspectors appointed; oath and bond

Sec. 10. Upon recommendation of the Commissioner of Agriculture, the Governor may in each year appoint and commission as many Citrus Fruit Inspectors for such period or periods, not exceeding one year, as said Commissioner may deem to be necessary for the effective enforcement of this Act. Such Inspectors shall make and file in the office of the Secretary of State, the oath required by the Constitution of this State, and shall give a good and sufficient bond in the sum of One Thousand Dollars ($1,000.00), payable to the Governor of the State of Texas and conditioned for the faithful performance of the duties of such office. All persons authorized under the provisions of this Act to inspect and certify to the maturity of citrus fruit shall be governed in the discharge of their duties as such Inspectors by the provisions of this Act, and by the rules and regulations pursuant thereto prescribed by the Commissioner of Agriculture as herein authorized and shall perform their duties under his direction and supervision. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Inspectors' salaries

Sec. 11. The salary of each citrus fruit inspector or "Special Citrus Fruit Inspector" shall be at the rate of not more than One hundred and Fifty Dollars ($150) per month and in addition thereto shall receive his or her necessary traveling and other expenses incurred by him or her in the discharge of his or her duties as such inspector, which shall be paid upon approval of accounts therefor by the Commissioner of Agriculture. The Commissioner of Agriculture is hereby authorized to employ a Chief of Maturity Division at a salary of not to exceed Two Hundred Dollars ($200) per month and such additional field and other agents and clerical assistance, at such time and for such periods, and to incur and pay any other expenses including the traveling expenses of the Commissioner of Agriculture during the citrus fruit season, as may be necessary for the effective enforcement of this Act, and to secure the payment of the inspection fees hereby imposed under the authority of this Act.

In cases of emergency or necessity where no citrus fruit inspector is available for the inspection of citrus fruit in any particular locality in this State, the Commissioner of Agriculture may designate some fit and competent individual to inspect, test, and certify as to such fruit offered for sale or transportation in such locality. Certificate made or issued by such designated individual shall be signed by him or her as "Special Citrus Fruit Inspector"; he or she shall not be required to give bond, but shall be subject to the penalties imposed by this Act for violation of any of the provisions thereof. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1; Acts 1935, 44th Leg., p. 131, ch. 53, § 3.]

Method of inspection

Sec. 12. In the inspection of the citrus fruit in the grove as is provided herein, inspectors shall take samples for analysis from the trees and from such fruit in the area for which inspection is requested, in the presence of the owner or agent or representative of such owner of such grove. Sufficient samples of grapefruit or oranges, each fairly representative of such of the fruit for which clearance certificate is desired shall be drawn by the inspector, witnessed by the owner, agent, or owner's representative. For such fruit as passes the required test the Commissioner of Agriculture shall issue his certificate of clearance permitting such fruit to be removed and offered for sale; provided, however, that where the Commissioner of Agriculture or State Inspector has reason to believe that immature and green fruit is in fact being offered for sale, such immature or green fruit shall be condemned and it shall be unlawful for any person willfully to substitute green fruit for ripe fruit for which a clearance certificate has been issued; and for the determination of whether any such substitute has in fact taken place the Commissioner of Agriculture shall have the right and is herein fully empowered to test at the packing shed or elsewhere any fruit being offered for sale or for shipment. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Place of inspection

Sec. 13. No State Inspector or individual designated by the Commissioner of Agriculture as "Special Citrus Fruit Inspector" or duly authorized inspector of the United States Bureau of Economics, shall be authorized to inspect, test, or issue a certificate of inspection and maturity or quality of any fruit, except at a regularly registered packing house or distributing house, or grove, as herein defined. [As amended Acts 1929, 41st Leg., p. 636, ch. 288; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Obstructing inspection

Sec. 14. It shall be unlawful for any person to obstruct or resist any authorized Inspector in the performance or discharge of any duty imposed or required by him or her by the provisions of this Act. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Penalty

Sec. 15. Any person who shall violate any of the provisions of this Act, or do, or commit 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 ($25.00) nor more than Five Hundred Dollars ($500.00) or by imprisonment for not to exceed six (6) months, or both such fine and imprisonment, in the discretion of the Court. [As amended Acts 1931, 42nd Leg., p. 406, ch. 244, § 1.]

Disposition of fees

Sec. 16. All money received by the Commissioner of Agriculture for inspection fees and certificates of inspection and maturity shall be paid by him to the State Treasurer, who shall deposit said money to the account of "Special Citrus Fruit Inspecting Fund," which shall be a continuing fund.

The Commissioner is hereby authorized and empowered to use the monies in said fund in defraying the expenses of the administration of this Act. [Acts 1927, 40th Leg., 1st C.S., p. 240, ch. 88; Acts 1931, 42nd Leg., p. 406, ch. 244, § 1; Acts 1935, 44th Leg., p. 131, ch. 53, § 4.]

Acts 1929, 41st Leg., p. 636, ch. 288, amended sections 1–3, 4, 5, 9, 12, and 13 of this Article. Acts 1931, 42nd Leg., p. 406, ch. 244, amended sections 1–3, 4–16, and added section 3a. Acts 1935, 44th Leg., p. 131, ch. 53, amended sections 3, 5, 11, and 16.

Section 18 of Acts 1927, as renumbered 17 by Acts 1931, 42nd Leg., p. 406, ch. 244, repeals all conflicting laws and parts of laws.

Art. 719b. Penalty for violation of Act relating to standardization of citrus fruit.—Any person, firm, corporation, association or other organization which violates any provisions of this Act or wilfully interferes with the Commissioner, his agent, inspectors or employees, in the performances or on account of the execution of his or their duties as provided by this Act shall be deemed guilty of a misdemeanor. Any person convicted under this Act shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not more than ninety (90) days, or both such fine and imprisonment in the discretion of the Court. [Acts 1933, 43rd Leg., p. 550, ch. 180, § 20.]

Sections 1–19 of this Act are published as Rev.Civ.St. Art. 118a.

Art. 719c—1. Coloring citrus fruit.

Definitions

Section 1. 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 (8½) 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 (4½) gallons to each standard packed box of one and three-fifths (1-⅗) 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,[1] shall also be charged with such duties hereunder as may be imposed by the Commissioner, or the Chief of the Maturity Division.

1 Article 719a.

Inspection of fruit to be colored; certificates of inspection; notice

Sec. 9. 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 or 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.]

Art. 719d. Sale of meat or meat products.— Section 15. It shall be unlawful to knowingly sell for human consumption meat from animals affected with the following diseases: Carcinoma or sarcoma, actinomycosis, a downer showing temperatures of one hundred and six (106) degrees, black leg, so-called hemorrhagic septicemia, anthrax, rabies, shipping fever, hog cholera, tetanus, pyemia, mastitis, and erysipelas and other visible diseases.

Sec. 16. It shall be unlawful for any person, persons, firm, or corporation to knowingly slaughter for food for human consumption any diseased animal or animals knowing them to be diseased and unfit for food for human consumption, and all such diseased animals shall be slaughtered only at either a Federal or State approved slaughter plant.

Sec. 17. It shall be unlawful for any person, persons, firm, or corporation to knowingly sell or offer for sale for food for human consumption or to process meat or meat food products from any animal which died other than by slaughter for food for human consumption purposes, and such dead animals shall be denatured.

Sec. 18. It shall be unlawful to sell for food for human consumption meat from the carcass of horses, dogs, mules, donkeys, cats, or other animals not normally used for human food.

Sec. 19. Penalty. Whoever violates any provision of this Act shall upon conviction be fined in the sum of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) and each separate violation shall constitute a separate offense. [Acts 1945, 49th Leg., p. 554, ch. 339.]

Sections 1–14, 20 of the Act of 1945 are published as Rev.Civ.St. art. 4476—3.

CHAPTER 3.—DRUGS, NARCOTICS AND POISONS

Art.
720–725. [Repealed.]
725a. [Repealed.]
725b. Narcotic drug regulations.
Sec.
1. Definitions.
2. Acts prohibited.

Art.
725b. Narcotic drug regulations.—Cont'd.
Sec.
2A. Authorized acts.
3. Repealed.
4. Qualification for licenses.
5. Sale on written orders.
6. Sale by apothecaries.
7. Professional use of narcotic drugs.
8. Preparations exempted.
9. Record to be kept.
10. Labels.
11. Authorized possession of narcotic drugs by individuals.
12. Persons and corporations exempted.
13. Common nuisances.
14. Contraband—Seizure.
15. Seizure without warrant.
16. Search warrants—Issuance.
17. Narcotic drugs to be delivered to State officials, etc.
18. Notice of conviction to be sent to Licensing Board.
19. Records, confidential.
20. Fraud or deceit.
21. Exceptions and exemptions not required to be negatived.
22. Enforcement and cooperation.
23. Penalties.
24. Effect of acquittal or conviction under Federal Narcotic Laws.
24(a). Uncorroborated accomplice testimony.
25. Constitutionality.
26. Interpretation.
27. Inconsistent laws repealed.
28. Name of Act.
29. Time of taking effect.
726. Sale of poisons.
726a. [Repealed.]
727. Sale of tobacco to minor.

Arts. 720–725. [Repealed by Acts 1937, 45th Leg., p. 333, ch. 169, § 27.]

Art. 725a. [Repealed by Acts 1937, 45th Leg., p. 333, ch. 169, § 27.]

The article repealed was Acts 1931, 42nd Leg., p. 154, ch. 97, §§ 1–24; Acts 1933, 43rd Leg., p. 609, ch. 204.

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. Repealed by Acts 1943, 48th Leg., p. 703, ch. 391.

Section 3 amended by Acts 1937, 45th Leg., 2nd C.S., p. 1970, ch. 58, § 1.

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 enforcemnt 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:

Administering, dispensing, or selling at retail of any medicinal preparation that contains in one (1) fluid ounce, or if a solid or semi-solid preparation, in one (1) avoirdupois ounce, not more than one (1) grain of codeine or of any of its salts.

The exemption authorized by this Section shall be subject to the following conditions: (1) That the medicinal preparation 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; and (2) that such preparation shall be 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. [As amended Acts 1941, 47th Leg., p. 647, ch. 392, § 1.]

Record to be kept

Amendment Effective Sept. 1, 1943. Effective Sept. 1, 1943, section 1-a of the amendatory Act of 1941, Acts 1941, 47th Leg., p. 647, ch. 392, repealed the amendment by section 1 of the same Act and, in lieu thereof, amended section 8 of this article to read as therein set out. However, the amendment by section 1-a of the 1941 Act was repealed by Acts 1943, 48th Leg., p. 346, ch. 225, § 2.

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 (1) 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 (½) of a grain of morphine or any of its salts; or (c) two (2) grains of codeine or any of its salts; or (d) one-fourth (¼) of a grain of heroin or any of its salts; or (e) 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. Provided further, that any person may purchase at any time one ounce of paregoric without a doctor's prescription. [As amended Acts 1941, 47th Leg., p. 647, ch. 392, § 2; Acts 1943, 48th Leg., p. 346, ch. 225, § 1.]

Section 2 of the amendatory Act of 1943 repealed Acts 1941, 47th Leg., p. 647, ch. 392, § 1-a, which amended section 8 of this article.

(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 directions 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 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. [Added Acts 1937, 45th Leg., 2nd C.S., p. 1970, ch. 58, § 2.]

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;[1] Chapter 150, Page 277, Acts of the Regular Session of the Thirty-sixth Legislature, 1919,[2] 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,[3] are hereby expressly repealed.

1 Penal Code, arts. 720–722.
2 Penal Code, arts. 723–725.
3 Penal Code, art. 725a.

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; Acts 1941, 47th Leg., p. 647, ch. 392, §§ 1, 2.]

Section 3 of the Act of 1941 repealed conflicting laws.

Art. 726. Sale of poisons.—The following poisons are included with the provisions of this article: arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce, aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less.

Every person, firm or corporation who sells any poison shall place on each package and container of poison sold a label containing the word "poison" printed in red ink in a conspicuous place thereon; and keep a well-bound book which shall at all times be open to the inspection of any officer charged with the enforcement of law, in which shall be recorded at the time of the sale the name and quantity of the poison purchased and the purpose for which the same is to be used, and the name and address of the purchaser, if known to the seller, and if unknown the sale shall not be made until the purchaser is identified by one known to the seller. The seller shall also record the name and address of the identifier.

Any person who shall for himself or as the agent or employé of another person, firm or corporation, sell, give away or deliver any of said poisons to another without having complied with any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars and be confined in jail for not less than twenty days nor more than six months. [Acts 3rd C. S. 1917, p. 86.]

Art. 726a. [Repealed by Acts 1937, 45th Leg., p. 554, ch. 274, § 1.]

The article repealed was Acts 1934, 43rd Leg., 3rd C.S., p. 52, ch. 29.

Art. 727. [1049] Sale of tobacco to minor.—Whoever shall sell, give or barter, or cause to be sold, given or bartered, to any minor under the age of sixteen years, or knowingly sell to another for delivery to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any of its forms, shall be fined not less than ten nor more than one hundred dollars. [Acts 1899, p. 237.]

CHAPTER 4.—BARBER SHOPS AND BEAUTY PARLORS

Art.
734b. Hairdressers and cosmetologists.—Cont'd.
Sec.
4. State Board of Hairdressers and Cosmetologists.
5. Officers and employees of Board.
6. State Treasurer as custodian of funds.
7. Salaries and expenses of board members.
8. Records.
9. Meetings of board and examinations.
10. Sanitary rules; clerks and inspectors.
11. Certificate of registration; teachers; license.
12. Charges for work by students; school and shop on same premises.
13. Applications; fees.
14. Expiration of certificate or license; reinstatement after retirement; license fees; itinerant shops.
15. Renewal of certificate; suspension or revocation.
16. Suit; appeal.
17. Grounds for failure to issue or renew certificate or for revocation or suspension.
18. Service excepted; hair cutter and manicurist to be licensed.
18a. Demonstration of preparations.
19. Disposition of funds.
20. Offenses.
21. False statements.

Article 728. Definitions.—A "barber" is one who shaves, or trims the beard, or cuts or shampoos or dresses the hair and massages the face of any person for pay, and includes "barbers' apprentices" and shop boys. A "manager" means any person having control of a barber shop or beauty parlor or person working or employed therein. A barber shop is any place where the work or business of a barber is done for pay, and may or may not include a beauty parlor or any work of a beauty parlor. A beauty parlor is a place where hair-dressing or manicuring of finger nails or massaging the skin, or shampooing or washing the scalp, is done for pay, and may or may not include work or business of a barber. [Acts 1921, p. 155.]

Art. 729. Registering name and location.—Every person owning, operating or managing a barber shop or beauty parlor shall register his full name and the location of said shop or parlor in a book to be kept in the office of the State Board of Health for that purpose, and every owner, operator or manager of a barber shop or beauty parlor that is first opened for business hereafter shall within five days after the opening of such shop or parlor register in like manner. In event of a change in the manager or location of any such shop or parlor, the manager of same shall call at or communicate by mail with said board within five days after such change takes place and inform said board thereof. [Id.]

Art. 730. Equipment.—The owner, operator or manager of any barber shop or beauty parlor shall equip and keep equipped the same with facilities and supplies and with all such appliances, furnishings and materials as may be necessary to enable persons employed in and about the same to comply with the law. [Id.]

Art. 731. Employé with disease.—No owner, operator or manager of a barber shop or a beauty parlor shall knowingly permit any person suffering from a communicable skin disease or from a venereal disease to act as a barber or employé or work or be employed in said shop or parlor. No person who to his own knowledge is suffering from a communicable disease or from venereal disease shall act as a barber or work or be employed in said shop or parlor. [Id.]

Art. 732. Cleanliness.—Every person in charge of a barber shop or beauty parlor shall keep said shop or parlor and all furniture, tools, appliances and other equipment used therein at all times in a cleanly condition, and shall cause all combs, hair brushes, hair dusters and similar articles used therein to be washed thoroughly at least once a day and to be kept clean at all times, and shall cause all mugs, shaving brushes, razors, shears, scissors, clippers and tweezers used therein to be sterilized at least once after each time used as hereinafter provided. The term "persons affected by this chapter" shall include any person working or employed in a barber shop or beauty parlor or acting as a barber, beauty specialist or manicurist. Every barber or other person affected by this chapter, immediately after using a mug, shaving brush, razor, scissors, shears, clippers, or tweezers, for the service of any person, shall sterilize the same by immersing it in boiling water for not less than a minute, or in the case of a razor, scissors, shears or tweezers, by immersing it for not less than ten minutes in a five per cent aqueous solution of carbolic acid. No barber or other person affected by this chapter shall:

1. Use for the service of any customer a comb, hair brush, hair duster or any similar article that is not thoroughly clean, nor any mug, shaving brush, razor, shears, scissors, clippers, or tweezers, that are not thoroughly clean or that have not been sterilized since last used.
2. Serve any customer unless he shall immediately before such service cleanse his hands thoroughly.
3. Use for the service of a customer any towel or wash cloth that has not been boiled and laundered since last used.
4. To stop the flow of blood use the same piece of alum or other material for more than one person.
5. Shave any person when the surface to be shaved is inflamed or broken out or contains pus, unless such person be provided with a cup, razor and lather brush for his individual use.
6. Permit any person to use the head rest of any barber's chair under his control until after the head rest has been covered with a towel that has been washed and boiled since having been used before, or by clean new paper or similar clean substance.
7. Use a powder puff or a sponge in the service of a customer unless it has been sterilized since last used.
8. Use a finger bowl unless it has been sterilized since last used and fresh water or other liquid placed therein. [Id.]

Art. 733. No place to sleep.—No owner or manager of any barber shop or beauty parlor shall permit any person to sleep in any room used wholly or in part as such shop or parlor, and no person shall pursue the barber business or be employed in a barber shop or beauty parlor in any room used as a sleeping apartment. [Id.]

Art. 734. Penalty.—Whoever violates any provision of this chapter or fails or refuses to comply with any provision thereof shall be fined not to exceed one hundred dollars. [Id.]

Art. 734a. Texas Barber Law.

Registration required

Section 1. That it shall be unlawful for any person to engage in the practice or attempt to practice barbering in the State of Texas without a certificate or registration as a registered barber issued pursuant to the provisions of this Act, by the Board of Barber Examiners hereinafter created.

Registered assistant barber.

Sec 2. That it shall be unlawful for any person to serve or attempt to serve as an assistant barber under a registered barber within the State of Texas without a certificate of registration as a registered

assistant barber, issued by the Board herein provided for.

Shop managed by registered barber

Sec. 3. That it shall be unlawful for any person to operate a barber shop within this State unless such shop shall at all times be under the direct supervision and management of a registered barber.

Definition

Sec. 4. Barber shop, as defined herein, shall mean any place where barbering is practiced in this State, and the practice of barbering is hereby defined to be the following practices for hire or reward when not done in the practice of medicine, surgery, osteopathy, or necessary treatments of healing the body by one authorized by law to do so;

(a) Shaving or trimming the beard or cutting the hair.

(b) By giving any of the following treatments by any person engaged in shaving or trimming the beard and/or cutting the hair;

(1) Giving facial and scalp massages, or applications of oils, creams, lotions, or other preparations, either by hand or electrical appliances;

(2) Singeing, shampooing, or dyeing the hair or applying hair tonics;

(3) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to the scalp, face, neck, or that part of the body above the shoulders.

Provided, however, that nothing contained in this Act shall be construed to include those engaged in beauty culture, or what is commonly known as beauty shops, or hair dressing parlors, or such other places where such persons giving treatments or applications therein do not shave or trim the beard or cut the hair, and provided further that any person in any such places exempt shall obtain a certificate to cut or bob the hair only, if he or she desires to cut or bob the hair in such places, and upon the issuance of such a certificate may do any or all of the things set out above, except shaving or trimming the beard. Provided, that persons not authorized or qualified hereunder to cut the hair may clip hairs as a necessary incident to giving beauty treatments, curling or treating the hair for cosmetic, remedial, or like purposes; but such persons shall not clip the hair as a separate treatment or undertaking where a separate or additional charge is made therefor, whether done directly or indirectly.

The first class of persons named herein shall be issued a certificate of a certain color, which shall have stamped thereon "Certificate Class A" and the second class provided for herein, who only bob or cut the hair, shall be issued a Certificate on a different color of paper, which shall have stamped thereon "Certificate Class B." [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, § 2.]

Assistant under supervision of registered barber

Sec. 5. No registered assistant barber shall independently practice barbering, but he may as an assistant barber do any or all of the acts constituting the practice of barbering under the immediate personal supervision of a registered barber.

Certificates to practice; issuance

Sec. 6. It shall be unlawful for any person to follow the occupation of cutting hair, or practice as a haircutter in any beauty shop or hair dressing parlor or elsewhere for hire as hereinbefore provided unless excepted by this act, unless such person shall have first obtained a Certificate, as herein provided, which certificate shall authorize the cutting of hair only in such parlor or establishment where such haircutting is for hire or reward. Applications for such certificates styled "Class B" must possess the qualifications required of others made amenable to the provisions of this act, and the application shall be made likewise and the same fees paid. Before any certificate is issued to such haircutter he or she shall submit to an examination to test their qualifications as a haircutter, and such examination shall be held and conducted in the same manner and by the same persons as is required by law of "Class A," except that such applicants shall only be examined as to their skill, ability and knowledge of properly performing the art or science of haircutting, and their knowledge of hygiene and sanitation pertaining thereto.

Any person who for a period of two years prior to the taking effect of this act, was bobbing or cutting hair in any beauty shop or hair dressing establishment shall be entitled to a certificate without taking an examination. Application shall be made in the same manner as that made for "Class A." "Class A" and "Class B" as used herein shall refer to the classifications prescribed herein and shall include Registered Barbers and Registered Assistant Barbers as defined and used in the sections of this act.

Registered Barbers and Registered Assistant Barbers may obtain "Class B" as well as "Class A" Certificates, and shall be governed under the same provisions as "Class A" barbers or assistant barbers. The following persons shall be exempt from the provisions of this act while in the proper discharge of their professional duties in addition to those heretofore exempt:

(a) Persons authorized under the laws of the State of Texas to practice medicine, or osteopathy;

(b) Commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital service;

(c) Registered Nurses. [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, § 3.]

Qualification of applicant for certificate

Sec 7. Any person is qualified to receive a certificate of registration to practice barbering:

(a) Who is qualified under the provisions of Section 8 of this Act.

(b) Who is at least eighteen (18) years of age and who has practiced as an assistant barber under authority of a certificate issued by the Board of Barber Examiners, as such, for at least eighteen (18) months.

(c) Who is of good moral character and temperate habits; and

(d) Who has passed a satisfactory examination conducted by the Board to determine his fitness for practicing barbering.

Provided, however, that an applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the Board must continue to practice as an assistant barber for an additional six (6) months before he is again entitled to take the examination as a registered barber. [As amended Acts 1933, 43rd Leg., p. 802, ch. 235, § 1.]

Qualification of applicant as assistant barber

Sec. 8. Any person is qualified to receive a certificate of registration as a registered assistant barber

(a). Who is at least sixteen and one-half years of age; and

(b). Who is of good moral character and temperate habits; and

(c). Who has graduated from a school of barbering approved by the Board; and

(d). Who has passed a satisfactory examination conducted by the Board to determine his fitness to practice as a registered assistant barber.

Permit to operate barber school or college

Sec. 9. Any firm, corporation or person desiring to conduct or operate a barber school or college in this state shall first obtain from the Board of Barber Ex-

aminers a permit to do so, and shall keep the same prominently displayed. No such school or college shall be approved unless such school or college requires as a prerequisite to graduation a course of instruction of not less than one thousand hours (1,000), to be completed within a period of not less than six months; and unless said school or college requires as a prerequisite to the admission thereto, applicants to demonstrate their ability to read intelligently and write clearly the English language; and no certificate or permit shall be issued to an applicant as provided for herein, unless said applicant demonstrates his or her ability to read intelligently and write clearly the English language as determined by an examination conducted by the Board.

Such schools or colleges shall instruct students in such subjects as may be necessary and beneficial in teaching the practice of barbering, including the following subjects: Scientific fundamentals of barbering; hygienic bacteriology; Histology of the hair, skin, muscles and nerves; Structure of the head, face and neck; Elementary chemistry relating to sterilization and antiseptics; Diseases of the skin and hair; Massaging and manipulating the muscles of the scalp, face, and neck; Haircutting, shaving, and bleaching and dyeing of the hair. However, if said school does not care to teach persons who apply for "Class A" but only Class B Certificates, shaving need not be taught.

If said Board refuses to issue a permit to any such school or college, such school or college may by written request demand the reasons for said refusal and if said school or college shall thereupon meet said requirements and makes a showing that the requirements of this law have been complied with, then if said Board refuses to issue said permit a suit may be instituted by such school or college in any of the District Courts of Travis County Texas, to require said Board to issue such permit. Any such suit must be filed within twenty days after the final order of said Board refusing to issue such permit is entered, provided registered notice is mailed or it is otherwise shown that said school or college has notice within ten days from the entering or making of said order.

In the event such school or college after a permit is issued to it violates any of the requirements of this law, either directly or indirectly, then said Board shall suspend or revoke the permit of any such school or college. Before suspending or revoking any such permit, said Board must give such school or college a hearing, notice of which hearing shall be delivered to such school or college at least twenty days prior to the date of said hearing. If said Board suspends or revokes said permit at said hearing, then such school or college may file suit to prevent the same or to appeal from said order. Any and all suits filed hereunder shall be filed within twenty days from the date of the order of said Board in any of the District Courts of Travis County, Texas, and not elsewhere, and order shall not become effective until said twenty days has expired.

The Attorney General or any District or County Attorney may institute any injunction proceeding or such other proceeding as to enforce the provisions of this act, and to enjoin any barber, assistant barber, or school or college from operating without having complied with the provisions hereof and each shall forfeit to the State of Texas the sum of Twenty-five dollars per day as a penalty for each days violation, to be recovered in a suit by the District or County Attorney, and/or the Attorney General. [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, § 4.]

Application for examination

Sec. 10. Each applicant for an examination shall (a) Make application to the Board on blank forms prepared and furnished by the Board for an examination before the Board, which application shall be in such form and shall contain such matters as may be required by the Board, and shall be verified by the oath of said applicant:

(b) Each applicant shall at the time of the presentation of the application furnish to the Board photographs of such applicant, one to accompany the application and one to be returned to the applicant to be presented to the Board when applicant appears for examination.

(c) Each applicant shall at the time of the presentation of the application pay to the Board the fee required under this Act.

Conduct of examinations

Sec. 11. The Board shall conduct examination of applicants for certificates of registration to practice as registered barbers and of applicants for certificates of registration to practice as registered assistant barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. The examination of applicants for certificates of registration as registered barbers and as registered assistant barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board.

Certificates to successful applicants

Sec. 12. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant a certificate of registration as a registered barber or as a registered assistant barber, where such applicant shall have passed a satisfactory examination making an average grade of not less than seventy-five per cent, and who shall possess the other qualifications required by this Act.

Permit to practice as journeyman barber

Sec. 13. Any person who is at least sixteen and one-half years of age, and who can furnish evidence of good moral character and temperate habits, and who has a diploma showing graduation from a seven-grade grammar school, or its equivalent as determined by an examination conducted by the Board, and either

(a) Has a license or certificate of registration as a practicing barber from another State or country, which has substantially the same requirements for licensing or registering barbers as required by this Act, or

(b) Who can prove by personal affidavit that he has practiced as a barber in another State for at least two years immediately prior to making application in this State, and who possesses the qualifications required by this Act, shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber only until he is called by the Board of Barber Examiners to determine his fitness to receive a certificate of registration to practice barbering. Should such applicant fail to pass the required examination he shall be allowed to practice as a journeyman barber until he is called by the Board for the next term of examination. Should he fail at the examination he must cease to practice barbering in this State.

Permit to practice as assistant barber

Sec. 14. Any assistant barber who is at least sixteen and one-half years of age and who is of good moral character and temperate habits and who has a diploma showing graduation from a seventh grade grammar school, or an equivalent education as determined by an examination conducted by the Board, and who

has a certificate of registration as an assistant barber in a State or country which has substantially the same requirements for registration as an assistant barber as is provided for by this Act, shall upon payment of the required fee be issued a permit to work as an assistant barber until called by the Board of Examiners for examination to determine his fitness to receive a certificate of registration as an assistant barber. Should such person be able to pass the required examination, he will be issued a certificate of registration as a registered assistant barber, and that the time spent in such other State or country as an assistant barber shall be credited upon the period of assistant barber required by this Act as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

Recognition of practice as assistant in another state

Sec. 15. That any person who has practiced as an assistant barber in another State or country which does not have substantially the same requirements for registration as an assistant barber as is required by this Act, and who has the qualifications required in subdivisions (a), (b), (c), (d), and (e) of Section 8 of this Act, shall be credited with the time so spent as an assistant barber in such other State or country, upon the period of service as assistant barber required by this Act, as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

Recognition of existing practicing barbers; fees

Sec. 16. That any person who has for two (2) years immediately preceding the taking effect of this Act been continuously engaged in the practice of barbering at one or more established places of business, shall be granted a certificate of registration as a registered barber without examination by making application to the Board on or before the expiration of sixty (60) days after the passage of this Act, and by paying the required fee of Ten dollars ($10.00). The required fee, as referred to herein, shall mean ten dollars ($10.00), but certificates shall be issued to those entitled thereto according to the classification under which they fall, to wit, Class A and Class B. [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15; Acts 1933, 43rd Leg., p. 802, ch. 235, § 2.]

Credit for time previously spent by assistant barber

Sec. 17. That any person who on and prior to the taking effect of this Act was practicing as an assistant barber under the supervision of a practicing barber, shall be granted a certificate of registration to practice as an assistant barber by making application to the Board on or before the expiration of sixty (60) days after the passage of this Act, and paying the required fee of Ten dollars ($10.00), and shall be given by the board credit for the time previously spent in such practice, according to the classification under which they may fall, to wit, Class A and Class B. [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15; Acts 1933, 43rd Leg., p. 802, ch. 235, § 2.]

Graduates of existing barber schools

Sec. 18. That any person who on or prior to the date of the taking effect of this Act was a student in a school of barbering is qualified upon graduation from such school to take the examination for a certificate of registration to practice as an assistant barber, without regard to whether such school complied with the standards for approval specified in Section 9 of this Act.

Display of certificate

Sec. 19. Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work-chair in the shop in which he is working or employed.

Annual renewal of certificates; fee; restoration of expired certificates

Sec. 20. Every registered barber and every registered assistant barber, who continues in active practice or service, shall annually on or before the first day of November of each year, renew his certificate of registration which shall be issued by the Board of Barber Examiners, upon the payment of a renewal fee of Five Dollars ($5). Every certificate of registration which has not been renewed prior to that date shall expire on the first day of November of that year. A registered barber or a registered assistant barber, whose certificate of registration has expired, may, within thirty (30) days thereafter, and not later, have his certificate of registration restored upon making a satisfactory showing to the Board, supported by his personal affidavit, which, in the opinion of the Board, will excuse the applicant for having failed to renew his certificate within the time required by this Act. Any registered barber who retires from the practice of barbering for not more than five (5) years may renew his certificate of registration by making proper showing to the Board, supported by his personal affidavit, which in the opinion of the Board would justify the Board in issuing a certificate to such applicant as upon an original application upon payment of a fee of Ten Dollars ($10) when filing affidavit as fee for making examination. [As amended Acts 1933, 43rd Leg., p. 802, ch. 235, § 1; Acts 1945, 49th Leg., p. 579, ch. 343, § 1.]

Section 2 of the Act of 1945 provided that partial invalidity should not affect the remaining provisions of the Act.

Refusal, suspension or revocation of certificates; grounds

Sec. 21. The Board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration for any one of, or a combination of the following causes:

(a) Conviction of a felony shown by a certificate copy of the record of the trial wherein the conviction was had;

(b) Gross malpractice or gross incompetency;

(c) Continued practice by a person knowingly having an infectious or contagious or communicable disease;

(d) Advertising by means of knowingly making false or deceptive statements;

(e) Advertising, practicing, or attempting to practice under another's trade name or another's name;

(f) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit forming drugs;

(g) Immoral conduct; and

(h) The commission of any of the offenses described in Section 24 of this Act.

(i) No certificate shall be issued or renewed unless and until each applicant shall present a health certificate from a regular practicing medical doctor showing that the applicant is free from any kind of infectious or contagious diseases, tuberculosis, communicable diseases, free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said medical examination that all of said facts are true.

Hearing on charges for refusal, suspension or revocation of certificate

Sec. 22. That the Board shall neither refuse to issue nor to renew nor to suspend, nor revoke any certificate of registration, however, for any of the causes enumerated in Section 21 hereof unless the person accused has been given at least twenty days' notice in writing of the specific charge against him and shall have been given public hearing before the Board. Upon the hearing of such proceeding the accused shall have the right to be represented by counsel. The Board shall have the power to summon witnesses and to require the production of books, records, and pre-

pare for the purpose of such hearing, and to administer oaths. Any District Court or any Judge of such Court in this State, in term time or in vacation, upon application by the accused or of the Board or a member thereof, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Board, in any hearing relating to the refusal, suspension, renewal, or revocation, or issuing of a certificate of registration, and may order the sheriff or any other peace officer of the county wherein said order is made and entered to serve such process as may be issued in order to compel the attendance of witnesses before said Board, for which services so rendered by such officer or officers the fees and mileage of the sheriff and of witnesses shall be the same as allowed in Criminal cases and shall be paid from the fund of the Board as herein provided for, as other expenses of the Board are paid, however, the officers shall make claim for fees as in Criminal cases and be paid upon warrant drawn by the Comptroller as in Criminal cases. If the accused shall prevail at such hearing, the Board shall grant him the proper relief without delay. Any investigations, inquiry, or hearing thus authorized may be entertained or held by or before any member or members of the Board, and the finding or order of such member or members, when approved, and confirmed by the Board, shall be deemed a finding or order of the Board, and at such hearing the Board shall be represented by the District Attorney or County Attorney.

Notice of hearing before suspension or revocation of certificate or permit

Sec. 22-A. If any person to whom a certificate or permit has been issued fails to comply with any of the requirements of this Act, the Board shall suspend or revoke such certificate or permit or refuse to renew the same. Before suspending, revoking or refusing to renew such certificate or permit the Board shall give the person holding same a public hearing, notice of which hearing shall be delivered to such person at least twenty days prior to the date thereof and shall state the grounds complained of, and notice by registered mail to his last known address shall be sufficient. If said Board suspend, revoke or refuse to renew such certificate or permit at said hearing, then such person may file suit to prevent same or to appeal from said order. Any and all suits filed hereunder shall be filed within twenty days from the date of the order of said Board in any of the District Courts of Travis County, Texas, and not elsewhere. [As amended Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, § 7.]

Fees

Sec. 23. That the fees to be paid to the Board by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering shall be Ten Dollars ($10.00).

The fees to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice as an assistant barber, which entitles the applicant to receive an examination to practice barbering without further charge, shall be Ten Dollars ($10.00). [As amended Acts 1933, 43rd Leg., p. 802, ch. 235, § 1.]

Offenses and penalty

Sec. 24. That each of the following offenses shall constitute a misdemeanor punishable upon conviction in a court of competent jurisdiction by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00):

(a) The violation of any of the provisions of Sections 1, 2 and 3 of this Act;

(b) Permitting any person in one's employ, supervision, or control to practice as a barber or assistant barber unless that person has a certificate of registration as a registered assistant;

(c) Obtaining or attempting to obtain a certificate of registration by fraudulent representation;

(d) The willful failure to display a certificate of registration as required by Section 19 of this Act. [As amended Acts 1933, 43rd Leg., p. 802, ch. 235, § 1.]

False statements

Sec. 25. That the wilful making of any false statement as to a material matter in any oath or affidavit which is required by the provisions of this Act to be made is false swearing and punishable as such under the laws of this State.

State Board of Barber Examiners; appointment and term

Sec. 26. That a Board to be known as the State Board of Barber Examiners is hereby created and shall consist of three members to be appointed by the Governor upon the taking effect of this Act. Each member of said Board shall be a practical barber who has followed the occupation of a barber of this State for at least five years immediately prior to his appointment. The members of the first Board appointed under this Act shall serve for three years, two years, and one year, respectively, as appointed, and members appointed thereafter shall serve for three years. The Governor may remove any member of the Board for cause. All members appointed by the Governor to fill vacancies in the Board caused by death, resignation, or removal shall serve during the unexpired term of his predecessor.

Officers of Board; compensation of members; compensation and bond of secretary

Sec. 27. The State Board of Barber Examiners shall elect one of its members as president, and shall elect a secretary and such other employees, as may be necessary, to carry out the provisions of this Act and H. B. 104 and provide for the compensation of such secretary and other employees. Said Board shall provide and equip suitable quarters for the maintenance of its office in the City of Austin, Texas, and shall adopt rules and regulations for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The secretary shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasury,[2] which special fund is hereby appropriated for the purpose of carrying out all the provisions of this Act. That annually at the close of business on August 31 of each year a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas.

The Secretary shall give a surety bond, payable to the State of Texas in the sum of $5,000.00, conditioned for the faithful performances of his duties as secretary, to be approved by the Board and filed with the State Comptroller. A majority of the Board in meetings duly assembled may perform and exercise all the duties and powers devolving upon the Board.

The compensation of the members of the Board shall be a per diem of $10.00 per day for each day, exclusive of Sunday, when performing their duties at the main office in Austin, Texas, and $10.00 per day, inclusive of Sunday, when performing their official duties when away from the main office at Austin, Texas, and in addition to the per diem provided for herein, they shall be entitled to their actual traveling expenses. Each Board member shall make out, under oath, a complete itemized statement of the number of days engaged and

the amount of their expenses when presenting same for payment. [As amended Acts 1929, 41st Leg., 2nd C.S., p. 129, ch. 62, § 1.]

[1] So in enrolled bill. The word "known" should probably be inserted.
[2] So in enrolled bill. Should probably read "Treasurer".

Sanitary rules and regulations

Sec. 28. The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops and barber schools and inspect same at any time during business hours. That a copy of the sanitary rules and regulations adopted by said Board shall be furnished to the Secretary of the State Board of Barber Examiners who shall in turn forward to each barber and barber school a copy of same. That a copy of the sanitary rules and regulations promulgated and adopted by the State Board of Health shall be kept posted in all barber shops and barber schools in this State. [As amended Acts 1929, 41st Leg., 2nd C.S., p. 129, ch. 62; Acts 1933, 43rd Leg., p. 802, ch. 235, § 3.]

Additional inspectors

Sec. 28a. The additional funds derived by this Act are hereby appropriated to be used by the State Board of Barber Examiners to employ five (5) additional inspectors, for traveling expenses and office equipment. Inspectors' salaries shall be the same as those set out in Senate Bill No. 317,[1] Acts of the Regular Session of the Forty-ninth Legislature. [Acts 1945, 49th Leg., p. 579, ch. 343, § 1a.]

[1] Laws 1945, p. 810, ch. 378.

Records of Board

Sec. 29. The Board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension, and revocation of certificates of registration. This record shall also contain the name, place of business, and residence of each registered barber and registered assistant barber, and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times.

Partial invalidity

Sec. 30. If any section, sub-section, sentence, clause, or phrase of this Act for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act. [Acts 1929, 41st Leg., 1st C.S., p. 166, ch. 65.]

Acts 1929, 41st Leg., 2nd C.S., p. 129, ch. 62, amended sections 27 and 28 of this Article.
Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, amended sections 4, 6, 9, 16, 17, and 22a.
Acts 1933, 43rd Leg., p. 802, ch. 235, amended sections 7, 16, 17, 20, 23, 24, and 28.
Section 31 of Acts 1929, 41st Leg., 1st C.S., p. 166, ch. 65, provided that the act should not be construed to repeal any law relating to barbering, but cumulative thereof.
Section 8 of Acts 1930, 41st Leg., 5th C.S., p. 134, ch. 15, provides that, if any part or parts of the act are held invalid, such decision shall not affect the remainder and repeals all conflicting laws or parts of laws.
Section 4 of Acts 1933, 43rd Leg., p. 802, ch. 235, repeals all conflicting laws and parts of laws and provides that if any part or parts of the act is invalid, such invalidity shall not affect the remaining provisions.

Art. 734b. Hairdressers and cosmetologists.

Certificate or license required

Section 1. It shall be unlawful for any person to perform any of the operations of, or engage in the practice or occupation of, a hairdresser or cosmetologist or to conduct a hairdressing or cosmetological establishment or schools as defined in this Act unless such person shall have first obtained a certificate of registration, and/or license as provided under this Act; and it shall be unlawful for the owner, owners and/or manager of any hairdressing of cosmetological shop to employ any person as a hairdresser, cosmetologist, or manicurist who has not first obtained a certificate of registration and/or license as provided under this Act.

Beauty shop or beauty school

Sec. 2. (a) It shall be unlawful for any person, firm or corporation to operate a beauty shop within this state, unless such shop is at all times under the direct supervision of an operator licensed under this Act.

(b) It shall be unlawful for any person, firm or corporation to operate a beauty school within this state, unless such school is at all times under the direct supervision of an instructor licensed under this Act.

Practice of occupation

Sec. 3. (a) Any person who for a fee engages in or performs any one or any combination of the following practices, to-wit: arranging, dressing, curling, waving, cleansing, singeing, bleaching, or coloring of the hair, shall be construed to be practicing the occupation of a hairdresser.

(b) Any person who with hands or mechanical or electrical apparatus or appliances, or by use of cosmetological preparations, antiseptics, tonics, lotions, or creams, engages in or performs any one or combination of the following practices, to-wit: cleansing, beautifying, or any work of the scalp, face, neck, arms, bust, or upper part of the body, or manicuring the nails of any person, shall be construed to be practicing the occupation of a cosmetologist.

(c) Any person, firm, institution or corporation, who shall hold himself or itself out as a school to teach and train, or any person, firm, institution or corporation who shall teach and train any other person or persons in the art, business or trade of hairdressing, cosmetology, or manicuring, as provided in this Act, is hereby declared to be a beauty culture school, and is subject to the provisions and restrictions contained in this Act.

(d) Any person who engages in, or performs, only the practice of manicuring the nails of any person, shall be known as a manicurist.

(e) An operator is a person who engages in, or performs, any of the practices of hairdressing and/or cosmetology as defined in this Act.

(f) An instructor is any person engaged in teaching any of the practices of beauty culture as defined in this Act.

(g) A hairdressing or cosmetological shop is that part of any building where or whereupon hairdressing or cosmetology as defined in this Act is performed or practiced. For the purposes of this Act, a hairdressing or cosmetological shop shall be synonymous with beauty parlor, beauty shop, beauty salon or studio of beauty.

(h) Any person who is being instructed in a licensed and/or registered school of beauty culture, as defined in this Act, is a student.

(i) All references in this Act to the Board are construed to mean the Texas State Board of Hairdressers and Cosmetologists.

State Board of Hairdressers and Cosmetologists

Sec. 4. (a) The State Board of Hairdressers and Cosmetologists shall be composed of three (3) members; such members shall be appointed by the Governor and confirmed by the Senate; such members shall be at least twenty-five (25) years of age and shall have had at least five (5) years practical experience in the majority of the practices of hairdressing and cosmetology in Texas as a hairdresser or cosmetologist and/or instructor under a license issued by the Board, and shall be a citizen of this state. No member of the Board shall be a member of, or affiliated with, or shall have any financial interest in any such school

of hairdressing or cosmetology while in office, nor shall any two (2) members of said Board be graduates of the same school. If it be proved to the Governor of Texas by reliable and satisfactory evidence that any member of such Board is affiliated with or has any financial interest in any such school, then the Governor shall declare the office vacant and shall immediately appoint a new member to fill the unexpired term.

(b) Each member of said Board shall serve a term of six (6) years, or until his or her successor is appointed and qualified. The present members of the Board shall serve until their respective terms expire and one member shall be appointed biennially thereafter. The members of said Board shall take the oath provided by law for public officials. Vacancies shall be filled by the Governor for the unexpired portion of the term.

(c) The majority members of the Board shall constitute a quorum for the transaction of business. The Board shall prescribe the rules for its government and have a seal with which to authenticate its acts.

Officers and employees of Board

Sec. 5. (a) The members of the Board shall annually elect from its members a President, a Vice-President and a Secretary.

(b) The Board shall employ an Executive Secretary who shall not be a member of the Board. The compensation of such Secretary shall be fixed by the Board. His or her necessary expenses actually incurred in the discharge of the duties of the office shall be paid by direction of the Board. Such Executive Secretary before entering upon the duties of the office shall give a bond signed by some surety company authorized to do business in Texas, in the sum of Ten Thousand ($10,000.00) Dollars, payable to the State of Texas, conditioned for the faithful performance of his or her duties, such bond to be filed with the Secretary of State.

State Treasurer as custodian of funds

Sec. 6. The State Treasurer of the State of Texas is hereby designated as custodian of all revenues derived under the provisions of this Act, and all such funds shall be credited by the State Treasurer to the "State Board of Cosmetologists Fund".

Salaries and expenses of board members

Sec. 7. The members of the Board shall each receive a salary of Three Thousand Six Hundred ($3,600.00) Dollars per year, payable in equal monthly payments, together with actual expenses incurred in the performance of their official duties, providing such expenses shall be allowed if and when audited, approved and allowed by the State Comptroller. Such salary of the Board members and the Executive Secretary, as well as all other expenses incidental to the discharge of their duties, shall be allowed, including reasonable expenses in attending schools for the purpose of taking post graduate courses in beauty culture only and attending conventions of beauty culturists, both state and national; providing in no event shall such expenses for any one Board member exceed the sum of One Hundred ($100.00) Dollars for any one convention or post graduate course attended within the state nor more than Two Hundred ($200.00) Dollars for any one convention or post graduate course attended out of the state; provided that no more than one member of the Board shall be absent from his regular duties as a Board member at any time for the purpose of taking such post graduate work only and that no Board member shall attend (or take) more than one (1) such post graduate course during any one (1) calendar year extending over not more than a two (2) weeks period. All salaries and expenses shall be paid out of the fund in the State Treasury to the credit of the Texas Board of Cosmetology on requisition signed by the President and Secretary of the Board and a warrant of the State Comptroller. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1846, ch. 469, § 1.]

Records

Sec. 8. The said Board shall keep a record of its proceedings. It shall keep a register of applicants for certificates showing the name of the applicant, the name and location of his place of occupation or business, and whether the applicant was granted or refused a certificate. The books and records of the Board shall be prima facie evidence of matters therein contained and shall constitute public records.

Meetings of board and examinations

Sec. 9. (a) The Board shall hold regular meetings for the examination of applicants in the capital of the state on the first Tuesday in February, May, August and November of each year. All applicants for examination, before filing such application with the Board, must furnish the Board a birth certificate showing applicant to be past sixteen (16) years of age; also must have completed the hours and months of instruction required by this Act in a school licensed and/or registered and duly recognized by the Board, or hold either a current or expired license of this state or of a state having requirements as provided in this Act. Such examination shall be conducted under the rules provided by said Board and shall include practical demonstration and written and/or oral tests in reference to the practices for which a license is applied for, and such related subjects as the Board may determine necessary for the proper and efficient performance of such practices; and such examination shall include sanitation and hygiene, and the use of cosmetics, and application of electrical and mechanical equipment and appliances, anatomy, and dermatology, and such other kindred subjects as may be necessary and prescribed by the Board to determine one's fitness and qualifications as a hairdresser or cosmetologist.

(b) All applications for examination for operators, instructors, or manicurists license and renewal of any such license shall be accompanied by a health certificate issued and personally signed by a licensed doctor of medicine showing the applicant to be free from any contagious or infectious disease as determined by a general examination and by a Wasserman blood test, and shall have complied with all requirements of this Act. The Board shall not issue a license or certificate of renewal of license to any operator, instructor, demonstrator, or manicurist whose health certificate shows him or her to be infected with any contagious or communicable disease. Any such doctor who shall issue or sign any such health certificate without having actually made a physical examination for the purpose of ascertaining if the applicant shall have any contagious or communicable disease, or if any such doctor shall issue or sign any such health certificate without having actually made a Wasserman blood test, he shall be guilty of a misdemeanor, and on conviction therefor, shall be fined not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars.

(c) If an applicant for examination passes such examination to the satisfaction of the Board and in accordance with the rules promulgated by said Board, the Board shall issue a certificate to that effect, signed by the President and Secretary and attested with its seal. Such certificate shall be evidence that the person to whom it is issued is entitled to follow the practices, occupation, or occupations stipulated therein, as prescribed in this Act. Such certificates shall be conspicuously displayed

in his or her place of business or employment, provided however, that where the applicant is a graduate of some school of beauty culture in the State of Texas duly licensed and recognized by the Board, then such applicant, by complying with, and after passing an examination as provided for in subsections 9(a), (b) and (d) shall be given a certificate.

(d) The Board may refuse to grant a certificate to any persons who shall fail to make a grade of seventy-five (75) in all subjects upon which they are examined, or to any person guilty of fraud in passing the examination and obtaining a certificate of authority to operate under the provisions of this Act at any time.

(e) Any person within the provisions of this Act having, at the effective date thereof, a valid certificate or license from the State Board of Hairdressers and Cosmetologists shall be exempt from the examinations required by this Section of this Act, but such person shall be required to pay all the fees and have such certificate or license renewed, as provided in this Act.

Sanitary rules; clerks and inspectors

Sec. 10. (a) The said Board shall, with the approval of the State Board of Health and in compliance with the sanitary provisions contained in Article 728–734 of the Penal Code of the State of Texas, prescribe such sanitary rules as it may determine necessary to be employed to prevent the spread of infectious and contagious diseases. Any person who fails to comply with such sanitary rules shall be subject to the penalties provided for in this Act. It shall be unlawful for a person, firm or corporation to operate a beauty shop or a beauty school as defined in this Act unless the same is a bona fide establishment with a permanent and definite location completely and permanently separated by solid walls with no openings from rooms used wholly or in part for residential or sleeping purposes. Provided a person may have a shop in his or her home where the requirements, provisions, and sanitary rules of this Act are complied with.

(b) The said Board shall have the authority to employ and fix the salary of such clerical help, and inspectors for the purpose of enforcing compliance with this law, as may be necessary. Provided, however, that all the expense of such help and inspectors shall be paid out of the funds derived from the fees provided for by this Act and not otherwise. And no salaries, compensation, and/or expenses provided by any part of this Act shall, in any event, exceed the salaries, compensation, and/or expenses allowed for like service in the Comptroller's Department by the general appropriation bill.

(c) No person shall be employed by the Board as an inspector unless such person is at least twenty-five (25) years of age, and has had at least five (5) years actual experience as a cosmetologist and a hairdresser and/or as an instructor under a license issued by the Texas State Board, and shall be a citizen of this state.

(d) The said Board, or any duly appointed agent, shall have authority to inspect any beauty shop, beauty parlor, or school, at any time during business or school hours. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1846, ch. 469, § 1.]

Certificate of registration; teachers; license

Sec. 11. (a) Any person, firm or corporation applying to the Board for an original certificate of registration and/or license as a school of beauty culture shall make such application in the form prescribed by the Board, giving the data and information required by the Board. The Board shall, in such applications, require such data, information and facts as it deems necessary to determine such applicant's compliance with this Act and fitness to conduct and maintain such school. No applicant for an original school license shall hereafter be granted an original certificate of registration and/or license unless it shall have a location approved by the Board, having therein a minimum space of not less than three thousand five hundred (3,500) square feet of floor space in a modern fireproof building of a permanent type of construction. Such space shall be divided into three separate departments, viz: a theory class room, a room for practical work for seniors, and a room for practical work for juniors, and shall have not less than two (2) modern sanitary toilets in separate rooms, and shall possess and have installed the minimum equipment and apparatus required and approved by the Board, sufficient to train and properly and fully instruct a minimum of fifty (50) students at one time in all subjects of its curriculum; and such schools shall thereafter maintain such school premises, minimum equipment and apparatus; and such applicants shall furnish evidence to the Board of their financial ability to continue the possession of such minimum requirements and to operate such school. Should any such applicant after the passage of this Act not meet such minimum requirements and/or fail to furnish satisfactory evidence to the Board of his financial ability to continue the possession and maintenance thereof and to operate such school, the Board shall not issue a certificate of registration and/or license to such applicant; however, the requirements as to floor space and number of licensed instructors shall not apply to Public Vocational Schools.

(b) No school of beauty culture shall be granted a license and/or registration unless it shall maintain a sanitary establishment and employ and maintain on its staff not less than two (2) instructors who have been licensed as instructors by the Texas State Board, and shall keep a daily record of attendance of students, and shall maintain a regular class and regular instruction hours, establish grades and hold examinations before issuing diplomas, and shall require a school term of not less than six (6) months, and not less than one thousand (1,000) hours of instruction for a complete course of the practices of hairdressing and cosmetology, and shall require a school term of not less than six (6) weeks, and not less than one hundred fifty (150) hours instruction for a complete course in manicuring; and no student shall receive credit for more than eight (8) hours of instruction in any one (1) day, or for more than six (6) days in any one (1) calendar week.

(c) No school shall enroll any person as a student who has not acquired a seventh grade education or its equivalent; nor any person who is afflicted with any communicable disease; provided however, all applicants for examination by the Board for license to practice within the State of Texas must be able to read and write the English language.

(d) All applicants for a teacher's license shall have had at least three (3) years experience as an operator under a license from the Texas State Board, shall have a current operator's license at the time of applying, shall have a high school education or its equivalent, and shall be required to pass an examination conducted by the Board to determine their fitness as teachers. A licensed instructor from another state is eligible for Texas instructor's examination after first having successfully passed the examination herein provided for an instructor, and upon presentation of his or her instructor's license from his or her respective state.

Charges for work by students; school and shop on same premises

Sec. 12. (a) No school shall be permitted to charge for work done by any student who has not completed fifty (50%) per cent of the required number of hours, as provided for in Section 11, Subsection (b); and no

school shall be permitted to charge for work done by a licensed instructor.

(b) No school and shop shall be conducted in the same quarters or upon the same premises unless they are separated by walls of permanent construction with no openings between them; and no school shall employ any licensed operator to perform the services of a hairdresser, cosmetologist, or manicurist as defined in this Act.

Applications; fees

Sec. 13. Each applicant, to conduct a beauty parlor as defined in this Act, shall accompany such application with a cashier's check or Post Office money order for Ten ($10.00) Dollars, and the certificate issued such applicant shall entitle the person to practice the occupation or occupations of hairdressing or cosmetology, provided he or she can meet the requirements for such practice as stipulated in this Act; and each application for examination as an operator to work in any beauty parlor shall be accompanied by a cashier's check or Post Office money order for Ten ($10.00) Dollars; and each application for examination to work as a manicurist shall be accompanied by a cashier's check or Post Office money order of Ten ($10.00) Dollars; and each application for examination as an instructor shall be accompanied by a cashier's check or Post Office money order of Ten ($10.00) Dollars. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1846, ch. 469, § 1.]

Expiration of certificate or license; reinstatement after retirement; license fees; itinerant shops

Sec. 14. (a) No certificate or license shall be issued for a longer period than one (1) year, and shall expire on the thirty-first (31st) day of August of the year for which it is issued unless renewed prior to that date. A licensed instructor, operator or manicurist, whose license has expired, may, within thirty (30) days thereafter, and not later, have his or her certificate or license restored by making proper application to the Board, supported by his or her personal affidavit stating the reasons, which in the opinion of the Board, will excuse the applicant for having failed to renew his or her certificate within the time required by this Act, a reinstatement fee of Five ($5.00) Dollars being required thereafter. Provided, however, where an instructor, operator, or manicurist retires from the active practice as defined in this Act for not more than five (5) years, he or she may have his or her license reinstated without examination upon proper application to the Board accompanied by each year's annual renewal fee; and provided further that such person shall furnish the Board with a health certificate as provided for under other provisions of this Act; and provided further, however, that the Board may refuse to issue or renew such license for any of the causes set forth under Section 17 of this Act.

(b) The annual license fee for conducting a beauty parlor shall be the sum of Five ($5.00) Dollars; and the annual license fee for operators to work at the trade or practice of beauty culture shall be the sum of Three ($3.00) Dollars; and the annual registration fee for a manicurist shall be Two and 50/100 ($2.50) Dollars; and the annual registration fee for an instructor shall be Ten ($10.00) Dollars; and the annual registration fee to conduct a beauty school shall be One Hundred ($100.00) Dollars.

(c) The establishment of itinerant shops is hereby expressly prohibited, and it shall be unlawful for any person, firm or corporation to operate a beauty shop as defined in this Act, unless the same is a bona fide establishment with a permanent and definite location. Any license granted under the terms of this Act shall permit the licensee to practice in only such bona fide established beauty shop; provided, however, that nothing in this Act shall prohibit the removal or change of location of a beauty shop, provided such move or change is made in good faith with the intention of definitely and permanently locating elsewhere. Provided, further, that nothing in this Act shall prohibit the establishment of chain beauty shops which have a definite and permanent location and have complied with all the other terms of this law.

Renewal of certificate; suspension or revocation

Sec. 15. The Board shall neither refuse to renew, nor shall it suspend nor revoke any certificate of registration, for any of the causes enumerated in this Act, except for failure of applicant to furnish the Board with a health certificate and Wasserman test, as required by Section 9(b) of this Act, showing such applicant and/or licensee to be free from contagious or infectious disease as determined by a general examination and such test, unless the person accused has been convicted of violation of the provisions of this Act in a court of competent jurisdiction; however, upon any such conviction, the Board may suspend or revoke any such certificate of license or registration after giving the person so convicted at least twenty (20) days written notice of time and place of hearing before the Board for such purpose. Upon the hearing of such proceeding the accused shall have the right to be represented by counsel. The Board shall have the power to summon witnesses and to require the production of books and records, and to prepare for the purpose of such hearing, and to administer oaths. Any District Court or any Judge of such court in this state, in term time or in vacation, upon application by the accused or of the Board or a member thereof, may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the Board, in any hearing relating to the refusal, suspension, renewal, or revocation, or issuing of a certificate of registration, and may order the sheriff or any other peace officers of the county wherein said order is made and entered to serve such process as may be issued in order to compel the attendance of witnesses before said Board, for which services so rendered by such officer or officers the fees and mileage of the sheriff and of witnesses shall be the same as allowed in criminal cases and shall be paid from the fund of the Board as herein provided for, as other expenses of the Board are paid. However, the officers shall make claim for fees as in criminal cases and be paid upon warrant drawn by the Comptroller as in criminal cases. If the accused shall prevail at such hearing, the Board shall grant him the proper relief without delay. Any investigation, inquiry, or hearing thus authorized may be entertained or held by or before a majority of the members of the Board and the finding or order of such members, when approved and confirmed by the Board, shall be deemed a finding or order of the Board, and at such hearing the Board may be represented by the District Attorney or County Attorney, or the Attorney General of Texas.

Suit; appeal

Sec. 16. If the Board suspends, revokes, or refuses to issue or renew such certificate of registration or license at said hearing, then such person may file suit to prevent same or to appeal from said order and shall be entitled to a trial de novo in the District Court of the county in which the person, whose certificate of registration or license is involved, resides. Any and all suits filed hereunder shall be filed within twenty (20) days from the date of the order of said Board.

Grounds for failure to issue or renew certificate or for revocation or suspension

Sec. 17. The Board may either refuse to issue or to renew, or may suspend, or revoke, any certificate of registration or license, for failure to furnish the Board with a health certificate and Wasserman test, as re-

quired by Section 9(b) of this Act, showing such applicant and/or licensee to be free from contagious or infectious disease as determined by a general examination and such test, or for any one or combination of the following causes:

(a) Conviction of a felony shown by a certified copy of the record of the trial wherein the conviction was held;

(b) Gross malpractice or gross incompetency, after having been convicted thereof in a court of competent jurisdiction;

(c) Continued practice by a person knowingly having an infectious or contagious or communicable disease, when such is shown by medical certificate or Wasserman test;

(d) Advertising by means of knowingly making false or deceptive statements, after having been convicted thereof in a court of competent jurisdiction;

(e) Advertising, practicing, or attempting to practice under another's trade name or another's name;

(f) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(g) Immoral conduct; and

(h) Violation of any of the regulations described in this Act after conviction thereof by a court of competent jurisdiction.

Services excepted; hair cutter and manicurist to be licensed

Sec. 18. Nothing in this Act shall prohibit service in case of emergency, or domestic administration, nor service by persons authorized under the laws of this state to practice medicine, surgery, dentistry, chiropody, osteopathy; nor registered nurses; nor service by any licensed barber; engaged in the usual and ordinary duties of their vocations; and nothing herein contained shall be construed to mean that a barber, working in a beauty shop in the capacity of a hair cutter only, shall be subject to the provisions of this Act. Provided that any person who works in a beauty shop in the capacity of a hair cutter shall be a licensed barber and any person who works in a barber shop in the capacity of a manicurist as herein defined shall be licensed as a manicurist. Provided, further, that nothing in this Act shall prohibit a person licensed under this Act from performing duties as prescribed by this Act in the home of a customer in cases of emergency when sent by a shop owner and shall in no manner apply to, limit or prohibit the arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring of, or any work upon, the hair of a person when performed in a private home without charge or fee. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1846, ch. 469, § 1.]

Demonstration of preparations

Sec. 18a. Nothing in this Act shall be construed so as to prevent bona fide salesmen from demonstrating any preparations herein referred to.

Disposition of funds

Sec. 19. (a) Any and all sums of money paid into the State Treasury and credited to the State Board of Hairdressers and Cosmetology Fund shall be, and the same are hereby, appropriated for the fiscal years ending August 31, 1936, and for August 31, 1937, and each succeeding year thereafter to be expended under the direction of the Legislature as may be provided by law.

(b) On August 31st of each year the Board shall file with the State Comptroller its annual report in such form as may be required by the Comptroller.

(c) Ten (10%) per cent of all moneys received by the Board shall be paid into the General Revenue Fund of the State of Texas at the end of each fiscal year.

(d) Nothing herein shall affect, impair, modify, amend or change any funds credited to the State Board of Hairdressers and Cosmetology Fund at the effective date of this Act. All funds received by the said Board during the remainder of the biennium ending August 31, 1947, shall likewise be applied as provided by law prior to the effective date hereof, and especially as provided in the Departmental Appropriation Bill, Acts 1945, 49th Legislature, Chapter 378.

(e) It is hereby specifically provided that if for any reason an applicant pays money to the Board for application fees for license or any other fees provided for under this Article, and when such applicant fails to take the examination as required by this law, or for any other reason the license fails to issue as required by this law, then the Board of Hairdressers and Cosmetologists is hereby authorized and directed to refund the amount of money paid by such applicant from the moneys in the Hairdressers-Cosmetologists Fund.

Offenses

Sec. 20. Each of the following offenses shall constitute a misdemeanor punishable on conviction in a court of competent jurisdiction by a fine of not less than twenty-five ($25.00) Dollars, nor more than One Hundred ($100.00) Dollars:

(a) The violation of any of the provisions of this Act;

(b) Obtaining or attempting to obtain a certificate of registration or license by fraudulent representation;

(c) The willful failure to display a certificate of registration or license as required by this Act.

False statements

Sec. 21. The willful making of any false statement as to material matter in any oath or affidavit which is required by the provisions of this Act to be made is false swearing and punishable as such under the laws of this state. [Acts 1935, 44th Leg., p. 304, ch. 116; Acts 1935, 44th Leg., 2nd C.S., p. 1846, ch. 469, § 1; Acts 1943, 48th Leg., p. 639, ch. 365, §§ 1, 2; Acts 1947, 50th Leg., p. 623, ch. 333, § 1.]

Section 2 of the Act of 1947 read as follows:

"Sec. 2. All laws and parts of laws in conflict herewith are hereby repealed. It is the intention of this Act to amend in its entirety Acts 1935, 44th Legislature, Regular Session, page 304, Chapter 116, Sections 1 to 25 inclusive; as amended by Acts 1935, 44th Legislature, Second Called Session, page 1846, Chapter 469; as amended by Acts 1943, 48th Legislature, Regular Session, page 639, Chapter 365, the same being otherwise designated as Article 734b, Sections 1 to 25 inclusive of Vernon's Annotated Penal Code; and all Sections and parts of said Acts 1935, 44th Legislature, page 304, Chapter 116, and all amendments thereto not amended by this Act are hereby repealed.

Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

CHAPTER 5.—OPTOMETRY

Art.
735. "Optometry."
736. Display license and itemize bill.
737. Penalty.
738. Treating diseased eye.
738a. Practice without license—fraud—practicing house to house or in streets prohibited.

Article 735. "Optometry."—The practice of optometry is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect

whatsoever in any manner nor to administer or prescribe any drug or physical treatment whatsoever, unless such optometrist is a regular licensed physician or surgeon under the laws of this State. No person shall begin to practice optometry within this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be indorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license. [Acts 1st C. S. 1921, p. 159.]

Art. 736. Display license and itemize bill.—Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and whenever required, exhibit the same to the Texas State Board of Examiners in Optometry or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for such lenses and material respectively. [Id.]

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. [Acts 1921, 1st C.S., p. 159; Acts 1939, 46th Leg., p. 360, § 13.]

Sections 7, 11, 14, 15, and 17, of the amendatory Act of 1939, see Rev.Civ.St. article 4553.

Art. 738. Treating diseased eye.—Anyone practicing optometry who shall prescribe for or fit lenses for any diseased condition of the eye, or for the disease of any other organ of the body that manifests itself in the eye, shall be deemed to be practicing medicine within the meaning of that term as defined in the succeeding chapter. Any such person possessing no license to practice medicine who shall so prescribe or fit lenses shall be punished in the same manner as is prescribed for the practice of medicine without a license. [Acts 1921, 1st C.S., p. 159.]

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.]

Sections 7, 11, 14, 15, and 17 of the Act of 1939, see Rev.Civ.St. article 4553.

CHAPTER 6.—MEDICINE

Art.
739. Authority to practice to be registered.
740. Exceptions.
741. "Practicing medicine."
742. Unlawfully practicing medicine; penalty.
743. Practice after license cancelled.
744. False statement by applicant.
745. Medical register.
746. Protecting eyes of new born.

Art. 739. [750] Authority to practice to be registered.—It shall be unlawful for any one to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's office of every County in which he may reside, and in each and every County in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners, together with his age, post office address, place of birth, name of medical college from which he graduated, and date of graduation, subscribed and verified by oath, which, if wilfully false, shall subject the affiant to conviction and punishment for false swearing, as provided by law. The fact of such oath and record shall be endorsed by the District Clerk upon the certificate. The holder of every such certificate must have the same recorded upon each change of residence to another County, as well as in each and every County in which he may maintain an office, or in which he may designate a place for meeting, advising with, treating in any manner, or prescribing for patients; and the absence of such record in any place where such record is hereby required shall be prima facie evidence of the want of possession of such certificate. [Acts 1923, p. 292; Acts 1931, 42nd Leg., p. 74, ch. 49, § 3.]

Sections 1 and 2 of Acts 1931, 42nd Leg., p. 74, ch. 49 amended Rev.Civ.St. Arts. 4495, 4498.

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 affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministration 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. [Acts 1923, p. 292; Acts 1939, 46th Leg., p. 352, § 9.]

Sections 2–8, 11–13 of the amendatory Act of 1939, see notes under Rev.Civ.St. art. 4500. Section 10 amended art. 740.

Art. 741. [755] "Practicing medicine."—Any person shall be regarded as practicing medicine within the meaning of this chapter:

1. Who shall publicly profess to be a physician or surgeon and shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof.

2. Who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. [Acts 1907, p. 224.]

Art. 742. [756] 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. [Acts 1907, p. 224; Acts 1939, 46th Leg., p. 352, § 10.]

Sections 2–8, 11–13 of the amendatory Act of 1939 see notes under Rev.Civ.St. art. 4500. Section 9 amended art. 740.

Art. 743. Practice after license cancelled.—If any person required to register as a practitioner of medicine under the provisions of Section 1 of this Act shall fail, neglect or refuse to apply for such registration and pay the annual registration fee before the expiration of sixty days after the 1st day of January of each year, his license to practice medicine, previously issued to him, shall stand suspended, so that, for thereafter practicing medicine, he shall be subject to the penalty imposed by Article 742 of the Penal Code of 1925 upon any person unlawfully practicing medicine in this State; provided, that such license shall be reinstated at any time upon written application of the holder, made to the Texas State Board of Medical Examiners, accompanied by payment of the annual registration fees in arrears; and an additional fee of One ($1.00) Dollar, and without examination or the performance of any other condition.

And provided further that when any such suspended license is thus reinstated, the practitioner's license shall stand as if the same had never been suspended, and if any prosecutions have been filed or any penalties incurred on account of the practice of medicine by such practitioner during the period when such license stood suspended, said prosecutions and penalties shall be completely abated, and such reinstatement shall be a complete defense to the same. [Acts 1923, p. 292; Acts 1931, 42nd Leg., p. 55, ch. 37, § 2.]

Sections 1 and 3 of Acts 1931, 42nd Leg., p. 55, ch. 37 are published as Rev.Civ.St. Art. 4498a.

Art. 744. False statement by applicant.—Whoever shall make any false statement in his application for examination by the Board of Medical Examiners, or who shall make any false statement under oath to obtain a license or to secure the registration of his license to practice medicine, shall be guilty of false swearing and punished accordingly. [Acts 1923, p. 292.]

Art. 745. [751] Medical register.—Every district clerk shall keep as a permanent record of his office a book to be known as the "Medical Register," and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration. When the license of any one to practice medicine has been cancelled, said clerk shall, if such license is registered in his county, note such cancellation upon said book, and shall also note therein the death or removal of any licensee. Any such clerk knowingly violating any provision hereof shall be fined not exceeding fifty dollars. [Acts 1907, p. 224, Acts 1923, p. 285.]

Art. 746. Protecting eyes of new born.—All physicians, midwives, nurses, or those in attendance at child birth shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health to prevent opthalmia neonatorum in the new born. Any of the persons referred to in attendance at child birth who shall violate this article shall be fined not less than ten nor more than one hundred dollars for each offense. [Acts 1921, p. 172.]

CHAPTER 7.—DENTISTRY

Art. 747. Dentist to obtain license.—It shall be unlawful for any person to practice, or offer to practice, dentistry in this State or hold himself out as practicing dentistry in this State without first having obtained a license from the State Board of Dental Examiners. Said license must be signed by all members of the Board and shall have a small photograph of the licensee attached thereon which must be partially covered by the official seal of the Board. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 13.]

Art. 748. Must comply with law.—No person shall extract teeth or perform any other operation pertaining to dentistry or dental surgery for pay or for the purpose of advertising, exhibiting or selling any medicine or instrument, unless such person shall first have complied with the provisions of the law regulating the practice of dentistry in this State. [Acts 1919, p. 50.]

Art. 749. License recorded by County Clerk; fee.—Every person to whom a license is issued by the State Board of Dental Examiners shall, before beginning the practice of dentistry at any place in this State, present the same to the County Clerk of the county in which he resides and offers to practice, and to the County Clerk of each and every county in which he may practice or offer to practice; said County Clerk shall record said license in a book provided for that purpose and receive fifty (50¢) cents therefor.

Absence of the record of such license in any place where such license is required to be recorded shall be prima facie evidence in any court of this State of the want of possession of such license. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 14.]

Art. 750. Practice after license has been revoked.—No person whose license to practice dentistry in this State shall be revoked by any district court of this State shall practice or attempt to practice dentistry or dental surgery in this State after such license has been so revoked. [Acts 1919, p. 50.]

Art. 751. Shall exhibit license.—Any person authorized to practice dentistry or dental surgery in this State either under this or any former law of Texas, shall place his license on exhibition in his office where said license shall be in plain view of patients. No such person shall do any operation in the mouth of a patient, or treat any lesions of the mouth or teeth, without having said license so exhibited. [Id.]

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. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 15; Acts 1937, 45th Leg., p. 1346, ch. 501, § 1.]

Art. 752a. Violation of regulations as to practice of dentistry.—It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements as to the skill or method of practicing dentistry of any person through the means of letters, bills, posters, circulars, cards, stereopticon slides, motion pictures, radios, newspapers, or other advertising agencies or devices; or in any way or manner whatsoever to fraudulently advertise that a given person is able to practice dentistry or render dental service without causing pain; or to fraudulently advertise in any manner or way that will tend to deceive the public, or to fraudulently claim superiority over other dental practitioners; or to publish or circulate fraudulent reports of cases or fraudulent statements of patients in any newspaper or to circulate same in any other way whatsoever; or to fraudulently advertise that he is using any anesthetic, drug, formula, medicine, method or system which is either falsely advertised or misbranded, or to fraudulently advertise willingness to render free dental services or examinations; or to fraudulently advertise the prices or fees that any such person or persons is, or are willing, or proposes or propose, to charge for service or services in the practice of dentistry; or to fraudulently employ any person or persons to obtain or solicit patronage; or to fraudulently exhibit or use specimens of dental work, posters or any other advertising means directing the attention of the public to any such person or persons engaged in the practice of dentistry; or to fraudulently give a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage; 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 the kinds or classes of work that he does and his name, degree, office location, office hours, telephone numbers and residence address; and if he limits his practice to a specialty he may state same. [Acts 1935, 44th Leg., p. 606, ch. 244, § 16.]

Effect of Another Act. Acts 1947, 50th Leg., p. 752, ch. 371, which amends Rev.Civ.St., arts. 4544, 4550a and arts. 752b, 752c, provides, in section 5 thereof, that this article shall in no way be affected by the provisions of such act.

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 or 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 anaesthetic, 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 a display advertisement, display signs or glaring light signs, electric or neon signs, 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 the construction, under any fictitious, fancy, or unscientific names unapproved 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 pratice to a specialty, he may state same. [Added Acts 1937, 45th Leg., p. 1346, ch. 501, § 2; Acts 1947, 50th Leg., p. 752, ch. 371, § 4.]

Section 2 of the Act of 1937 purported 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, was set out as art. 752b.

Art. 752c. Licenses, refusing, revoking, cancelling, and suspending of.

Authority to grant license

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,[1] 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 setting out the alleged violations of such Statutes and Penal Code and 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. The Board shall then proceed to set a time and place, not less than ten (10) nor more than sixty (60) days, for a hearing to consider the revocation, cancellation, or suspension of such license or licenses. The Board shall mail by Registered Mail to the last known address of such person or persons a copy of such Order together with the Notice of Hearing. At the time and date set for such hearing the person or persons alleged to have violated the Statutes or the Penal Code pertaining to dentistry may appear and show cause, if any he has, why his 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, and the Board shall have the authority to subpoena, and compel the attendance of such licensees or other persons deemed to have knowledge which would aid the Board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority 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. [As amended Acts 1947, 50th Leg., p. 752, ch. 371, § 3.]

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. Repealed by Acts 1943, 48th Leg., p. 576, ch. 340, § 8.

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.]

1 Penal Code, articles 747 to 754a.
Section 1 of this Act amended Article 752 of the Penal Code, and Section 2 added a new article, Article 752b.
Section 9 of the Act of 1937 provided that partial invalidity should not affect the remaining portions of the Act.

Art. 753. Exceptions.—Nothing in this Chapter applies to students of a reputable dental college who perform their operations without pay except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a member of the faculty of a reputable dental college, nor to persons doing laboratory work on inert matter only, and who do not solicit or obtain by any means, work from a person or persons not a licensed dentist actually engaged in the practice of dentistry; and, who do not act as the agents or solicitors or have any interest whatsoever, in, any dental office, practice, or the receipts therefrom. Physicians and surgeons may in the regular practice of their profession, extract teeth or make applications for the relief of pain. Nothing in this Chapter applies to one legally engaged in the practice of dentistry in this state at the time of the passage of this law, except as hereinbefore provided. [Acts 1919, p. 50; Acts 1943, 48th Leg., p. 576, ch. 340, § 5.]

Art. 754. Punishment.—Any person who shall violate any provision of this Chapter shall be fined not less than One Hundred ($100.00) Dollars, nor more than Five Hundred ($500.00) Dollars, or be confined in jail from one to six (6) months, or both. Each day of such violation shall be a separate offense. [Acts 1919, p. 50; Acts 1935, 44th Leg., p. 606, ch. 244, § 17; Acts 1943, 48th Leg., p. 576, ch. 340, § 6.]

Art. 754a. Persons regarded as practicing dentistry.—Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor", "Dr.", "Doctor of Dental Surgery", "D.D.S.", "Doctor of Dental Medicine", "D.M.D.", or any other letters, titles, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws.

(2) Who shall offer or undertake, by any means or methods whatsoever to diagnose, treat, remove stains or concretions from teeth, or shall treat, operate or prescribe, by any means or methods, for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, alveolar process, gums or jaws, and charge therefor, directly or indirectly, money or other compensation.

(3) Any person, firm, association, or corporation who professes, advertises, sells, offers, or undertakes to construct, produce, reproduce, make, repair, fit, adjust, substitute, or deliver to or accepts from the general public, any model or impression of the human mouth, teeth, alveolar process, gums or jaws, or any prosthetic or orthondontia appliance, denture, or structure.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined. [Acts 1935, 44th Leg., p. 606, ch. 244, § 18; Acts 1943, 48th Leg., p. 576, ch. 340, § 7.]

CHAPTER 8.—PHARMACY

Art.
755. Unlicensed pharmacy.
756. Exceptions.
757. License and renewal posted.
758. Offenses and penalty.
758a. Display of license; application for renewal; penalty for violating Pharmacy Act.

Article 755. Unlicensed pharmacy.—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or keep exposed for sale at retail any drug, chemicals or poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or compound physicians' prescriptions except as an aid to, or under the supervision of a person licensed as a pharmacist under this law. No owner, or manager of a pharmacy, or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. [Acts 1907, p. 349.]

Art. 756. Exceptions.—The preceding article shall not be construed to prevent any person from engaging in such business as proprietor or owner thereof, provided such proprietor or owner shall have employed to conduct same some one qualified under this law, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper; nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. [Id.]

Art. 757. License and renewal posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employé to conduct a drug store in towns of not more than one thousand inhabitants, and every renew-

al of such license shall be conspicuously exposed in the place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof. If any pharmacist or assistant pharmacist shall fail for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist. The name of the responsible manager of every pharmacy, drug store or apothecary shop, shall be conspicuously displayed outside of such place of business. [Id.]

Art. 758. Offenses and penalty.—Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store or other place of business for the compounding, dispensing or sale at retail of any drugs, medicine or poisons, or for the compounding of physicians' prescriptions contrary to any provision of the three preceding articles shall be fined not less than twenty-five nor more than one hundred dollars. Each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be a separate offense. Whoever not being licensed as a pharmacist or assistant pharmacist shall compound, dispense or sell at retail any drugs, medicine, poison or pharmaceutical preparation even upon a physician's prescription or otherwise, and whoever being the owner or manager of the drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription, contrary to any provision of the three preceding articles, shall be fined not less than ten nor more than one hundred dollars. Any license or permit or renewal thereof, obtained through fraud, or by any false or fraudulent representations, shall be void and of no effect in law. Any person who shall make any false or fraudulent representations for the purpose of procuring a license or renewal thereof, either for himself or for another, shall be fined not less than twenty-five nor more than one hundred dollars. Whoever being the holder of any license or permit granted under this law, shall fail to expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, contrary to the provisions of article 757 shall be fined not less than five nor more than twenty-five dollars, and each week that such license, permit or renewal shall not be exposed, shall be a separate offense, and whoever being the holder of any license or permit granted under this law shall, after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of article 757 shall be fined not less than five nor more than twenty-five dollars. [Id.]

Art. 758a. Display of license; application for renewal; penalty for violating Pharmacy Act.—Every license to practice pharmacy, and every license to any proprietor or employee to conduct a drug store, pharmacy or factory, and every renewal of such license or annual renewal certificate shall be conspicuously displayed in the place of business of which the pharmacy or person to whom it is issued is the owner or manager, or in which he is employed.

Every licensed pharmacist who desires to continue in the practice of his profession shall within thirty (30) days next preceding the expiration of his license or annual renewal certificate file with the Board his application for the renewal thereof.

If any pharmacist shall fail for a period of sixty (60) days after the expiration of his license or annual renewal certificate to make application to the Board for its renewal, his name shall be stricken from the register of licensed pharmacists. The name of the responsible manager of every pharmacy, drug store or apothecary shop shall be conspicuously displayed outside of such place of business.

Any person not being licensed as a pharmacist who shall compound, mix, blend, dispense, prepare or sell at retail any drugs, medicines, poisons or pharmaceutical preparations upon a physician's prescription, or otherwise, and whoever, being the manager or owner of the drug store, pharmacy or factory, or other place of business, shall manufacture, or permit anyone not licensed as a pharmacist to compound, mix, blend, dispense any drugs, medicines, poisons or pharmaceutical preparations, on physician's prescription, contrary to any of the provisions of this Act, shall be subject to the penalties of this Act.

Any license or permit or renewal certificate obtained through fraud or by false or fraudulent representations shall be void and of no effect in law, and shall be subject to the penalties provided for in this Act.

Any person who shall make any false or fraudulent representations for the purpose of procuring a license or renewal certificate, either for himself or for another, shall be subject to the penalties provided for in this Act.

Any person being the holder of a pharmacist's license or renewal certificate who shall fail to display such license or renewal certificate in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, shall be subject to the penalties provided for in this Act, and each day such license or renewal certificate is not displayed shall be a separate offense.

Any person being the holder of any license or renewal certificate or store or manufacturer's permit under this law who shall, after the expiration of such license or manufacturer's permit, drug store or pharmacy permit, fail to renew same, and who continues to carry on the business for which such license, renewal certificate or permit was granted shall be subject to the penalties provided for in this Act.

Any person, firm, corporation, partnership, or joint stock company violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty ($50.00) Dollars, nor more than Five Hundred ($500.00) Dollars, or be confined in jail for not less than one (1), nor more than six (6) months, or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

It shall be unlawful for any member of the Board to permit any applicant to take the examination herein provided for, unless such applicant furnishes written proof to said Board that such applicant is qualified as herein provided in this Act to take such examination. Any member of the Pharmacy Board violating this Section shall be guilty of a misdemeanor and shall be punished as provided in the preceding paragraph. [Acts 1929, 41st Leg., p. 242, ch. 107, § 21; Acts 1943, 48th Leg., p. 710, ch. 395, § 17.]

Sections 1–20 of this Act are published as Rev.Civ.St. Art. 4542a. Section 18 expressly repeals Rev.Civ.St. Arts. 4529–4542, and all conflicting laws and parts of laws, but makes no direct reference to Pen.Code, Arts. 755–758.

CHAPTER 9.—EMBALMING

Article 759. [784–5] Embalmer's license.—Every person engaged in or desiring to engage in the practice of embalming in connection with the care and disposition of dead bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with the fee fixed by law, and if said board shall find upon examination that the applicant is of good moral character and possesses the knowledge required by law, they shall issue to him a license authorizing him to practice the science of embalming. All persons receiving such license shall have it registered in the county clerk's office in the county in which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the place of business of said person so licensed. Every registered embalmer who desires to continue the practice of his profession shall annually thereafter during the time he may continue in such practice, on such date as said bard [board] may determine, pay to the secretary of said board a fee of five dollars for the renewal of said license. [Acts 1903, p. 124; Acts 1921, p. 180.]

Art. 760. [786] Unlawful embalming.—No person shall embalm or pretend to practice the science of embalming, in connection with the care and disposition of the dead, unless such person is a registered embalmer within the meaning of this chapter. [Acts 1903, p. 125.]

Art. 761. [787] Exceptions.—This chapter does not apply to one simply engaged in the furnishing of burial receptacles, nor is it intended to apply to or interfere with the duties of any municipal, county or State officer or State institution. [Id.]

Art. 762. [788] Penalty.—Whoever shall embalm, or attempt to practice the science of embalming, in connection with the care and disposition of the dead, without having complied with the provisions of this chapter, shall be fined not less than fifty nor more than one hundred dollars for each offense. [Id.]

See, also, Article 762a.

Art. 762a. Penalty for violating regulations of Embalming Board.—Any person violating any provision of this Chapter, or any rule or regulation of the Board relating to its subject matter shall be fined not less than Twenty-five, nor more than Two Hundred ($200.00) Dollars, or imprisoned not less than thirty days nor more than ninety days, and each violation shall be a separate offense. [Acts 1935, 44th Leg., p. 676, ch. 287, § 8.]

Sections 1–7, 9, of this Act are published as Rev.Civ.St. Art. 4582a.

CHAPTER 10.—QUARANTINE REGULATIONS

Article 763. [789] [472] Vessel landing from infected port.—After the legal establishment of any quarantine station on the coast of this State, if any vessel shall land or arrive at such station from any infected port without a bill of health from the proper officer of said port, or with a false bill of health, the master or commanding officer of such vessel shall be fined not less than five hundred nor more than five thousand dollars. [Acts Aug. 13, 1870; Acts 1901, p. 305.]

Art. 764. [790] [473] Passing station without permission.—Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this State during the continuance of the quarantine without having first obtained permission from the health officer of such station so to do, shall be imprisoned in the penitentiary not less than two nor more than five years, or be fined not less than five hundred nor more than ten thousand dollars. [Act Aug. 13, 1870.]

Art. 765. [791] [474] Going ashore without permission.—Any person belonging to or on board of a vessel placed under quarantine who shall go ashore without the written permission of the health officer of the station shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 766. [792] [475] Landing goods without permission.—Any master or officer of a vessel placed under quarantine, who shall land or permit to be landed from said vessel any goods, wares, merchandise or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed. [Id.]

Art. 767. [793] [476] Leaving quarantine station.—Any person detained at any quarantine station who shall wilfully absent himself without leave of the officer having charge thereof, shall be fined not less than ten nor more than one thousand dollars. [Acts 1883, p. 81.]

Art. 768. [794] [477] Violating quarantine law.—Any health officer, guard or other employé who shall wilfully disobey or in any manner knowingly neglect or fail to perform any duty imposed upon him by the provisions of quarantine laws, rules and regulations of this State, or who shall disobey knowingly an order emanating from superior authority, shall be fined not exceeding one thousand dollars. In the meaning of this article the Governor and State Health Officer shall alone be deemed superior authority. [Id.]

Art. 769. [795] [478] Evading quarantine guards, etc.—Any person coming from any port or district infected with yellow fever, or any other infectious or contagious disease, who shall knowingly evade any guard or pass through any cordon of quarantine duly established shall be fined not exceeding one thousand dollars. [Id.]

Art. 770. [796] [479] Violating quarantine regulations.—Whoever wilfully violates any regulation of the quarantine established by the Governor, the State Health Officer, or the health officer of any county or city of this State, shall be fined not less than ten nor more than one thousand dollars. [Acts 1901, p. 305.]

Art. 771. [797] [478b] Person in charge of train or boat.—If any conductor, or person in charge of any train, ship, steamboat or any other kind of common carriers, shall wilfully bring into this State any person or thing contrary to quarantine regulations as proclaimed by the Governor or State Health Officer, such conductor or person so wilfully offending shall be fined not to exceed five hundred dollars. [Id.]

Art. 772. [798] [478c] Violating Governor's proclamation.—Any merchant or other person who shall wilfully order the shipment, or wilfully receive any merchandise whose shipment into the State is prohibited by the Governor's proclamation,

or any person who wilfully sells and proceeds to deliver such merchandise or other article as above, shall be fined not exceeding five hundred dollars. [Id.]

CHAPTER II.—MISCELLANEOUS

Art. 773. Soliciting patients.—No physician, surgeon, osteopath, masseur, optometrist, or any other person who practices medicine or the art of healing the sick or afflicted, with or without the use of medicine shall employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for securing, soliciting or drumming patients or patronage. No person shall accept or agree to accept any payment, fee or reward, or anything of value, for securing, soliciting or drumming for patients or patronage for any physician, surgeon, osteopath, masseur, optometrist, or any other person who practices medicine or the art of healing with or without medicine. Whoever violates any provision of this Article shall be fined not less than One Hundred nor more than Two Hundred Dollars for each offense. Each payment or reward or fee or agreement to pay or accept a reward or fee shall be a separate offense. [Acts 1911, p. 97; Acts 1931, 42nd Leg., 2nd C.S., p. 18, ch. 10, § 1.]

Art. 774. Advertising.—The preceding Article shall not be construed to prohibit the inserting in a newspaper of any advertisement of such person's business, profession and place of business, or from advertising by handbills and paying for services in distributing same. [Acts 1911, p. 97; Acts 1931, 42nd Leg., 2nd C.S., p. 18, ch. 10, § 2.]

Art. 775. Witness shall testify.—No person shall be exempt from giving testimony in any proceedings for the enforcement of the second preceding article, but the testimony so given shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him. [Acts 1911, p. 97.]

Art. 776. Nurse.—No person shall practice nursing as or claiming to be a graduate certified registered nurse without a license or permit from the State Board of Nurse Examiners, which license or permit shall have been registered with the county clerk of the county in which he or she resides within a period of thirty days. A nurse who has received his or her license or permit according to law shall be styled a "registered nurse," and no other person shall assume such title or use the abbreviation "R. N." or any other to indicate that he or she is a graduate certified registered nurse; and any person violating any provision of this article or who shall make any false representations to said board in applying for a license shall be fined not less than twenty-five nor more than two hundred and fifty dollars. [Acts 1923, p. 413.]

Art. 777. Exceptions.—The preceding article does not apply to gratuitous nursing by friends or members of the family or to any person nursing for hire who does not in any way assume or profess to practice as a graduate certified registered nurse.

Art. 778. Chiropody.—Chiropody means the diagnosis, medical and surgical treatment of ailments of the human foot. A chiropodist is one practicing chiropody. Whoever professes to be a chiropodist or practices or assumes the duties incident to chiropody, without first obtaining from the State Board of Chiropody Examiners a license authorizing the practice of chiropody, 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 chiropodist 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. [Acts 1923, p. 357; Acts 1939, 46th Leg., p. 368, § 6.]

Sections 8-10 of the amendatory act of 1939, see Rev. Civ.St. art. 4568.

Art. 778a. Name under which one may practice chiropody.—It shall be unlawful for any person or persons to practice chiropody 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 Chiropody Examiners. Each day of violation of the Article shall constitute a separate offense. [Added Acts 1939, 46th Leg., p. 368, § 7.]

Sections 8-10 of the act of 1939 see Rev.Civ.St. art. 4568.

Art. 779. Improper practice.—If any registered chiropodist shall amputate the human foot or toe, or use any anaesthetic other than local, he shall be punished as directed in the preceding article. [Acts 1923, p. 357.]

Art. 780. Exceptions.—The two preceding articles shall not apply to physicians licensed by the State Board of Medical Examiners of this State, nor to surgeons of the United States Army, Navy, and Public Health Service, when in actual performance of their official duties. [Id.]

Art. 781. Vital statistics.—Any person who shall violate any rule of the Sanitary Code of this State relating to vital statistics, or who shall fail to perform any duty imposed on him by said rules herein referred to, shall be fined not less than ten nor more than one hundred dollars. Whoever shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death shall be confined in the penitentiary not less than one nor more than two years. [Acts 1911, p. 173; Acts 1917, p. 332.]

Art. 781a. Violation of provisions as to vital statistics.—That any person, who for himself or as

an officer, agent, or employee of any other person, or of any corporation or partnership, (a) shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or (b) shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this Act; or (c) shall willfully alter, otherwise than is provided by Section 18 of this Act,[1] or shall falsify any certificate of birth or death, or any record established by this Act; or (d) being required by this Act to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act; or (e) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act and by the instructions, and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars ($5.00) nor more than fifty dollars ($50.00), and for each subsequent offense not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned. [Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 22.]

[1] Rev.Civ.St. Art. 4477, rule 51a.
Sections 1–21 of this Act are published as Rev.Civ.St. Art. 4477, rules 34a–55a.

Art. 782. Sanitary Code.—Whoever shall violate any provision of the Sanitary Code of this State, other than those relating to vital statistics, shall be fined not less than ten nor more than one thousand dollars. [Acts 1911, p. 173.]

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 homeworker 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 homeworker'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 certifi-

cate 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 is 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 representatives 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 subpœnas

Sec. 11. In matters relating to this Act, the Board or its duly authorized representative may administer oaths, take affidavits, and issue subpœnas 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. Subpœnas 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.]

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."

TITLE 13—OFFENSES AGAINST PUBLIC PROPERTY

CHAPTER 1.—HIGHWAYS AND VEHICLES

Article 783. [811] [479] [404] Obstruction of navigable stream.—Whoever obstructs the navigation of any stream which can be navigated by steam, keel, or flatboats, by cutting and felling trees or by building on or across the same any dyke, mill dam, bridge, or other obstruction, shall be fined not less than fifty nor more than five hundred dollars. [O. C. 428.]

Art. 784. [812] [480] [405] Obstructing public road, street, etc.—Whoever shall wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever any public road or highway or any street or alley in any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars. [Acts 1860, p. 97; Acts 1913, p. 258.]

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. 834, § 1.]

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. 834, § 2.]

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. 834, § 3.]

Art. 785. [823] [483] [406] Permission to obstruct.—No person shall be punished under the preceding article who places obstructions in the streets or alleys of an incorporated city or town for purposes of building or improvement under the sanction of the governing body thereof. [Acts 1860, p. 97.]

Art. 786. [824] [484] [407] May regulate removal.—Nothing in this chapter is to be construed to prevent the commissioners court or the municipal authorities from adopting regulations relative to the removal of obstructions from public roads, streets or

bridges, and to enforce the same by due process of law. [O. C. 430.]

Art. 787. Obstructing railway crossing.—Any officer, agent, servant or receiver of any railway corporation who wilfully obstructs for more than five minutes at any one time any street, railway crossing or public highway by permitting their train to stand on or across such crossing, shall be fined not less than five nor more than one hundred dollars. [Acts 1st C. S. 1921, p. 34.]

Art. 788. Exceptions as to railways.—The city council of any incorporated city may by ordinance grant a franchise to a railway company to obstruct a street crossing, not a part of a "Designated State Highway," by railway passenger trains for the purpose of receiving and discharging passengers, mail, express or freight, for a longer time than specified herein, and may enact and enforce reasonable ordinances in the premises. When any such franchise has been granted under the provisions of this law, the street crossing named therein shall be excepted from the preceding article. The provisions hereof shall not apply to a city having a special charter unless it shall first be amended so as to adopt the provisions hereof. [Id.]

Art. 789. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42, § 18.]

Art. 790. Shall drive carefully.—No person operating or driving a motor or other vehicle upon the public highways shall pass any motor or other vehicle, person or thing on any public highway of this State at such rate of speed as to endanger the life or limb of any person or the safety of any property. Any person violating any provision of this article shall be fined not less than five nor more than two hundred dollars. [Id.]

This article was held unconstitutional in Ladd v. State, 115 Cr.R. 355, 27 S.W.(2d) 1098, on ground it provided no standard for determining lawful speed.

Art. 791. Exceptions to speed law.—Section 8, of Article 827A, of the Acts of 1929, 41st Legislature, 2nd Called Session, Page 72, Chapter 42, as amended by the Acts of 1931, 42nd Legislature, Regular Session, Page 507, Chapter 282, relating to the speed of motor vehicles, shall not apply to fire patrols or motor vehicles operated by the fire department of any city, town or village responding to calls, nor to police patrols or physicians and/or ambulances responding to emergency calls; provided that incorporated cities and towns may by ordinance regulate the speed of ambulances. [Acts 1923, p. 333; Acts 1933, 43rd Leg., p. 545, ch. 176.]

Art. 792. Violation of promise to appear.—In case of any person arrested for violation of the preceding articles relating to speed of vehicles, unless such person so arrested shall demand that he be taken forthwith before a court of competent jurisdiction for an immediate hearing, the arresting officer shall take the license number, name and make of the car, the name and address of the operator or driver thereof, and notify such operator or driver in writing to appear before a designated court of competent jurisdiction at a time and place to be specified in such written notice at least five days subsequent to the date thereof, and upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release such person from custody. Any person wilfully violating such promise, regardless of the disposition of the charge upon which he was originally arrested, shall be fined not less than five nor more than two hundred dollars. [Acts 1923, p. 333.]

Art. 793. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42, § 18.]

Art. 794. [Repealed by Acts 1933, 43rd Leg., p. 112, ch. 56.]

Art. 795. No racing or contest for speed.—No race or contest for speed between motor vehicles of any kind shall be held upon any public highway. Any person violating this article shall be fined not exceeding one hundred dollars. [Acts 1917, p. 480, Acts 3rd C. S. 1917, p. 70.]

Art. 796. Horn or noise device.—Every motor vehicle shall be equipped with a bell, gong, horn, whistle or other device in good working order, capable of emitting an abrupt sound adequate in quality and volume to give warning of the approach of such motor vehicle to pedestrians and to the rider or driver of animals, or of other vehicles and to persons entering or leaving street, interurban or railroad cars. Every person operating a motor vehicle shall sound said bell, gong, horn, whistle or other device whenever necessary as a warning of danger but not at other times or for other purposes. Any person while operating a motor vehicle who shall violate this article shall be fined not more than one hundred dollars. [Acts 1917, p. 496, Acts 3rd C. S. 1917, p. 70.]

Art. 797. Device to prevent unusual noise, etc.—Every motor vehicle must have devices in good working order which shall at all times be in constant operation to prevent excessive or unusual noises, annoying smoke, and the escape of gas or steam. Pipes carrying exhaust gas from the engine shall be directly parallel to the ground or slightly upward. Devices known as "Muffler cut-outs" shall not be used within the limits of any incorporated city or town or on any public highway where the territory contiguous thereto is closely built up. Any person violating any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 477, Acts 3rd C. S. 1917, p. 70.]

Art. 797a. Preventing unnecessary noises by motor vehicles.—Any person operating on any public highway or street in this State a motor vehicle or motorcycle which is not equipped with a muffler, or which is equipped with a muffler cutout, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by confinement in the county jail not more than ten days, or by both such fine and imprisonment.

Art. 797b. Muffler defined.—A muffler cut-out within the meaning of this Act is any device or aperture which permits the escaping gases produced by the operation of the motor of a motor vehicle or motorcycle to escape without going through the muffler on such motor vehicle or motorcycle, or which is capable of being manipulated so as to permit such gases to so escape. A muffler within the meaning of this Act is a device through which the escaping gases of the motor of a motor vehicle or motorcycle pass, designed to muffle or minimize the noise produced by the operation of such motor. [Acts 1925, p. 350.] [39th Leg., ch. 142, § 2.]

Art. 798. Front and rear lights.—Every motor vehicle other than a motorcycle while on the public highways, when in operation, during one-half hour after sunset to one-half hour before sunrise, and at all times when fog or other atmospheric conditions render the operation of such vehicles unusually dangerous to traffic and the use of the highways, shall carry at the front at least two lighted lamps showing the white lights visible under normal atmospheric conditions at least five hundred feet in the direction toward which such motor vehicle is facing, and shall also carry at the rear a lighted lamp exhibiting one red light plainly visible for a distance of five hundred feet to the rear. At the times and under the conditions hereinbefore specified every motorcycle or bicycle while on the public highway shall carry on its front one lighted lamp showing a white light visible

under normal atmospheric conditions at least two hundred feet in the direction such vehicle is facing, and shall have at the rear one red light plainly visible from the rear. Any person who while operating such vehicle on a public highway shall violate any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 476; Acts 3rd C. S. 1917, p. 70.]

Art. 799. Brakes.—Any person who operates upon a public highway a motor vehicle not provided with adequate brakes kept in good working order, or any person having control or charge of a motor vehicle who shall allow such vehicle to stand in any public street or highway unattended without first effectively setting the brakes and stopping the motor thereon, shall be fined not exceeding one hundred dollars. [Acts 1917, p. 477, Acts 3rd C. S. 1917, p. 70.]

Art. 800. [Unconstitutional]

This article, Acts 1917, p. 479, Acts 1917, 3rd C.S., p. 70, prohibiting driving of automobile over obscured railroad crossing at speed greater than six miles per hour was held invalid for uncertainty. See Vernon's Ann.Civ.St., Notes of Decisions, note 1 under this section.

Art. 801. Law of the road.—(A) The driver or operator of any vehicle in or upon any public highway wherever practicable shall travel upon the right hand side of such highway. Two vehicles which are passing each other in opposite directions shall have the right of way, and no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles. On all occasions the driver or operator of any vehicle upon any public highway shall travel upon the right hand side of such highway unless the road on the left hand side of such highway is clear and unobstructed for a distance of at least fifty yards ahead.

(B) Vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other one-half of the road as nearly as possible.

(C) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left thereof and shall not again drive to the right until the road is reasonably clear of such overtaken vehicle.

(D) It is the duty of the driver, rider, or operator of a vehicle about to be overtaken and passed to give way to the right in favor of the overtaking vehicle on suitable and audible signal, given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle, if such overtaking vehicle be a motor vehicle.

(E) Except where controlled by such ordinances or regulations enacted by local authorities, as are permitted under the law, the operator of a vehicle approaching an intersection on the public highway shall yield the right-of-way to a vehicle approaching such intersection from the right of such first named vehicle.

(F) It is the duty of the person operating or in charge of an overtaking vehicle to sound audible and suitable signal before passing a vehicle proceeding in the same direction.

(G) All vehicles approaching an intersection of the public highway with the intention of turning thereat shall, in turning to the right, keep to the right of the center of such intersection and in turning to the left, shall run beyond the center of such intersection, passing to the right before turning such vehicle to the left.

(H) In passing and overtaking, such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall reasonably demand in order to obtain clearance and avoid accident.

(I) Every person having control or charge of any motor vehicle or other vehicle upon any public highway and approaching any vehicle drawn by horse or horses, or any horse upon which any person is riding, shall operate and control such vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse and to insure the safety of any person riding or driving the same; and if such horse or horses appear frightened, the person in control of such vehicle shall reduce its speed, and if requested by signal of the hand, by the driver or rider of such horse or horses, shall not proceed further toward such animal or animals unless such movement be necessary to avoid injury or accident, until such animal or animals shall be under the control of the rider or driver thereof.

(J) The person in control of any vehicle moving slowly along upon any public highway shall keep such vehicle as closely as possible to the right hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(K) The person in charge of any vehicle upon any public highway before turning, stopping or changing the course of such vehicle shall see first that there is sufficient space for such movement to be made in safety, and if the movement or operation of other vehicles may reasonably be affected by such turning, stopping or changing of course, shall give plainly visible or audible signal to the person operating, driving or in charge of such vehicle of his intentions so to turn, stop or change said course.

(L) Before attempting to pass any railroad train, interurban car or street car stopped for the purpose of receiving or discharging passengers, every operator in charge of a motor vehicle or motorcycle approaching the same from the rear and proceeding in the same direction shall bring such motor vehicle or motorcycle to a full stop and shall not start up or attempt to pass until the said railroad train, interurban car or street car has finished receiving and discharging its passengers; provided that cities of ten thousand inhabitants and over may provide by ordinance for the establishment of safety zones for the use and safety of such passengers contiguous to such railroad, interurban or street car tracks, and may maintain and establish such safety zones at such places and may provide by ordinance for the regulation of traffic in passing such safety zones, and when such safety zones are so established and ordinances are passed to regulate the traffic in passing same, the provisions of this subdivision shall not apply to the places where safety zones are so established.

(M) Every motor vehicle when moving along such portions of the road where the curvature of the road prevents a clear view for a distance ahead of one hundred yards shall be held under control, and the operator thereof in approaching curves or sharp turns in the road shall give a warning by his signaling device.

(N) Police patrols, police ambulances, fire patrols, fire engines and fire apparatus in all cases while being operated as such shall have the right-of-way with due regard to the safety of the public; provided that this provision shall not protect the driver or operator of any such vehicle or his employer or principal from the consequence of the arbitrary exercise of this right to the injury of another.

Any person while operating or driving any motor vehicle upon a public highway who shall violate any provision of this article shall be fined not exceeding one hundred dollars. [Acts 1917, p. 478; Acts 3rd C. S. 1917, p. 70; Acts 1919, p. 310; Acts 3rd C. S. 1920, p. 96.]

Various provisions of this article have been held invalid for indefiniteness. See Abbot v. Andrews (Com.App.) 45 S.W.(2d) 568; Harr v. State, 98 Cr.R. 1, 263 S.W. 1055; Snider v. State, 89 Cr.R. 192, 230 S.W. 146; Russell v. State, 88 Cr.R. 512, 228 S.W. 566.

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 public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not less than ten (10) days nor more than two (2) years, or by a fine of not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500), or by both such fine and imprisonment. [Acts 1923, 2nd C.S., p. 56; Acts 1935, 44th Leg., 1st C.S., p. 1654, ch. 424, § 1; Acts 1937, 45th Leg., p. 108, ch. 60, § 1; Acts 1941, 47th Leg., p. 819, ch. 507, § 1.]

Provision prohibiting driving while drunk upon any place within limits of city was held inoperative. Ward v. State, 102 Cr.R. 204, 277 S.W. 672.

Art. 802a. Placing drunken drivers on probation.

This article was repealed by Rev.Civ.St. art. 6687a, relating to driver's licenses and providing for suspension and revocation thereof. See Harris v. State, 133 Cr.R. 129, 109 S.W.2d 203; Reeves v. State, 133 Cr.R. 248, 109 S.W. 2d 1051.

The article read:

In all cases where a defendant is convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotics, the Jury at the same time shall add to their verdict the length of time that the defendant shall be prohibited from driving any motor vehicle on the highways of this State not to exceed two years. The Judge of the Court where such conviction is had shall cause to be entered on the Minutes of the Court an order prohibiting such defendant from driving any motor vehicle for a period of time found by the Jury. Any person violating such an order shall be deemed guilty of contempt and be punished in the manner now provided for contempt of Court. [Acts 1931, 42nd Leg., p. 268, ch. 162, § 1.]

Art. 802b. Subsequent offense of driving while intoxicated; felony.—Any person who has been convicted of the misdemeanor offense of driving or operating an automobile or other motor vehicle upon any public road or highway in this State or upon any street or alley within an incorporated city, town or village, while intoxicated or under the influence of intoxicating liquor, and who shall thereafter drive or operate an automobile or other motor vehicle upon any public road or highway in this State or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a felony and upon conviction be punished by confinement in the penitentiary for any term of years not less than one (1) nor more than five (5). [Added Acts 1941, 47th Leg., p. 819, ch. 507, § 2.]

Art. 802c. Punishment of intoxicated driver involved in accident or doing act otherwise felonious.—Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley or any other place within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, and while so driving and operating such automobile or other motor vehicle shall through accident or mistake do another act which if voluntarily done would be a felony, shall receive the punishment affixed to the felony actually committed. [Added Acts 1941, 47th Leg., p. 819, ch. 507, § 3.]

Art. 803. May arrest without warrant.—Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of the preceding articles of this chapter. [Acts 1st C. S. 1917, p. 48.]

Art. 803a. Regulating arrests for speeding.—No officer shall have authority to make any arrests for violation of the laws of this State relating to the speed of motor vehicles unless he is at the time of such arrest wearing a uniform and badge clearly distinguishing him from ordinary civilians or private citizens, and shall have no authority to make any such arrests by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating the speed laws in reference to motor vehicles. No such officer, and no sheriff, constable, marshal, policeman, traffic officer, or other officer shall be entitled to any fee for making an arrest or serving a warrant of arrest or claim, demand or receive any witness fee or commitment fee for an alleged violation of any law of this State relative to such speeding. It shall be the duty of the district or county attorney, as the case may be, to dismiss any and all prosecutions wherein it is shown that the arrest was made by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating such speed law, and this provision shall apply to such conduct by any highway officer, sheriff, deputy sheriff, constable, marshal, policeman, or any other officer of this State, or political subdivision thereof, provided any officer pursuing or lying in wait in any vehicle other than a motorcycle shall be held to be designedly remaining in hiding as defined in this Act. Provided, however, that the provision hereof pertaining to motor equipment and uniform, shall not apply to an arrest made within the incorporated limits of a city or town having a population less than Ten Thousand (10,000) inhabitants, according to the Federal Census report of 1920.

The venue of any prosecution for speeding of motor vehicles under State laws shall be in the justice precinct only wherein the offense was committed or in the precinct of the defendant's residence. The badge herein required to be worn by an officer making an arrest shall be diamond-shaped, and the uniform prescribed to be worn by such officer or officers shall consist of a cap, coat and trousers of dark grey color, provided that the uniform worn by city policemen within the corporate limits of an incorporated city or town may be either blue or dark grey in color.

If any peace officer willfully violates any provision of this Act, he shall, upon conviction, be fined in any sum not to exceed Two Hundred ($200.00) Dollars.

The Attorney General or any County Attorney may institute quo warranto to oust from office any officer violating any provision of this Act or permit any deputy to do so. [Acts 1927, 40th Leg., p. 321, ch. 218, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 83, ch. 47, § 1; Acts 1930, 41st Leg., 5th C.S., p. 239, ch. 76, § 1.]

This article was held invalid as local or special law, and as being in violation of Const. art. 1, §§ 19, 28. See Scoggin v. State, 117 Cr.R. 294, 38 S.W.(2d) 592; Ex parte Heiling, 128 Cr.R. 399, 82 S.W.2d 644.

Art. 803b. Badge and uniform of officers.—No Sheriff, Constable, or Deputy or either, shall have authority to arrest or accost any person for driving a motor vehicle over the highways of this State in violation of the law relating to motor vehicles unless he is at the time wearing on his left breast on the outside of his garment so that it can be clearly seen a badge showing his title, and unless he is also wearing a cap, coat or blouse, and trousers of dark grey color, or dark blue, which cap and other uniform shall be of the same color. Provided, if any person shall violate the provisions hereof, he shall be guilty of a misdemeanor and shall be punished as provided in Section 3 hereof, and if any officer charged by law so to do shall refuse to take any complaint or prosecute the same, he shall be removed from office. [Acts 1931, 42nd Leg., p. 503, ch. 280, § 3a.]

Sections 1-3 of this Act are published as Rev.Civ.St. Art. 6879a.

Art. 804. Operating unregistered vehicle.—Whoever operates upon any public highway a motor vehicle which has not been registered as required by law shall be fined not to exceed two hundred dollars. [Acts 1923, p. 158.]

Art. 805. Operating under improper license.—Whoever operates upon a public highway a motor

vehicle under a license, however obtained, for a class other than that to which such vehicle properly belongs, shall be fined not exceeding two hundred dollars. [Id.]

Art. 806. Motorcycle without seal.—Any person operating, or as owner permitting to be operated, on any public highway any motorcycle during any calendar year to which there is not attached a registration seal assigned to said motorcycle, shall be fined not exceeding two hundred dollars. [Acts 1917, p. 425; Acts 1st C. S. 1921, p. 147.]

Art. 807. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 807a. Operation of motor vehicles without license number plates.—Sections 14a to 14e [Repealed by Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, § 4.]

Sec. 14f. Any person violating any provisions of this Act for the violation of which no other penalty is prescribed shall be deemed guilty of a misdemeanor, and on conviction, shall be fined in any sum not exceeding Two Hundred ($200.00) Dollars. [Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88.]

Section 4 of Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, provides that convictions and prosecutions for violations of said sections committed before April 1, 1934, shall not be affected by the repeal.

Sections 1–13a, 15, of Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, are published as Rev.Civ.St. Arts. 6675a—1, 6675a—2, 6675a—3 to 6675a—3b, 6675a—4 to 6675a—13, 6675a—13a, 6675a—14.

Section 16 of Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, repeals all conflicting laws and parts of laws and specially repeals Pen.Code, Arts. 807, 810, 818–820, 825 and Rev.Civ.St. Arts. 6675–6683, 6688–6693, 6697, and excepts from its operation tractors, graders or other machinery owned by cities, counties or Federal government and used on streets, alleys or roads.

Art. 807b. Operation of motor vehicles without license number plates.

Violation a misdemeanor; dealers; purchase of plates in February and March

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State any time during any month of a motor vehicle registration year without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration year, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration year for which they are issued upon the motor vehicle for which they are issued. [As amended Acts 1935, 44th Leg., p. 63, ch. 21, § 1; Acts 1947, 50th Leg., p. 451, ch. 254, § 1.]

Bribery of Commissioners' Court

Sec. 5a. Any person who shall directly or indirectly enter into any agreement with a Commissioners' Court of any county in the State of Texas, or any officer or agent of said Court or county, that he will register or cause to be registered any motor vehicle, trailer or semi-trailer, in said county in consideration of the use by said county of the funds derived from said registration in the purchase of any property of any kind or character, or in consideration of anything or any act to be done or performed by the Commissioners' Court, or any of its agents or officers or any county officer, shall be guilty of a bribery and shall be subject to the same penalty as provided by law for the offense of bribery. The registration of each separate vehicle shall constitute a separate offense. The agreement and/or conspiracy to register shall constitute a separate offense. Any person, firm or corporation who shall make agreements as provided herein, or seek to make such agreements, shall be restrained by injunction by the county or district attorney of the county in which said motor vehicle is registered, or upon application of the Attorney General of the State of Texas.

Road tractors, motorcycles, trailers, etc.

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State any time during any month of a motor vehicle registration year without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current year shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3[1] hereof.

Operation with old license plates

Sec. 7. Any person operating any motor vehicle, trailer or semi-trailer upon the highways of this State on and after April 1st of any motor vehicle registration year with license plate or plates for any preceding year attached or displayed, shall be deemed guilty of a misdemeanor.

Penalty

Sec. 8. Any person convicted of a misdemeanor for violation of Section 5, Section 6 or Section 7 of this Act shall be fined in any sum not exceeding Two Hundred Dollars ($200.00). [Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3.]

[1] Rev.Civ.St. Arts. 6675a—3, 6675a—4, 6675a—3a.

Acts 1935, 44th Leg., p. 63, ch. 21, amended section 5 of this Article.

Sections 1–3 of Acts 1934, 43rd Leg., 2nd C.S., p. 5, ch. 3, are published as Rev.Civ.St. Arts. 6675a—3, 6675—4, and 6675a—3d.

Section 2 of the Act of 1947 provided that a holding of partial invalidity should not affect the validity of the remaining portions. Section 3 repealed conflicting laws.

Art. 808. Unauthorized distinguishing seal.—Whoever obtains a distinguishing seal for a motor vehicle or motorcycle from any source other than the State Highway Department or its authorized agents, unless authorized by law, shall be fined not less than twenty-five dollars. [Acts 1917, p. 425.]

Art. 809. Sale of imitation seal or number.—Whoever sells or offers to sell any seal or number in imitation of those furnished by the State Highway Department shall be fined not less than twenty-five dollars. [Id.]

Art. 810. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 811. Must have own number and seal.—Whoever shall operate, or as owner permit to be operated upon a public highway a motor vehicle with a number plate or seal issued for a different motor vehicle attached thereto shall be fined not exceeding two hundred dollars. [Acts 1917, p. 475, Acts 1st C. S. 1921, p. 147.]

Art. 812. Wrong or unclean number plate.—No person shall attach to or display on any motor vehicle any number plate or seal assigned to a different motor vehicle or assigned to it under any other motor vehicle law other than by the State Highway Department, or any registration seal other than that assigned for the current year, or a homemade or fictitious number plate or seal. All letters, numbers and other identification marks shall be kept clear and distinct and free from grease or other blurring matter so that they may be plainly seen at all times during daylight. Whoever violates any provision of this arti-

cle shall be fined not exceeding two hundred dollars. [Id.]

Art. 813. Chauffeur.—A "chauffeur" is one whose business or occupation is operating a motor vehicle for compensation, wages or hire.

1. No person shall operate a motor vehicle as a chauffeur upon any public highway unless he shall have complied in all respects with the requirements of the law regulating the licensing of chauffeurs and shall have at all times in his possession his certificate or license and wear the badge issued to him by the State Highway Department prominently displayed on his clothing while on duty.

2. No person shall use a fictitious name in applying for a license as a chauffeur.

3. No licensed chauffeur shall use or possess any fictitious badge, nor permit any other person to use or possess his license or badge, nor while operating a motor vehicle shall use or possess any license or badge belonging to another.

4. No owner of a motor vehicle shall permit said vehicle to be driven by a chauffeur upon a public highway unless the requirements of the law applicable to chauffeurs have in all respects been complied with.

Whoever violates any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 482–3, Acts 3rd C. S. 1917, p. 70.]

Art. 814. Suspension of license.—In addition to the punishment provided in this chapter, the court may for a period not to exceed thirty days suspend an operator or chauffeur's license upon conviction of the licensee for violation of any provision of this chapter. [Acts 1917, p. 482.]

Art. 815. Penalty for subsequent offense.—Where the penalty for violating any article of this chapter is a fine not exceeding one hundred dollars, then for a second or subsequent violation of a provision of the same article the fine shall be not less than ten nor more than two hundred dollars. [Acts 3rd C. S. 1917, p. 70.]

Art. 816. Width of tires.—No person shall sell or offer for sale any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons engaged in the sale of road vehicles, either at wholesale or retail, but not to individuals, selling or offering for sale road vehicles purchased for their individual use. Whoever violates the terms of this article shall be fined not less than one hundred nor more than one thousand dollars. Each sale or offer of sale is a separate offense. [Acts 1917, p. 139, Acts 1919, p. 284, Acts 3rd C. S. 1920, p. 61.]

Art. 817. Protuberance on tires.—No person shall operate or run on any public highway any vehicle which has on its periphery any block, log,[1] stud, cleat, ridge, bead or any other protuberance of metal that shall project more than one-fourth of an inch beyond the tread or traction surface of the tire, unless the said wheels are protected by bands, wooden blocks, skids or some sufficient device to protect the highway against injury by reason thereof. Nothing herein shall prevent the use of traction engines with cleats on the driving wheels thereof on dirt or unimproved roads, or the use of vehicles actually engaged at the time in construction or repair work on roads. Whoever violates any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 477; Acts 3rd C. S. 1920, p. 70.]

[1] So in enrolled bill. Should probably read "lug".

Arts. 818–820. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Article 818 was also repealed by Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42, § 18.

Art. 821. Inscription on State vehicle.—There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas the word "Texas," followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a public highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00). [Acts 1921, p. 122; Acts 1931, 42nd Leg., p. 373, ch. 219, § 1.]

Art. 822. Mirror.—Whoever shall operate or permit to be operated upon a public highway, a commercial motor vehicle which is not equipped with a mirror placed and maintained so that the operator shall at all times be able to see other vehicles approaching from the rear, shall be fined not to exceed two hundred dollars. [Acts 1st C. S. 1921, p. 169; Acts 1923, p. 159.]

Arts. 823, 824. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42, § 18.]

Art. 825. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 172, ch. 88, § 16.]

Art. 826. Tire equipment of trailer or tractor.—Whoever shall operate or permit to be operated upon a public highway a motor vehicle, trailer, semi-trailer or tractor equipped with solid rubber tires less than one inch in thickness at any point from the surface to the rim, or if equipped with pneumatic tires when one or more of such tires has been removed, shall be fined not exceeding two hundred dollars. [Acts 1923, p. 155.]

Art. 827. [1570—1—2—3—4—5] Street railways.—All persons or corporations owning or operating street railways or motor buses in or upon the public streets of any city of not less than twenty thousand inhabitants are required.

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half the regular fare collected for the transportation of adults, to students in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within, or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that such student is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such schools are in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport, free of charge, children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this Article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare.

Any such person or any officer or employee of any such corporation or other person who knowingly violates any provision of this Article, or any person who misrepresents the age or the grade of any person for the purpose of securing the reduced fare herein provided for, shall be fined not less than Twenty-five nor more than One Hundred Dollars. [Acts 1903, p. 132; Acts 1931, 42nd Leg., p. 828, ch. 343, § 1.]

Art. 827a. Regulating operation of vehicles on highways.

Definitions

Section 1. 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, as follows:

"Vehicle." Every mechanical device, in, upon or by which any person or property is or may be transported or drawn upon a public highway, including motor vehicles, commercial motor vehicles, truck-tractors, trailers, and semi-trailers, severally, as hereinafter defined, but excepting devices moved by human power or used exclusively upon stationary rails or tracks.

"Motor Vehicle." Every vehicle, as herein defined, which is self-propelled.

"Commercial Motor Vehicle." Any motor vehicle other than a motorcycle, designed or used for the transportation of property, including every vehicle used for delivery purposes.

"Truck-tractors." Every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Trailer." Every vehicle without motive power designed or used for carrying property or passengers wholly on its own structure and to be drawn by a motor vehicle.

"Semi-trailer." Every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle.

"Department." The State Highway Department of this State acting directly or through its duly authorized officers and agents. [As amended by Acts 1931, 42nd Leg., p. 507, ch. 282, § 1.]

Weights and loads of vehicles; special permits

Sec. 2. It shall be unlawful and constitute a misdemeanor for any person to drive, operate or move, or for the owner to cause or permit to be driven, operated, or moved on any highway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this Act or any vehicle or vehicles which are not constructed or equipped as required in this Act, or to transport thereon any load or loads exceeding the dimensions or weight prescribed in this Act; provided the department, acting directly or through its agent or agents designated in each county shall have and is hereby granted authority to grant permits limited to periods of ninety (90) days or less for the transportation over State highways of such overweight or oversize or overlength commodities as cannot be reasonably dismantled or for the operation over State highways of super-heavy and oversize equipment for the transportation of such oversize or overweight or overlength commodities as cannot be reasonably dismantled; provided, that any haul or hauls made under such permits shall be made by the shortest practicable route; provided further, that the department shall designate the county judges of the respective counties in addition to its other designated agents, who acting under the direction of the department shall have and are hereby granted authority to issue such permits over State highways; and provided further, that the Commissioners' Courts through the county judges of the several counties of the State shall have and are hereby granted authority to grant such permits over the highways of their respective counties other than State highways, and the said county judges shall have and are hereby granted said authority independently of the said Commissioners' Courts until such time as the said courts shall have acted with respect thereto. Said Commissioners' Courts, in their discretion, may require a bond to be executed by an applicant in such amount as will guarantee the payment of any damages which any road or bridge traversed or crossed may sustain in consequence of the transportation aforesaid. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 2.]

Width, length and height

Sec. 3. (a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, and except further, that the limitations as to size of vehicle stated in this section shall not apply to implements of husbandry, including machinery used solely for the purpose of drilling water wells, and highway building and maintenance machinery temporarily propelled or moved upon the public highways.

(b) No vehicle unladen or with load shall exceed a height of thirteen feet six inches (13′ 6″) including load; provided, however, it shall be unlawful to operate or attempt to operate any vehicle over or on any bridge or through any underpass or similar structure unless the height of such vehicle, including load, is less than the vertical clearance of such structure as shown by the records of the Department. In every case or proceeding, civil and criminal, in which a violation of this Act may be an issue, a certificate signed by the State Highway Engineer as to such vertical clearance shall be admissible in evidence for all purposes. [As amended Acts 1947, 50th Leg., p. 138, ch. 81, § 1.]

(c) No motor vehicle, commercial motor vehicle, truck-tractor, trailer, or semi-trailer shall exceed a length of thirty-five (35) feet, and no combination of such vehicles coupled together shall exceed a total length of forty-five (45) feet, unless such vehicle or combination of vehicles is operated exclusively within the limits of an incorporated city or town.

(d) No train or combination of vehicles or vehicle operated alone shall carry any load extending more than three (3) feet beyond the front thereof, nor, except as hereinbefore provided, more than four (4) feet beyond the rear thereof.

(e) No passenger vehicle shall carry any load extending more than three (3) inches beyond the line of the fenders on the left side of such vehicle, nor extending more than six (6) inches beyond the line of the fenders on the right side thereof; provided, that the total over-all width of such passenger vehicle shall in no event exceed ninety-six (96) inches, including any and all such load.

(f) Immediately upon the taking effect of this Act, it shall thereafter be unlawful for any person to operate or move, or for any owner to cause to be operated or moved, any motor vehicle or combination thereof over the highways of this State which shall have as a load or as a part of the load thereon any product, commodity, goods, wares or merchandise which is contained, boxed or bound in any container, box or binding containing more than thirty (30) cubic feet and weighing more than five hundred (500) pounds where there are more than fourteen (14) of such containers, boxes or bindings being

carried as a load on any such vehicle or combination thereof; provided, that no number of any such containers, boxes or bindings shall be carried as the whole or part of any load exceeding seven thousand (7000) pounds on any such vehicle or combination thereof; and provided, that if this subsection is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this Act, and 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 this section be declared unconstitutional; providing, further, that if this Act or any section, subsection, sentence, clause or phrase thereof is held to be unconstitutional and invalid by reason of the inclusion of this section, the Legislature hereby declares that it would have passed this Act and any such section, subsection, sentence, clause or phrase thereof without this section. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 3.]

Lights or flags on extended loads

Sec. 4. Wherever the load or drawbar or coupling on any vehicle shall extend beyond the rear or the bed or body thereof, there shall be displayed at the end of such load or extension, in such position as to be clearly visible at all times from the rear of such load or extension, a red flag not less than twelve (12) inches both in length and width, except that between one-half hour [1] after sunset and one-half hour before sunrise there shall be displayed at the end of any such load or extensions a red light, plainly visible under normal atmospheric conditions at least five hundred (500) feet from the rear of such vehicle. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 4.]

[1] So in enrolled bill. Session Laws omit word "hour".

Weight of load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semi-trailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, the total gross weight of which exceeds that given by the following formula:

W equals C times (L plus 40), where

W equals total gross weight, including load and vehicle, in pounds;

C equals 700;

L equals the distance between the first and last axles of a vehicle or combination of vehicles, in feet.

Under the foregoing formula, the gross weight is ascertained by adding forty (40) to the distance in feet between the first and last axles of a vehicle or combination of vehicles and multiplying this sum by seven hundred (700). Provided, however, the gross weight shall never exceed forty-eight thousand (48,000) pounds.

Provided, however, the gross weight permitted by the foregoing formula shall be subject to the following restrictions and limitations:

No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and nine thousand (9,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and eighteen thousand (18,000) pounds on low-pressure tires. An axle load shall be defined as the total load on all wheels whose centers may be included between two parallel transverse vertical planes forty (40) inches apart. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 5; Acts 1941, 47th Leg., p. 86, ch. 71, § 1, Acts 1945, 49th Leg., p. 218, ch. 162, § 1.]

Section 2 of the Act of 1945 repealed all conflicting laws and parts of laws.

Section 3 of Acts 1941, 47th Leg., p. 86, ch. 71, read as follows:

"Nothing in this Act shall be construed as authorizing an increase in the size or dimensions of commercial motor vehicles as provided in the present law."

Section 7 of the Act of 1941 provided that partial invalidity should not affect the remaining portions.

Sections 8 and 9 of the Act of 1941 read:

"Sec. 8. Providing that the enactment of this Act will in no way repeal or affect the provisions of House Bill No. 690, Chapter 349, page 832, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature.

"Sec. 9. Nothing in this Act shall in any way alter, amend, repeal or modify any part of Chapter 41, Acts Second Called Session, Forty-first Legislature [Rev.Civ. St. art. 6701a]."

Applicant for registration to show weight and maximum load; license receipt; penalty for violation

Sec. 5a. Upon application for registration of any commercial motor vehicle, truck tractor, trailer or semi-trailer, the applicant shall deliver to the Tax Collector, or one of his duly authorized deputies, an affidavit, duly sworn to before an officer authorized to administer oaths, showing the weight of said vehicle, the maximum load to be transported thereon, and the total gross weight for which said vehicle is to be registered; which affidavit shall be kept on file by the Collector. The license receipt issued to the applicant shall also show said total gross weight for which said vehicle is registered. A copy of said receipt shall be carried at all times on any such vehicle while same is upon the public highway.

The copy of the registration license receipt above required shall be admissible in evidence in any cause in which the gross registered weight of such vehicle is an issue, and shall be prima facie evidence of the gross weight for which such vehicle is registered. Such copy of the registration license receipt shall be displayed to any officer authorized to enforce this Act, upon request by such officer.

The driver, owner, operator, or other person operating or driving such vehicle, failing to comply with this provision of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred ($200.00) Dollars. [Added Acts 1931, 42nd Leg., p. 507, ch. 282, § 6; amended Acts 1941, 47th Leg., p. 144, ch. 110, § 12.]

Acts 1941, 47th Leg., p. 144, ch. 110, § 12, purported to amend "Section 5a, chapter 282, Acts 1931, 42nd Legislature, Regular Session," to read as set out in the text above, whereas it was evidently the legislative intent to amend section 6 of Acts 1931, 42nd Leg., p. 507, ch. 282, which added section 5(a) to Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42.

Exceptions as to limitations of length and weight

Sec. 5b. Repealed by Acts 1941, 47th Leg., p. 86, ch. 71, § 2.

The section repealed was added by Acts 1931, 42nd Leg., p. 507, ch. 282, § 7.

Weighing loaded vehicles by inspectors

Sec. 6. Any license and weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy having reason to believe that the gross weight of a loaded vehicle is unlawful is authorized to weigh the same by means of portable or stationary scales furnished or established by the Department of Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales in the direction of destination, for the purpose of weighing. In the event the gross weight of any such vehicle be found to exceed the maximum gross weight authorized by law, such license and weight inspector, highway

patrolman, sheriff, or his duly authorized deputy shall demand and require the operator or owner thereof to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum gross weight authorized by law. Provided, however, that if such load consists of livestock, perishable merchandise, or merchandise that may be damaged or destroyed by the weather, then such operator shall be permitted to proceed to the nearest practical unloading point in the direction of destination before discharging said excess cargo. The officers named herein are the only officers authorized to enforce the provisions of this Act. [As amended Acts 1941, 47th Leg., p. 86, ch. 71, § 4.]

Limitation as to trailers

Sec. 7. (a) No motor vehicle shall be driven upon any highway outside of the limits of an incorporated city or town drawing or having attached thereto more than one trailer.

(b) The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, shall not exceed twenty (20) feet in length from one vehicle to the other. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 8.]

Rate and speed of vehicle

Sec. 8. It shall be unlawful for any person to operate or drive any motor or other vehicle upon the public highways of Texas at a rate of speed in excess of sixty (60) miles an hour during the daytime, or to drive or operate a motor or other vehicle at a rate of speed in excess of fifty-five (55) miles per hour during the nighttime, or drive or operate a motor or other vehicle within the corporate limits of an incorporated city or town, or within or through any town or village not incorporated, at a greater rate of speed than thirty (30) miles per hour; provided, that it shall be unlawful to drive or operate upon said public highways a commercial motor vehicle, truck-tractor, trailer, or semitrailer as defined in this Act, at a rate of speed in excess of forty-five (45) miles per hour during the daytime, or to drive or operate said commercial motor vehicle, truck-tractor, trailer, or semitrailer at a rate of speed in excess of forty-five (45) miles per hour during the nighttime. Provided further, that it shall be unlawful to operate any motor vehicle engaged in this State in the business of transporting passengers for compensation or hire on any highway, road, or thoroughfare not privately owned between cities, towns, and villages at a rate of speed in excess of fifty-five (55) miles per hour.

Daytime as used in this Act shall mean a half hour before sunrise to a half hour after sunset, and nighttime shall mean at any other hour.

Provided further that no person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing, having regard to the actual and potential hazards when approaching and crossing an intersection or a railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions; and speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

The State Highway Commission shall have the power and authority upon the basis of an engineering and traffic investigation to determine and fix the maximum, reasonable and prudent speed at any road or highway intersections, railway grade crossings, curves, hills, or upon any other part of a highway, less than the maximum hereinbefore fixed by this Act, taking into consideration the width and condition of the pavement and other circumstances on such portion of said highway as well as the usual traffic thereon. That whenever the State Highway Commission shall determine and fix the rate of speed at any said point upon any highway at a less rate of speed than the maximum hereinbefore set forth in this Act and shall declare the maximum, reasonable and prudent speed limit thereat by proper order of the Commission entered on its minutes, such rate of speed shall become effective and operative at said point on said highways when appropriate signs giving notice thereof are erected under the order of the Commission at such intersection or portion of the highway.

That whenever the governing bodies of incorporated cities and towns in this State within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the maximum reasonable and prudent speed at any intersection or other portion of the highway, based upon the intersections, railway grade crossings, curves, hills, width and condition of pavement and other conditions on such highway, and the usual traffic thereon, is greater or less than the speed limits hereinabove set forth, said governing bodies shall have the power and authority to determine and declare the maximum reasonable and prudent speed limit thereat, which shall be effective at such intersection or other place.

It shall be unlawful for any person to so operate or drive any motor or other vehicle upon the public highways or streets of this State so as to wilfully obstruct or impede the normal, reasonable and safe movement of traffic. Police officers are hereby authorized to enforce the foregoing provision by directions to drivers, and a wilful disobedience to this provision shall be in violation of law punishable as provided in this Act.

Every charge of a violation of any speed regulation provided for in this Act, also the summons or notice to appear in answer to such charge, shall specify the rate of speed at which the person so charged is alleged to have driven, also the speed limit applicable within the district or at the location shall be set out.

The provisions of this Act declaring speed limits shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of any accident. [As amended, Acts 1931, 42nd Leg., p, 507, ch. 282, § 9; Acts 1941, 47th Leg., p. 817, ch. 506, § 1.]

This article was also amended by Acts 1941, 47th Leg., p. 115, ch. 90, § 1, which amendment was repealed by section 4 of the amendatory Act of 1941, p. 817, ch. 506.

Section 2 of the amendatory Act of 1941 read as follows: "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."

Section 3 repealed all conflicting laws.

Equipment with lights, brakes, etc.

Sec. 9. Every motor vehicle, other than any road roller, road machinery or farm tractor, having a width at any part in excess of seventy (70) inches shall carry two clearance lamps on the left side of such vehicle, one located at the front and displaying a white light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of the vehicle, and the other located at the rear of the vehicle and displaying a red or yellow light visible under like conditions from a distance of five hundred (500) feet to the rear of the vehicle, both of which lights shall be kept lighted while any such vehicle is upon the highway from one-half hour after sunset to one-half hour before sunrise. A motor vehicle requiring clearance lights hereunder may, in lieu of such clearance lights, be

equipped with adequate reflectors conforming as to color and marginal location to the requirements for clearance lights. No such reflector shall be deemed adequate unless it is so designed, located as to height and maintained as to be visible for at least two hundred (200) feet when opposed by the light of a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Reflectors herein referred to must be approved by the Department as to specifications before they can be lawfully used on a vehicle, and it shall be unlawful and constitute a misdemeanor to use a reflector on a motor vehicle unless it has been approved by the Department, and such approval by the Department shall be firmly affixed to such reflector.

All vehicles not heretofore by law required to be equipped with specified lighted lamps shall carry one or more lighted lamps or lanterns displaying a white light visible under normal atmospheric conditions from a distance of not less than five hundred (500) feet to the front of such vehicle and displaying a red or yellow light visible under like conditions from a distance of not less than five hundred (500) feet to the rear of such vehicle, which light shall be kept lighted while the vehicle is upon a highway from one-half hour after sunset to one-half hour before sunrise. Provided, however, that vehicles drawn by animal power may in lieu of such lamps or lanterns be equipped with adequate reflectors.

Every owner, driver or operator of a vehicle while it is upon the main traveled portion of the highway during the period from one-half hour after sunset to one-half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person upon the highway from a distance of at least two hundred (200) feet ahead, shall keep lighted all lamps or lighting devices with which such vehicle is required to be equipped, whether the vehicle is in motion or not.

It shall be unlawful for any person to operate or move any vehicle upon a highway with a red light thereon visible directly from the front thereof, except, that this provision shall not apply to law enforcement officers, fire departments, and ambulances.

Every motor vehicle other than a motorcycle when operated upon the highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels. Any motor vehicle or combination of motor vehicles, trailer, or semi-trailer or other vehicle, shall be equipped with brakes upon one or more of such vehicles adequate to stop such combination of vehicles in dry weather upon a reasonably level surface within a distance of forty-five (45) feet from the spot where such brakes are first applied when such vehicle or combination of vehicles are traveling at a rate of speed of twenty (20) miles per hour.

Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sounds audible under normal conditions for a distance of not less than two hundred (200) feet, and it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any bell, siren, compression or exhaust whistle or for any person at any time to use a horn otherwise than as a reasonable warning or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device, except that vehicles operated in the performance of duty by law enforcement officers, fire departments and ambulances may attach and use a bell, siren, compression or exhaust whistle.

Every motor vehicle engaged in the transportation of passengers for hire or lease shall be equipped with at least one quart of chemical type fire extinguisher in good condition and conveniently located for immediate use.

Except as otherwise provided herein, it shall be unlawful for any person to operate or permit to be operated any commercial motor vehicle for hire or lease upon the highways of this State without first having obtained a chauffeur's license as provided in Article 6687 of the Revised Civil Statutes of Texas, 1925; and provided further, however, the driver or operator of such vehicle who has secured a driver's license under the provisions of any other statute of this State, shall not be required to secure the chauffeur's license under Article 6687 of the Revised Civil Statutes of Texas, 1925. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 10; Acts 1933, 43rd Leg., p. 45, ch. 20.]

Warning signals by commercial vehicles and wreckers

Sec. 9-a. Whenever any commercial motor vehicle, truck, tractor, trailer or semi-trailer, or motor bus, or any vehicle equipped with a crane or lifting device ordinarily referred to as a "wrecker" shall during the period from one-half hour after sunset to one-half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred (200) feet, be stopped upon the main traveled portion of any highway in this State for as long as fifteen minutes, the driver or operator thereof shall place a warning signal upon the highway on the roadway side of such vehicle, at a distance not less than one hundred and fifty (150) feet, nor more than two hundred (200) feet, from such parked vehicle near the edge of the roadway, in every direction from which a vehicle may approach; such warning signal to be with a lighted flare or electrical device, capable of operation, under all weather conditions, for not less than twelve (12) continuous hours, or a red reflex reflector, of a type approved by the Department of Public Safety of the State of Texas, and said flare, electrical device or reflector shall be placed in such a way as to be plainly observed as a signal by the driver of any approaching vehicle for a distance of five hundred (500) feet.

No person shall operate, or permit, or cause to be operated upon any public highway, road or street within this State any commercial motor vehicle, truck, tractor, trailer or semi-trailer, or motor bus, or any vehicle equipped with a crane or lifting device ordinarily referred to as a "wrecker" without three (3) or more signal flares or electrical warning devices capable of operation, under all weather conditions, for not less than twelve (12) continuous hours, or three (3) or more red reflex reflectors, of a type approved by the Department of Public Safety of the State of Texas, capable of plain observation for a distance of not less than five hundred (500) feet. [Added Acts 1935, 44th Leg., p. 757, ch. 328, § 1, amended Acts 1945, 49th Leg., p. 394, ch. 256, § 1.]

Section 1 of the amendatory act of 1945 purported to amend section 9 of the act of 1929, as amended, by adding a new section to be known as section 9a, but seems to have been intended as an amendment of section 9a, as previously added.

Penalty

Sec. 9-b. Any person violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding Fifty Dollars ($50) for the first offense, and by a fine not exceeding Two Hundred Dollars ($200) for the second offense, or not exceeding Five Hundred Dollars ($500), or imprisonment in the county jail, not to exceed sixty (60) days, or by both such fine

and imprisonment in the discretion of the Court for each subsequent offense thereafter. [Acts 1935, 44th Leg., p. 757, ch. 328, § 2; Acts 1945, 49th Leg., p. 394, ch. 256, § 2.]

Both of the acts cited to the text contained the same provision.

Penalty

Sec. 9-c. (a) Any person, corporation, receiver or association who violates any provision of Section 5 [1] of this Act (the Section fixing the gross weight of commercial motor vehicles) shall, upon conviction, be punished by a fine of not less than Twenty-five Dollars ($25), nor more than Two Hundred Dollars ($200); for a second conviction within one year thereafter such person, corporation, receiver, or association shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200) or imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the second conviction such person, corporation, receiver or association 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 more than six (6) months, or by both such fine and imprisonment. It shall be the duty of the judge of the court to report forthwith to the Department of Public Safety any convictions obtained in his court under this Section and it shall be the duty of the Department of Public Safety to keep a record thereof.

(b) If any corporation is convicted for the violation of any provision of this Act and fails to pay the fine assessed, the district or county attorney in the county in which such conviction was had is hereby authorized to file suit in a court of competent jurisdiction against such corporation to collect such fine. [Added Acts 1941, 47th Leg., p. 86, ch. 71, § 5.]

[1] Article 827a, § 5.

Parked or standing vehicles

Sec. 10. No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or improved or main traveled portion of any highway, outside of any incorporated town or city, when it is possible to park or leave such vehicle standing off of the paved or improved or main traveled portion of such highway; provided, in no event shall any person park or leave standing any vehicle, whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than fifteen feet upon the main traveled portion of said highway opposite such standing vehicle shall be left for free passage of other vehicles thereon, nor unless a clear view of such vehicle may be obtained from a distance of 200 feet in each direction upon such highway.

Whenever any peace officer or license and weight inspector of the Department shall find a vehicle standing upon a highway in violation of the provisions of this section, he is hereby authorized to move such vehicle or require the driver or person in charge of such vehicle to move such vehicle to a position permitted under this section.

Marking highways

Sec. 11. The Department is hereby authorized to classify, designate and mark both intrastate and interstate State Highways lying within the boundaries of this State and to provide a uniform system of marking and signing such highways under the jurisdiction of this State, and such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states.

Designation of main highways

Sec. 12. The Department, with reference to State Highways under its jurisdiction, is hereby authorized to designate main traveled or through highways by erecting at the entrances thereto signs notifying drivers of vehicles to come to a full stop before entering or crossing any such highway; and whenever any such sign has been so erected, it shall be unlawful for the driver or operator of any vehicle to fail to stop in obedience thereto.

Unauthorized markers or lights

Sec. 13. No unauthorized person shall erect or maintain upon any State Highway any warning or direction sign, marker, signal or light, and no person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising, provided nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the Department.

Penalty for removal of signs

Sec. 14. Any person who shall deface, injure, knock down or remove any sign, posted as provided in this Act shall be guilty of a misdemeanor.

Penalty for violations of act

Sec. 15. (a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this Act.

(b) Any person, corporation or receiver, who violates any provision of this Act shall, upon conviction, be punished by a fine of not more than Two Hundred Dollars ($200.00); for a second conviction within one (1) year thereafter such person, corporation or receiver, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the second conviction such person, corporation or receiver shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment. Provisions hereof with respect to imprisonment shall not be applicable to corporations, but double the fines herein provided for may be imposed against them in lieu of imprisonment. [As amended Acts 1931, 42nd Leg., p. 507, ch. 282, § 11.]

State Highway Patrolmen

Sec. 16. To insure the adequate enforcement of this Act and all other laws relating to vehicles and their use on the public highways, the State Highway Department is hereby authorized to and shall employ one hundred twenty (120) State Highway Patrolmen, in which shall be included all License and Weight Inspectors now authorized by Law, who shall be charged with the duty of strictly enforcing said Laws. Included in said number shall be one (1) Chief, five (5) Captains, five (5) Lieutenants, five (5) Sergeants, and one hundred four (104) Privates. There shall also be employed one (1) Secretary, two (2) Stenographers, two (2) Typists, and four (4) File Clerks. All salaries shall be fixed by the Legislature and paid in twelve (12) equal monthly installments, and sufficient funds are hereby appropriated out of, and the Highway Commission is hereby authorized to use sufficient money out of the State Highway Fund to pay for equipment, and all reasonable and necessary expenses for the proper functioning of said State Highway Patrol, including the establishment and maintenance of a Training School for State Highway Patrolmen. It is further provided, that before a State Highway Patrolman is permanently appointed, he shall take a course consisting of at least seven weeks' training in this school. Said patrolmen when appointed shall be given a Commission signed by the Chairman and one other member of the State Highway Commission and attested

by the Chief of the Department, and anywhere in this State they shall be charged primarily with the duty of enforcing all the State Laws relating to vehicles and traffic on the public highways; and they are also vested with all the rights and powers of peace officers, to pursue and arrest any person for any offense when said person is found on the highway. All such persons appointed to the office of Highway Patrol in this State shall before entering upon the duties of such office take and subscribe to the oath as prescribed in the Constitution of this State and shall make and execute a good and sufficient bond in the sum of One Thousand ($1,000.00) Dollars, payable to the Governor of this State and his successors in Office, with two or more good and sufficient sureties, conditioned that he will fairly and faithfully perform all the duties as may be required of him by law and that he will fairly and impartially enforce the law of this State and that he will pay over any and all moneys or turn over any and all property to the proper person legally entitled to same that may come into his possession by virtue of such Office. Said bond shall not be void for the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor for any person or persons to impersonate a State Highway Patrolman or to use any badge or operate any vehicle with the words "State Highway Patrol," "State Highway Police" or any other wording on such badge or vehicle that would cause anyone to believe that such person or persons were State Highway Patrolmen, except officers duly appointed by the State Highway Department. [As amended Acts 1931, 42nd Leg., p. 278, ch. 164, § 1.]

Law enforcement division of Highway Department

Sec. 16a. The State Highway Patrol, License and Weight Inspectors, Headlight Division and any other Law Enforcement Agencies now in existence or hereafter created in connection with the Highway Department shall be known as the Law Enforcement Division of the Highway Department. This Division shall be under the Chief of the Highway Patrol as the Executive Head who shall work directly under and be responsible to The Highway Commission only. [As added Acts 1931, 42nd Leg., p. 278, ch. 164, § 1.]

Employes oath against political activity

Sec. 16a-1. Each and every employee regardless of designation of name as mentioned in this Act shall be required to take a special oath, swearing that so long as he is connected with the Highway Department he will not take any part in promoting the candidacy of any candidate for public office, by contributing his time, influence or contribute any money or valuable thing, but nothing shall be construed as denying any citizen the right to cast his individual vote for candidates for public office. [As added Acts 1931, 42nd Leg., p. 278, ch. 164, § 1.]

Discharge from employment for violations

Sec. 16a-2. Any person guilty of violating the provisions of Section 16a-1 shall be discharged from employment by the State and shall not be eligible to hold office under this Act for a period of five years. [As added Acts 1931, 42nd Leg., p. 278, ch. 164, § 1.]

Night duties of Highway Patrol

Sec. 16a-3. A reasonable number of the Highway Patrol shall be assigned at least in part to night duty. [Acts 1929, 41st Leg., 2nd C.S., p. 72, ch. 42; Acts 1931, 42nd Leg., p. 278, ch. 164, § 1.]

Acts 1931, 42nd Leg., p. 278, ch. 164, § 1, amended section 16 of this Article and added sections 16a, 16a—1 to 16a—3.
Acts 1931, 42nd Leg., p. 507, ch. 282, amended sections 1-5, 7-9, and 15 and added sections 5(a) and 5(b).
Acts 1933, 43rd Leg., p. 45, ch. 20, amended section 9.
Acts 1935, 44th Leg., p. 757, ch. 328, added section 9—a.
Section 9—b is from Acts 1935, 44th Leg., p. 757, ch. 328.
Section 12 of Acts 1931, 42nd Leg., p. 507, ch. 282, provides that it shall not restrict or limit the powers of cities and towns as to streets and other public places, provided that no city or town shall pass any ordinance establishing any limit or requirement less than is provided by the act. Section 13 provides that, if any section is held invalid, such decision shall not affect the remainder. Section 14 repeals all conflicting laws and parts of laws.
Section 3 repealed conflicting laws.
Provisions of subd. (f) of section 3, limiting weight of vehicle loads containing any packages of more than stated size and weight, as well as number of such packages per load held unconstitutional as discriminating against parties transporting uncompressed cotton and similar commodities. Sproles v. Binford, D.C., 52 F.2d 730.
Section 3 repealed conflicting laws.
Provisions of subd. (f) of section 3, limiting weight of vehicle loads containing any packages of more than stated size and weight, as well as number of such packages per load held unconstitutional as discriminating against parties transporting uncompressed cotton and similar commodities. Sproles v. Binford, D.C., 52 F.2d 730.

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.]

Art. 827b. Temporary registration for out of state visitors.

Definitions

Section 1. 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 as follows:

"Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

"Motor Vehicle" means every vehicle as herein defined which is self-propelled.

"Passenger Car" means any motor vehicle other than a motor-cycle or a bus as defined in this Act designed or used primarily for the transportation of persons.

"Commercial Motor Vehicle" means any motor vehicle other than a motorcycle designed or used for the transportation of property including every vehicle used for delivery purposes.

"Trailer" means every vehicle without motive power designed or used for carrying property or passengers wholly on its own structure and to be drawn by a motor vehicle.

"Semitrailer" means every vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by a motor vehicle.

"Owner" means any person who holds a legal title to a vehicle or who has the legal right of possession thereof or the legal right of control of said vehicle.

"Occasional trip" means not to exceed five (5) trips into this State during any calendar month nor to exceed five (5) days on any one (1) trip.

"Nonresident" means every resident of a State or Country other than the State of Texas whose sojourn in this State is as a visitor and does not engage in gainful employment or enter into business or an occupation, except as may be otherwise provided in any reciprocal agreement with any other State or Country.

"Department" means the State Highway Department of this State, acting directly or through its duly authorized officers and agents.

Nonresidents; operation of motor vehicle without registration

Sec. 2. A nonresident owner of a motor vehicle, trailer, or semi-trailer which has been duly registered for the current year in the State or Country of which the owner is a resident and in accordance with the laws thereof, may be allowed to operate said vehicles for the transportation of persons or property for compensation or hire without being registered in this State, provided the owner thereof does not exceed two (2) trips during any calendar month and remains on each of said trips within the State not to exceed four (4) days. Provided, that nothing in this Act shall prevent a nonresident owner of a motor vehicle from operating at will such vehicle in this State for the sole purpose of marketing farm products raised exclusively by him, nor a resident of an adjoining State or Country from operating at will a privately owned and duly registered vehicle not operated for hire in this State for the purpose of going to and from his place of regular employment and the making of trips for the purpose of purchasing goods, wares, and merchandise. And provided, further, that any nonresident owner of a privately owned vehicle may be permitted to make an occasional trip into this State with such vehicle under this Act without being registered in this State. It is also provided that a nonresident owner of a privately owned passenger car not operated for compensation or hire may be allowed to operate said passenger car if duly registered in his resident State or Country for the length of time the license plates are valid, provided the owner is a visitor in this State and does not engage in gainful employment or enter into any kind of business or occupation. It is expressly provided, that the foregoing privileges may only be allowed in the event that under the laws of such other State or Country like exceptions are granted to vehicles registered under the laws of and owned by residents of this State. Provided further, that nothing in this Act shall affect the rights or status of any vehicle owner under any Reciprocal Agreement between this State and any other State or Foreign Country.

Motor vehicles operated or transported through state for sale in another state; registration

Sec. 3. Any owner, operator, or lessee of any vehicle being driven under its own power, or towed or otherwise transported by being attached or coupled to some other vehicle from or through this State over the highways thereof, for the purpose of sale, resale, or trade in another State; or after having been sold, resold, or traded to any persons, company, corporation, or association in another State, shall register each such vehicle so operated through the County Tax Collector of the first county through which said motor vehicle passes after entering this State; or if moving from this State to another State, of the county from which said motor vehicle first moves, and a registration fee of Three Dollars ($3) for each such vehicle shall be paid to said Tax Collector unless such motor vehicle has been previously registered with the Department in lawful manner and license fees paid. The Tax Collector of the county where such registration is had shall furnish the operator of said motor vehicle with a receipt on a form prescribed by the Department and said operator shall retain said receipt in his possession and exhibit same to any member of the State Highway Patrol, or other peace officer, for inspection upon request. If said operator is unable to present said receipt to said member of the State Highway Patrol, or other peace officer, he and the motor vehicle which he is operating shall be detained by such member of the State Highway Patrol, or peace officer until proper registration is had and said receipt issued by the Tax Collector of some county through which said motor vehicle is being, or has been driven or towed, or otherwise transported by being attached or coupled to some other vehicle from or through this State over the highways thereof. Any person of any officer, agent or employee of any corporation, company, or association who violates any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than One Hundred Dollars ($100). [Acts 1930, 41st Leg., 5th C.S., p. 141, ch. 18; Acts 1931, 42nd Leg., p. 34, ch. 27; Acts 1933, 43rd Leg., 1st C.S., p. 158, ch. 56, § 1; Acts 1935, 44th Leg., p. 800, ch. 342, § 1; Acts 1947, 50th Leg., p. 749, ch. 370, § 1.]

Section 2 of the Act of 1935 repealed all conflicting laws.

Sections 2 of the Act of 1947 provided that partial invalidity should not affect the remaining portions of the Act.

Sec. 3 read: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict; provided, however, that nothing in this Act shall be construed to repeal or conflict with Article 6675a, Section 16 of the Revised Civil Statutes of Texas authorizing the Department to enter into reciprocity agreements with other States as therein provided."

Art. 827c. Regulating cotton trucks on highways.

Declaration of policy

Sec. 1. A serious traffic menace has been caused upon the public highways and public roads of this State because of the use of the highways and roads to truck a substantial part of the cotton crop, and because of the fact that most of the cotton crop of this State moves within a very short period of time. The moving of an even greater proportion of the annual cotton crop each year will increase the traffic menace upon the highways and roads of the State. The operation of cotton trucks upon the public highways and public roads of the State of Texas at the present time has resulted in an unusual and an appalling loss of life of travelers upon the public roads and public highways of the State, has resulted in unwarranted destruction of the public highways of this State, has resulted in unwarranted and dangerous traffic congestion, has created an unusual and unwarranted traffic menace upon the public highways and public roads of the State, has created an unreasonable and unwarranted fire hazard upon the public highways and public roads of the State, and has made difficult and almost impossible the establishing and maintaining of a coordinated use of the highways by the general traveling public. It is declared to be the public policy of this State not to permit any one kind or character of truck traffic to be conducted upon the public highways and public roads of the State in such a manner as unreasonably to interfere with and unreasonably to make dangerous the use of the highways by the general traveling public in a reasonable and safe manner, or unreasonably to destroy such highways, and in order to guard against the dangers above mentioned, this law is enacted.

Definition of vehicle

Sec. 2. For the purpose of this Act a "vehicle" is every mechanical device in, 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 upon stationary rails or tracks.

Limitation of load

Sec. 3. It shall hereafter be unlawful for any person, firm, corporation or association of persons to operate or cause to be operated over the public highways of this State any vehicle or combination of vehicles carrying, singly or collectively, a load of more than ten (10) bales of cotton unless all of the bales of cotton carried in or on any such load shall have been compressed to a density of twenty-two (22) pounds per cubic foot or greater.

Enclosing loads

Sec. 4. It shall hereafter be unlawful for any person, firm, corporation or association of persons to operate or cause to be operated any vehicle or combination of vehicles carrying singly or collectively a load of more than ten (10) square bales of compressed cotton or more than twenty (20) round bales of compressed cotton for a distance of greater than fifteen (15) miles over the public roads and public highways of this State unless said vehicle or combination of vehicles shall be equipped with a body or bodies constructed so as to completely enclose the load or loads carried thereon from the bottom, sides and ends, and unless all the floors, tops, sides and ends of such vehicle, or combination of vehicles, so enclosing such load or loads, shall be entirely constructed of wood, not less than one and one-half (1½) inches thick, or of iron, or of steel, or of a combination of such wood and/or iron, and/or steel, to protect the load or loads from being spilled upon the roads or highways.

Inapplicable to cities or towns

Sec. 5. The provisions of this Act shall not apply to the operation of vehicles or combination of vehicles within an incorporated city or town in this State.

Penalty

Sec. 6. Any person, association of persons or corporation violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) and each day such vehicle or combination of vehicles is operated contrary to the provisions of this Act shall constitute a separate offense. [Acts 1931, 42nd Leg., p. 207, ch. 121.]

Section 7 of this Act declares that, if any part is held invalid, such decision shall not affect the remainder.

Provision in section 3 of this article prohibiting operation of vehicles carrying over 10 bales of uncompressed cotton on public highways held invalid as being discriminatory. J. H. McLeaish & Co. v. Binford (U.S.D.C.) 52 F.(2d) 151, aff 52 S.Ct. 207, 284 U.S. 598, 76 L.Ed. 513.

Art. 827d. Regulating transportation of persons for hire; transportation agencies for obtaining co-travelers to share expenses; licenses.—Sec. 1. It shall be unlawful for any person, firm, corporation, company, partnership, association or joint stock association, or organization or association of persons, firms or corporations to engage in the business of transporting persons for hire or compensation over the public roads, highways and bridges of this State, whether as a common carrier, contract or charter carrier, or as a transportation agency, or as a travel bureau or as a broker for hire to obtain a co-traveler or co-travelers to share the expense of the trip proportionately or otherwise, as to distance covered or as to money expended or in any other manner, or to act as an intermediary in connection therewith or as a broker for hire, agent or otherwise, whereby the expense of a trip or trips is to be shared with a co-traveler or co-travelers, unless the person, operator, driver or chauffeur in charge of the motor vehicle to be used on or in connection with said trip shall first have obtained a chauffeur's, operator's or driver's license in accordance with the existing laws of the State of Texas, and unless the motor vehicle used in connection therewith is properly equipped with a license plate issued by the Railroad Commission of the State of Texas, under the laws of the State of Texas, and unless the owner of said vehicle has complied in all respects with the law of the State of Texas in connection with the transportation of passengers over the public roads, highways and bridges of this State.

Sec. 2. This Act shall not apply to the owner, lessee or operator of vehicles operated exclusively within the boundaries of any incorporated city or town, and within a radius of five (5) miles from such city or town; and shall also not apply to the owner, lessee or operator of any vehicle who is not engaged in the business of transporting persons for hire or compensation over the public roads, highways and bridges of this State.

Sec. 3. That it shall be the duty of any person, firm, corporation, company, partnership, association or joint stock association, or organization or association of persons, firms, or corporations before entering into any contract with the owner, lessee, driver, or chauffeur of any motor vehicle whereby the expenses of the trip or trips are to be shared by the co-traveler or co-travelers to first make an examination of the public records of the State of Texas in order to ascertain whether or not the owner, lessee, chauffeur or operator of the motor vehicle to be used in the transportation of persons for hire has properly complied with the laws of the State of Texas as to chauffeurs', drivers' or operators' licenses, and to ascertain whether or not such owner, chauffeur or operator has complied with the laws of the State of Texas regulating the operation of motor vehicles for hire.

Sec. 4. Should any person, firm, corporation, company, partnership, association or joint stock association, or organization or association of persons, firms or corporations violate any of the provisions of this Act, the same shall be a misdemeanor and shall be punishable by fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00) for each offense or by imprisonment for not less than thirty (30) days nor more than ninety (90) days, or both, at the discretion of the court. Each day of the violation of any of the provisions of this Act shall constitute a separate offense and may be punishable as such. [Acts 1933, 43rd Leg., 1st C.S., p. 316, ch. 114.]

Certain provisions of sections 1 and 3 of this article were held invalid as being unreasonable and indefinite, in Ex parte Martin (Cr.App.) 74 S.W.(2d) 1017, foll Talbott v. State (Cr.App.) 75 S.W.(2d) 1116.

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 am-

ber (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.]

CHAPTER 2.—PUBLIC ROADS AND IRRIGATION

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Article 828. [827] [486] [408] Refusal to serve as overseer.—If any person subject to public road duty under the laws of this State shall wilfully fail or refuse to serve as overseer of any road in his road district or precinct, when duly appointed as such overseer by the commissioners court, he shall be fined not less than ten nor more than fifty dollars. [Acts 1876, p. 67.]

Art. 829. [828] [487] [409] Failure of duty as overseer.—If any overseer of a public road shall wilfully fail, neglect or refuse to perform any duty imposed upon him by law, or shall so fail, neglect or refuse to keep the roads, bridges and causeways in his precinct or district clear of obstructions and in good order, or shall wilfully suffer such roads, bridges or causeways to remain uncleared and out of repair for twenty days at any one time, he shall be fined not less than ten nor more than twenty-five dollars. [Id.]

Art. 830. [829] [488] [410] Overseer to mark roads, etc.—If any overseer of a public road shall fail, within six months after his appointment as such, to measure the road or roads in his precinct or district and set up posts of lasting timber or stone at the end of each mile leading from the court house or some other noted place or town, and to mark on such posts in legible words and figures the distance in miles to such court house or other noted place, or shall fail, when any such post is destroyed or removed, to replace the same with another marked as the original; or shall fail to affix or set up, at the forks of all public roads, or conspicuously and permanently at the intersections of all first and second class public roads, in his precinct or district, index or sign boards with directions plainly marked thereon stating the most noted place to which each of said roads lead, he shall be fined five dollars. [Acts 1876, p. 67, Acts 2nd C. S. 1919, p. 57, Acts 1923, p. 59.]

Art. 831. [830] [489] Failure of duty as road commissioner.—Any road commissioner who shall wilfully fail to comply with any duty required of him shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1889, p. 135.]

Art. 832. [831] [290] Failure of duty as road superintendent.—Any road superintendent who shall wilfully fail or refuse to comply with any provisions of law or order of the commissioners court shall be fined not less than twenty-five nor more than two hundred dollars for each offense. [Sec. 21, p. 163, Acts 1891.]

Art. 833. Forbidding use of highway.—The County Commissioners of any precinct, or County Road Superintendent of any county, or road Supervisor whose road is affected, or the State Highway Commission, may have the authority by posting notices on the highways or roads under their respective control when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The notices provided for herein shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted highways or portions thereof; provided no road shall be closed until detours have been provided.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the County Judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the County Road Superintendent or Road Supervisor, or the State Highway Commission, and the judgment of the County Judge shall be final as to the issues raised. If upon such hearing the judgment sustains the order of the County Road Superintendent or road Supervisor and it appears that any violation of same has been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if the same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of any such order or notice of the County Road Superintendent or road Supervisor, or the State High-

way Commission, before or after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars. [Acts 1st C.S. 1921, p. 170; Acts 1923, p. 160; Acts 1929, 41st Leg., p. 660, ch. 294, § 1.]

Art. 834. Closing roads and bridges.—The Commissioners' Court of any county subject to this law acting upon their own motion, or through the Superintendent where one is employed, or the State Highway Commission, shall have the power and authority to regulate the tonnage of trucks and heavy vehicles which by reason of the construction of the vehicle or its weight and tonnage of the load shall tend to rapidly deteriorate or destroy the roads, bridges and culverts along the particular road or highway sought to be protected, and notices shall be posted and shall state the maximum load permitted and the time such use is prohibited, and shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the County Judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint, the County Judge shall forthwith set down for hearing the issue thus raised for a certain day, not more than three days later, and shall give notice in writing to such road official of the day and purpose of such hearing, and at such hearing the County Judge shall hear testimony offered by the parties respectively, and upon conclusion thereof shall render judgment sustaining, revoking or modifying such order theretofore made by the County Road Superintendent, and the judgment of the County Judge shall be final as to the issues so raised.

If upon such hearing the judgment sustains the order of the County Superintendent, or the State Highway Commission, and it appears that any violation of same had been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of such order of the County Road Superintendent or State Highway Commission, after it has been so approved by such judgment of the County Judge shall be fined not exceeding Two Hundred Dollars. [Acts 1st C.S. 1921, p. 133; Acts 1923, p. 355; Acts 1929, 41st Leg., p. 660, ch. 294, § 2.]

Art. 835. [832] [491] [411] Failure to work road.—If any person liable to work upon the public roads after being legally summoned shall fail or refuse to attend either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or having attended shall fail or refuse to perform good service or any other duty required of him by law or the person under whom he may work, or if any one fails to comply with any duty requested of him as provided by the statutes providing for a systematic method of road maintenance, he shall be fined not exceeding twenty-five dollars. [Acts 1876, p. 60, Acts 1901, p. 280, Acts 1st C. S. 1921, p. 138.]

Art. 835a. Failure to pay road tax.—If any person, liable for the payment of the road tax assessed against him under the provisions of this Act, shall fail or refuse to pay same when due he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum of not less than Five Dollars and not more than Twenty-five Dollars. [Acts 1929, 41st Leg., 3rd C.S., p. 234, ch. 4, § 4.]

Section 5 of this Act repeals all conflicting laws and parts of laws. Sections 1–3 are published as Rev.Civ.St. Art. 6770a.

Art. 836. [833] [493] [412] Neighborhood roads.—Whenever the commissioners court shall duly declare the boundary lines between the lands of different persons, or any section line, or any direct line through an inclosure containing 1280 acres or more of land, a public highway in accordance with law, if a person or owner shall fail, neglect or refuse for twelve months after legal notice thereof to leave open his land free from all obstructions for fifteen feet on his side of the line designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse. [Acts 1876, p. 69; Acts 1884, S. S., p. 22.]

Art. 837. [834] [494] [413] Leaving gates open on third class roads.—Any person placing a gate on or across any third-class road, or on or across any road such as is designated in article 836 shall be required to keep said gate and the approaches to the same in good order, and the gate shall be ten feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the same; and provide a fastening to hold said gate open until the passengers go through. Such person shall place a permanent hitching post and stile block on each side of and within sixty feet of such gate. Any person who may place a gate on or across a third-class road, or on or across any road such as is designated in article 836 who shall wilfully or negligently fail to comply with any requirement of this article shall be fined not less than five nor more than twenty dollars for each offense, and each week of such failure is a separate offense. Whoever wilfully or negligently leaves open any gate on or across any third-class road, or on or across any road such as is designated in article 836, shall be fined as above provided for. [Id.]

Art. 838. Unlawfully taking water.—Whoever shall wilfully take, divert, or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of the statutes regulating such use shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding six months or both. Each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense; and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of guilt. [Acts 1917, p. 219.]

Art. 839. Diverting stored water.—Any person, association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this law, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as provided by law for other water rates and charges. To convey and deliver storm, flood or rain water from the place or [1] storage to the place of use, as provided herein, it shall be lawful for any person, association of persons, corporation, water improvement or irrigation district to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the Board of Water Engineers, and such board shall prescribe rules and regulations for such purpose. No person, association of persons, corporation, water improvement or irrigation district who has not acquired the right to the use of such conserved or stored waters as provided in this article shall take, use or divert same. Any per-

son, or the agent, officer, employé or representative of any association of persons, corporation, water improvement or irrigation district who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in this article, shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding six months, or both. Each day that such taking, diversion or appropriation may be made shall be a separate offense. [Acts 1917, p. 224.]

[1] So in enrolled bill. Should probably read 'of".

Art. 840. Sale of permanent water rights.—Whoever sells or offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or for the uses and purposes purporting to be conveyed by such permanent water right, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not to exceed one year, or both. [Acts 1917, p. 225.]

Art. 841. Interfering with headgates, etc.—Whoever shall wilfully open, close, change or interfere with any headgate or water box without lawful authority, or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he was not entitled, shall be fined not less than ten and not more than one thousand dollars, or be imprisoned in jail not exceeding six months. The possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Acts 1917, p. 227.]

Art. 842. Unlawfully diverting water.—No person, association of persons, corporation, water improvement or irrigation district shall take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course or watershed in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted.

Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or watershed in this State into any other watershed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the board until after full hearing before said board as to the rights to be affected thereby.

Whoever shall take or divert any waters from one natural stream, water course or watershed into any other watershed contrary to the provisions of this article, shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail for any term not exceeding six months. Each day that such taking or diversion shall continue shall be a separate offense. [Acts 1917, p. 231.]

Art. 843. Water from nuisance.—Any person, directly, or as agent, who operates or attempts to operate any works, or who uses any water under contract with any canal or irrigation system that has been previously declared to be a public nuisance shall be fined not exceeding one thousand dollars or be confined in jail not to exceed one year, or both. [Acts 1917, p. 234.]

Art. 844. Wasting water.—Any person owning or acquiring any possessory rights to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system by contract, who wilfully permits the excessive or wasteful use of water by his agent, servant or employé, or who wilfully permits water to be wasted and not applied to a beneficial purpose, shall be fined not exceeding five hundred dollars or be imprisoned in jail not more than ninety days, or both. [Acts 1917, p. 233.]

Art. 845. "Artesian well."—An artesian well is an artificial water well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. [Acts 1917, p. 232.]

Art. 846. "Waste."—Waste in relation to artesian wells is defined to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek, or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands, or to run or percolate through the strata above that in which the water is found unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well. Nothing herein shall prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish, or for any purpose authorized by law. [Acts 1917, p. 233.]

Art. 847. Waste from artesian well.—Whoever wilfully causes or knowingly permits waste as defined in relation to artesian wells shall be fined not exceeding five hundred dollars or be imprisoned in jail not more than ninety days, or both. [Acts 1917, p. 234.]

Art. 848. Log of artesian well.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed, shall transmit, by registered mail, to the Board of Water Engineers, a copy of such record. Whoever violates any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1917, p. 233.]

Art. 848a. Conservation of underground waters.

Policy and duty of Board

Section 1. It is hereby declared to be the policy and duty of the Texas State Board of Water Engineers to make and enforce rules and regulations for the conservation, protection, preservation and distribution of all underground, subterranean and percolating waters of every kind and nature whatsoever situated within the limits of the State of Texas.

Salt water; plugging or casing wells

Sec. 2. Every water well drilled, dug, or excavated in this State which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall be by the owner of said well securely plugged or cased, so that the salt water or other water containing mineral or other substances injurious to vegetation or agriculture shall be confined to the strata in which found, and said casing or plugging shall be done in such manner as to effectively prevent said salt water or water containing mineral or other substances injurious to vegetation or agriculture from escaping from the strata in which found into any other water bearing strata or onto the surface of the ground.

Application

Sec. 3. All the foregoing Sections are declared to be equally applicable to wells heretofore drilled, dug or excavated, and wells hereafter to be drilled, dug or excavated.

Rules and regulations

Sec. 4. The Board of Water Engineers shall make rules and regulations for the effective enforcement of the foregoing Sections, and shall efficiently enforce same.

Refusal to plug, cap or case well, when ordered

Sec. 5. If any owner of any well described in any of the foregoing Sections shall for a period of thirty days fail or refuse to securely and properly plug, case or cap the same after having been ordered to do so by the Board of Water Engineers, he shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than Ten ($10.00) Dollars nor more than Five Hundred ($500.00) Dollars for each and every day that he shall fail or refuse to plug, case or cap said well after the expiration of the time above stated, and each day that said owner so fails or refuses to plug, case or cap said well shall be considered a separate offense.

Powers and duties of Board; failure to comply with orders

Sec. 6. The Board of Water Engineers shall do all things necessary for the conservation, protection, preservation and distribution of underground, subterranean and percolating waters in this State and shall make and enforce appropriate rules and regulations therefor and the specific enumeration of special powers and duties herein shall not be construed to deny the said Board other powers and duties necessary to the carrying out of the purposes of this Act as expressed in Sections 1 and 6 hereof. Failure for a period of more than thirty days to comply with any order of said Board issued in pursuance of the powers and duties herein created shall subject the person so violating said order to the penalties enumerated in Section 5 hereof. [Acts 1931, 42nd Leg., p. 432, ch. 261.]

Art. 849. Hindering water improvement district work.—The directors of any Water Improvement District and the engineer and employés thereof are hereby authorized to go upon any lands within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. Whoever shall wilfully prevent or prohibit any such officer or employé from entering any lands for any such purpose shall be fined not exceeding one hundred dollars for each day he shall so prevent or hinder such officer or employé. [Acts 1917, p. 199.]

Art. 850. Resisting improvement commissioners or engineers.—The district supervisors of any levee improvement district, and the district engineer and his assistants, from the time of their appointment, and the State reclamation engineer and his deputies, are hereby authorized to go upon any lands or waters for the purpose of examining the same and locating all levees and other improvements, making plans, surveys, maps, and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass. Any person who shall wilfully prevent or prohibit any of such officers from entering any lands or waters for such purposes shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1909, p. 152; Acts 1915, p. 244.]

Art. 851. Resisting navigation and canal officer.—The navigation and canal commissioners of any district and the engineers from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action for trespass. Any person who shall wilfully prevent or prohibit any such officer from entering any land for such purpose shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1909, p. 45.]

Art. 852. Resisting drainage district officer.—The drainage commissioners of any drainage district and the civil engineer from the time of their appointment are authorized to go upon any lands lying within any such district for the purpose of establishing the same, locating the canals, drains, ditches, levees, making plans, surveys, maps and profiles, and are authorized to go upon any lands beyond the boundaries of such district and in any county for the purpose of examining the same and locating the necessary outlets of any canal, drain or ditch of such district, together with all necessary teams, help, tools and implements. Any person who shall wilfully prevent or prohibit any of such officers from entering any land for such purposes shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1911, p. 258.]

Art. 853. Resisting water control officer.—The directors of any Water Control and Preservation District and the engineers and employés thereof are hereby authorized to go upon any land lying within said district for the purpose of examining same for locating dams, bulkheads, jetties, locks, gates or any other character of improvement or construction necessary to the accomplishment of the purposes of the district, to make maps and profiles thereof, and are hereby authorized to go upon lands beyond the boundaries of such districts for the purposes stated and for any other purposes necessarily connected therewith whether herein enumerated or not. Any person who shall wilfully prevent or prohibit any such officer or employé from entering upon such land for such purpose shall be fined one hundred dollars for each day he shall so prevent or prohibit such officer or employé. [Acts 4th C. S. 1918, p. 95.]

CHAPTER 3.—FERRIES, TOLL ROADS AND BRIDGES

Article 854. [838] [497] [415] Keeping ferry without license.—Whoever shall keep any ferry over any water course, navigable stream, lake or bay in this State, and shall charge or receive any money, property, or other valuable thing for crossing passengers or property at such ferry, without first obtaining license as required by law, shall be fined not less than fifty nor more than two hundred dollars. [Acts 1860, p. 98.]

Art. 855. [839] [498] [416] Failure to keep good boats, etc.—If the owner of any licensed ferry in this State shall fail to keep at all times good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons or other property, or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars. [Acts 1875, p. 58.]

Art. 856. Trespassing on toll road.—Whoever trespasses or enters upon the property or right of

way of a toll road corporation without its consent except as to crossings provided by law shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1913, p. 146.]

Art. 857. Obstructing toll road.—Whoever in any manner obstructs any toll road, or places thereon any thing or substance which would be reasonably calculated to result in injury to any patron of such road or damage to any vehicle which might be run over the same, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 858. Trespassing on toll bridge.—Whoever wilfully enters upon any toll bridge maintained wholly or partly within this State, without the consent of those in charge of such bridge, with the intent to avoid the payment of the toll lawfully chargeable for crossing the same shall be fined not less than five nor more than one hundred dollars. [Acts 1915, p. 154.]

CHAPTER 4.—PUBLIC BUILDINGS AND GROUNDS

Article 859. [840] [499] [417] Injuring or defacing public building.—Whoever shall wilfully injure or deface any public building or the furniture therein shall be fined not less than five nor more than five hundred dollars. The word "deface" in this chapter shall be held to apply to writing, carving or scratching on the walls or plastering or furniture of said building, or staining the same with paint or any other article which will produce a discoloration of the same. [Acts 1862, p. 51; Acts 1888, p. 5.]

Art. 860. [841] [500] [418] "Public building."—The term "public building," as used in this chapter, means the capitol and all other buildings in the capital grounds at Austin, including the executive mansion, the various State asylums and all buildings belonging to either, all college or university buildings erected by the State, all court houses and jails and all other buildings held for public use by any department or branch of government, State, county or municipal. The specific enumeration of the above shall not exclude other buildings not named, properly coming within the meaning and description of a public building.

Art. 861. [843] [502] [420] Driving in capitol grounds.—Whoever shall drive, ride or lead, or cause to be driven, ridden or led, any horse or other animal into the capitol grounds at Austin or into the inclosure of the State cemetery, without the consent of the keeper or superintendent of said grounds or cemetery, shall be fined not exceeding twenty-five dollars. [Acts 1874, p. 165.]

Art. 861a. Consent to buildings within campus of State Capitol.—Sec. 1. That it shall be unlawful for any officer of this State, or any employee thereof, or any other person to construct, build, or maintain within the Campus inclosure around the State Capitol in Austin any building, memorial, monument, statue or concessions or other structure, without the authority of the Legislature theretofore given by statute or concurrent resolution for that purpose.

Sec. 2. Any officer, employee of this State, or other person violating Section 1 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 ($100.00) Dollars, nor more than One Thousand ($1,000.00) Dollars, or imprisoned in the County Jail of Travis County for a period of time not to exceed one year, or by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 780, ch. 312.]

Art. 862. [844—5—6] Injuring roadway, grounds or property.—No person shall drive, or cause to be driven, over or along any roadway in any of the public grounds of this State, any heavy vehicle for carrying merchandise, or vehicle heavily loaded or otherwise reasonably calculated to injure or deface such roadways or to make their maintenance more expensive; or drive or cause to be driven any vehicle or conveyance of any kind, or drive, or cause to be ridden any animal of any kind over, across, or along any of the footpaths or walks in such grounds or on the turf of such grounds or at any place therein, except on and along the roadways; or cause or permit any horse not being driven to some vehicle or ridden, or any cow, sheep, goat, hog or other animal reasonably calculated to injure said grounds or anything pertaining thereto to go into or remain in any portion of said grounds; or cut, pull, break, bruise, remove, or in anywise injure any tree, or shrub or vegetation of any kind growing thereon; or disturbing any birds' nests or eggs; or in anywise injure, deface or in any way interfere with any chair, bench, seat or hydrant, frame, fence, gate, or structure of any kind therein or thereon or connected therewith; or wash or bathe in or in any way pollute the waters of any lake or pond, or stream therein; or obscenely or indecently expose any part of his person, or do any indecent act thereon. Any person violating any provision of this article shall be fined not less than five nor more than one hundred dollars. This article shall not apply to anything done by the lawful custodian of the public grounds on which said act is performed, or under his authority or direction, and which is done in the reasonable discharge of his duties as such custodian, or in the use of such grounds for the purpose to which they are dedicated by the State. The term "public grounds," as used in this law, includes all grounds owned by the State, and used and maintained by it in connection with any public building or institution, whether for governmental, educational, eleemosynary or other purpose, and all State cemeteries and all parks maintained at the expense of the public. [Acts 1903, p. 187.]

Art. 863. [848] [503a] Pass keys to capitol—Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the State Capitol, unless authorized to do so, shall be fined not exceeding one hundred dollars. [Acts 1895, p. 79.]

Art. 864. [849] [504] [422] Taking property from public grounds.—Whoever shall take, remove, injure or destroy any public property pertaining to any public building or to the grounds belonging to such building shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 865. [852] Turning loose too many stock.—No purchaser or other person than the lessee of public school, asylum and public lands shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof four head of sheep or goats for every ten acres so purchased, owned or controlled by him and uninclosed, and whoever violates this article shall be fined one dollar for each head of stock he may turn loose and each thirty days violation hereof shall be a separate offense. [Act April 1, 1887, Acts 1895, p. 71, Acts 1897, p. 187, Acts 1901, p. 296.]

Art. 866. [508] [422d] Fences without gates.—Any person who has used any of the pasture lands by joining fences or otherwise, who shall build or

maintain more than three miles lineal measure of fences running in the same general direction without a gate way in same, which must be at least ten feet wide and shall not be locked or kept closed so as to obstruct free ingress and egress, shall be fined not less than two hundred nor more than one thousand dollars. [Acts 1884, p. 37, Acts 1887, p. 90.]

Laws 1884, ch. 24, making it a misdemeanor to construct a fence more than three miles in length without a gate therein was held unconstitutional in Dilworth v. State, 36 Cr.R. 189, 36 S.W. 274.

Art. 867. [855–6] Procedure.—In all prosecutions under the preceding article, the provisions of article 1380 shall apply. The preceding article shall not apply to persons who have heretofore settled upon lands not their own, where the inclosure is two hundred acres or less and where the principal pursuit of such person upon the land is that of agriculture. [Acts 1884, p. 69.]

Art. 868. [860] Illegal fencing or use of public lands.—No person shall fence, use, occupy or appropriate by herding or line-riding, any portion of the public lands of the State, or of the lands belonging to the public free schools or asylums, without having first obtained a lease of such lands from the proper authority. Any person, whether owner of stock, manager, agent, employé or servant who shall fence, use, occupy or appropriate by herding or line-riding any portion of such lands without a lease thereof, shall be fined not less than one hundred nor more than one thousand dollars, and imprisoned in jail for not less than three months nor more than two years. Each day of such fencing, occupying, using or appropriating shall be a separate offense, and any person so offending may be prosecuted in the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis. "Fencing" within the meaning of this article is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund or of any public land of this State without having first obtained a lease thereof, by fencing of any kind or by inclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock shall be deemed unlawful appropriation, punishable as provided in this article for appropriating such lands. Each day said land is appropriated shall be a separate offense. [Acts 1887, p. 89, Acts 1895, p. 74.]

CHAPTER 5.—FIRE ESCAPES

Art.
869. Violation of fire escape law.
870. Violation by agent.

Article 869. Violation of fire escape law.—Any owner of any building required by law to be equipped with adequate fire escapes, who shall fail or refuse to comply with any provision of the statutes regulating fire escapes, or any person who shall obstruct any fire escape or hallway or entrance leading thereto, so as to prevent free access to or use of either, shall be fined not less than twenty nor more than fifty dollars. If such owner be a corporation, each officer or member of the board of directors, thereof, shall be subject to such fine. Each day's failure or refusal to comply with any provision of said law is a separate offense. [Acts 1923, p. 365.]

Art. 870. Violation by agent.—If the owner of any building within the provisions of said law be a non-resident of this State, and such owner fails, neglects or refuses to comply with any provision of said law, it shall be unlawful for any person within this State to represent such non-resident owner as an agent in the care, management, supervision, control, or renting of such building, and whoever violates this article shall be punished as provided in the preceding article. Each day that such agent so represents such non-resident owner is a separate offense. [Id.]

CHAPTER 6.—GAME, FISH AND OYSTERS

Art.
871. "Commissioner."
871a. Wild birds and animals.
872. Game birds defined.
873. Bag limit, penalty.
874. Killing birds other than game birds.
875. Exemptions.
876. Possession of wild game.
877. Turkey hens.
878. Division into zones.
878a. Open seasons on white winged doves.
879. [Repealed.]
879a. Wild white winged doves.
879a—1. [Repealed.]
879a—2. Open season for doves in Archer and other counties.
879a—3. Open season for doves.
879a—4. [Repealed.]
879a—5. Mourning doves and white-winged doves.
Sec.
1. Open season.
2. Limitation on number.
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4. Affidavits of game law violations.
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879d. Wild rail and plover.
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879e—1. Open season for wild ducks, geese and brant.
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4. Duties of Game, Fish and Oyster Commission.
5. Investigations.
6. Open season of game birds and bag limits.
7. Proclamation of open season, bag limit, etc.
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Art.
978n. Game management unit for benefit of Texas Bighorn Mountain Sheep.
Sec.
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2. Gifts.
3. Purchase of school lands.
4. Acquisition of other lands.
5. Power to appropriate land.
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8. Expenditures.

Article 871. "Commissioner."—The word "Commissioner" wherever used in this chapter shall be held to mean the Game, Fish and Oyster Commissioner [1] of the State of Texas.

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Acts 1925, 39th Leg., ch. 172, p. 404, § 47 reads as follows: "That Articles 874 to 900, inclusive, of the Penal Code of 1911; and Articles 4022 to 4042, inclusive, of the Revised Civil Statutes of 1911; and Chapter 123 Acts Regular Session Thirty-fourth Legislature, amending law relating to quail and doves in Penal Code 1911, by adding Arts. 889a and 889b; and Chapter 22 of the General Laws passed at the First Called Session of the Thirty-fourth Legislature; and Chapter 7 of the General Laws, passed at the First Called Session of the Thirty-fifth Legislature; and Chapter 8 of the General Laws passed at the Third Called Session of the Thirty-fifth Legislature; and Chapter 72 of the General Laws passed at the Second Called Session of the Thirty-sixth Legislature and Chapter 157 of the General Laws passed at the Regular Session of the Thirty-sixth Legislature; and Chapter 72 of the General Laws passed at the Regular Session of the Thirty-seventh Legislature; and Chapter 85 of the Special Laws passed at the Regular Session of the Thirty-seventh Legislature; and Chapter 35 of the General Laws passed at the First Called Session of the Thirty-seventh Legislature; and Chapter 7 of the Special Laws passed at the Fourth Called Session of the Thirty-sixth Legislature; and Chapter 84 of the General Laws passed at the Regular Session of the Thirty-eighth Legislature; and Chapter 14 of the General Laws passed at the First Called Session of the Thirty-eighth Legislature, are hereby specifically repealed, and all other laws and parts of laws in conflict herewith, be and the same are hereby repealed."

Art. 871a. Wild birds and animals.—All wild animals, wild birds, and wild fowl within the borders of this State are hereby declared to be the property of the people of this State.

Art. 872. Game birds defined.—Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens or pinnated grouse, wild pheasants of all varieties, wild partridge and wild quail of all varieties, wild pigeons of all varieties, wild mourning doves and wild white-winged doves, wild snipe of all varieties, wild shore-birds of all varieties, wild Mexican pheasants or chachalacas, and wild plover of all varieties, are hereby declared to be game birds within the meaning of this Act.

Art. 873. Bag limit, penalty.—Any person killing or taking more than the daily, weekly or seasonal bag-limits as set forth in this chapter; or any person killing, taking, hunting, wounding, or shooting at any game bird or game animal at any other time of the year, except during the open season as provided for in this chapter; or any person killing, taking, capturing, wounding or shooting at any game bird or game animal for which no open season is provided by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than ten ($10.00) dollars nor more than two hundred ($200.00) dollars; and each game bird or game animal unlawfully taken shall constitute a separate offense.

Art. 874. Killing birds other than game birds.—It shall be unlawful for any person in this State to kill, catch, wound, take, shoot at, or have in possession, living or dead, any wild bird other than a game bird. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than ten ($10.00) dollars, nor more than two hundred ($200.00) dollars.

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.]

Art. 876. Possession of wild game.—It shall be unlawful for any person to have in possession at any one time more than forty-five wild doves, or thirty-six wild quail, or thirty-six wild Mexican pheasant or chachalaca; or to have in possession at any one time more than fifty waterfowl, shorebirds, and other game birds, all kinds and varieties being considered in making up the one total of fifty; provided, that the provisions of this section shall not apply to transportation companies which have in their possession, for the purpose of transportation, such wild birds, where the provisions of this chapter with reference to shipment of game have been complied with; nor shall the provisions of this chapter apply to owners, agents, managers, or receivers of cold storage plants which receive wild game for storage; provided, however, that it shall be unlawful for the owner, agent, manager, or receiver of such cold storage plant to receive or have in possession at any one time for himself or any one person more than the limits of the wild game birds as provided in this article.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars, nor more than two hundred ($200.00) dollars. The possession of each bird or fowl over the number designated herein, shall be deemed a separate offense.

Art. 877. Turkey hens.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt or possess, dead or alive, any wild turkey hen at any season of the year except as hereinafter provided.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars.

Art. 878. Division into zones.—In order to divide the State for the purpose of better regulating the open and closed seasons for the hunting of wild game birds and wild game animals of this State, a line beginning on the Rio Grande River directly West of the town of Del Rio, Texas; Thence East to the town of Del Rio; thence easterly following the center of the main track of the Southern Pacific Railroad through the towns of Spofford, Uvalde, Hondo; thence to the point where the southern Pacific Railroad crosses the I. & G. N. R. R. at or near San Antonio; thence following the center of the track of said I. & G. N. R. R. in an easterly direction, to the point in the City of Austin, where it joins Congress Avenue, near the I. & G. N. R. R. Depot; thence across said Congress Avenue to the center of the main track of the H. & T. C. R. R. where said track joins said Congress Avenue, at or near the H. & T. C. R. R. depot; thence following the center line of the track of said H. & T. C. R. R. in an easterly direction through the towns of Elgin, Giddings, and Brenham, to the point where said railroad crosses the Brazos River; thence with the center of said Brazos River in a general northerly

direction, to the point on said river where the Beaumont branch of the Santa Fe Railway, crosses the same; thence with the center of the track of said G. C. & S. F. Railway, in an easterly direction through the towns of Navasota, Montgomery, and Conroe, to the point at or near Cleveland, where said G. C. & S. F. Ry. crosses the Houston, East and West Texas Railroad; thence with the center of said H. E. & W. T. Railroad track to the point in said line, where it strikes the Louisiana line. All that portion of the State lying north or northerly shall be known as the North Zone and all that portion of the State lying south or southerly of said line shall be known as the South Zone. [As amended Acts 1927, 40th Leg., p. 326, ch. 222, § 1.]

Art. 878a. Open seasons on white winged doves.—For the purposes of this Act a line beginning in the center of the main track of the Texas-Mexican Railway at the international boundary line between the United States and the Republic of Mexico, where said Texas-Mexican Railway crosses the international bridge between the United States and the Republic of Mexico at Laredo, Texas; thence, along the center of the main track of the Texas-Mexican Railway to the center of the main track opposite the passenger station served by the Texas-Mexican Railway in the City of Corpus Christi, Texas; thence, due east from said passenger station to the Gulf of Mexico; shall be the division line for the two zones hereby created for the purposes of this Act only. All that territory within the State of Texas lying north or northerly of said division line shall be known as the North White Wing Zone, and all that territory within the State of Texas lying south or southerly of said division line shall be known as the South White Wing Zone. [Acts 1931, 42nd Leg., p. 238, ch. 142, § 1.]

Art. 879. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 19, § 1.]

The original Article 879 of Pen.Code 1925, as amended by Acts 1927, 40th Leg., p. 316, ch. 215, § 1, was separated into nine distinct articles and numbered 879, 879a–879h, post. Article 879 as thus amended related only to the open season for mourning doves and was again amended by Acts 1929, 41st Leg., 1st C.S., p. 284, ch. 114, § 1.

Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 19, § 1 (Article 879a—3, post), fixed an open season for mourning doves and repealed all conflicting laws and parts of laws.

Art. 879a. Wild white winged doves.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild white winged doves in the North White Wing Zone, August 8th to October 31st of each year, both days inclusive; in the South White Wing Zone, August 20th to October 31st of each year, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., p. 173, ch. 74, § 1; Acts 1931, 42nd Leg., p. 238, ch. 142, § 2.]

Fish and Game laws applicable to particular counties, see note to Article 978j of Vernon's Annotated Penal Code.

Art. 879a—1. [Repealed by Acts 1931, 42nd Leg., Spec. L., p. 211, ch. 102.]

Article repealed was Acts 1929, 41st Leg., p. 409, ch. 190, § 1.

Art. 879a—2. Open season for doves in Archer and other counties.—There shall be an open season or period of time when it shall be lawful to hunt, take or kill wild morning[1] doves in Archer, Baylor, Clay, Knox, Wilbarger, Young, Hill, Falls, Johnson, Somervell, Bell, Navarro, Bosque, McLennan, Wichita, Limestone and Milam Counties during the months of September and October of each year and it shall be unlawful to hunt, take or kill any such doves at any other time of the year. Any provision of law in conflict herewith, whether passed by the First Called Session of the 41st Legislature or at any other time, is hereby repealed. [Acts 1929, 41st Leg., 2nd C.S. p. 192, ch. 89, § 1.]

[1] So in enrolled bill. Should probably read "mourning".

Art. 879a—3. Open season for doves.—Sec. 1. There shall be an open season or period of time when it shall be lawful to hunt, take or kill wild Mourning doves in the North zone during the months of September and October; in the South Zone during the months of October and November, as such zones are defined in Article 878 of the Penal Code of the State of Texas, as amended in Chapter 222, page 326 of the 40th Legislature, Regular Session. All laws or parts of laws in conflict with this Act shall be and the same are hereby repealed.

Sec. 2. It shall be unlawful to hunt, take or kill any wild Mourning doves at any time except as provided in Section 1 of this Act.

Sec. 3. Any person who shall hunt, take or kill any wild Mourning doves at any time except as provided in Section 1 of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than One Hundred ($100.00) Dollars, and each bird so taken or killed shall constitute a separate offense. [Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 19.]

Acts 1933, 43rd Leg., Spec. L., p. 48, ch. 41, repealed this article in so far as it affects Smith and Wood Counties, and also all other laws or parts of laws in conflict therewith.

Art. 879a—4. [Repealed by Acts 1941, 47th Leg., p. 397, ch. 231, § 7.]

The article repealed was Acts 1937, 45th Leg., 2nd C.S., p. 1887, ch. 17. Act of 1941, see Article 879a—5.

Art. 879a—5. Mourning doves and white-winged doves.

Open season

Section 1. The open season for taking mourning doves and white-winged doves in this State shall be as follows: Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, Throckmorton, Young, Palo Pinto, Parker, Johnson, Ellis, Kaufman, Van Zandt, Rains, Hopkins, Franklin, and Red River, and in all counties north and west thereof during the period September 1st to October 31st of each year. In the remainder of the State, the open season shall be during the period September 15th to November 15th, except that in the Counties of Webb, Zapata, Starr, Hidalgo, Cameron, and Willacy it shall be lawful to hunt, take, or kill mourning doves or white-winged doves only on each Sunday, Tuesday, and Thursday, between the hours of twelve noon and sunset, from September 15th to October 15th of each year, and on no other days or at any other times. In the other portions of the State, it shall be unlawful to hunt mourning doves or white-winged doves except during the open season provided therefor and then only during the hours from 7:00 a. m. to sunset. This Act shall not apply to Shelby and Panola Counties. [As amended Acts 1941, 47th Leg., p. 1413, ch. 646, § 1.]

Limitation on number

Sec. 2. It shall be unlawful for any person to take or kill more than twelve (12) mourning doves or more than twelve (12) white-winged doves, or an aggregate of more than twelve (12) 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.

Restriction on gauge of shotgun and number of shells

Sec. 3. 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 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.

Affidavits of game law violations

Sec. 4. Any game warden of the State of Texas is hereby authorized to take the affidavit of any person concerning or involving violation of any of the game laws of the State of Texas, and for such purpose is authorized to administer oaths. It shall be the duty of any person when requested by a game warden to give affidavit concerning any facts within such person's knowledge as to violation of any game laws of the State, provided no person shall be required to make affidavit of any fact that might incriminate the person making such affidavit.

Nesting and propagating grounds for doves and chachalaca

Sec. 5. Portion of the State lying between the Rio Grande River and a line extending from a point on the Rio Grande River North along the common boundary line of Zapata and Starr Counties to the South boundary line of State Highway 4; thence along the South boundary line of the right of way of State Highway 4 to a point where said South right of way boundary intersects the West boundary of the city limits of the City of Brownsville in Cameron County; thence along the West city limits of the City of Brownsville to the point where same intersects the Rio Grande River, is hereby recognized as an area in which white-winged doves and chachalaca nest and propagate; and said area is hereby set aside as a nesting and propagating grounds for white-winged doves, chachalaca and other game within which area it shall be unlawful at any time to hunt, take, shoot, or kill any kind or species of wild fowl hereinabove mentioned.

Violations

Sec. 6. 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 otherwise violates any provision of this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars ($10), nor more than Two Hundred Dollars ($200). Each bird taken, or possessed, in violation of any provision of this Act shall constitute a separate offense. Any person who, in making an affidavit as authorized and provided in this Act, shall knowingly make a false affidavit of fact, shall be deemed guilty of false swearing and punished in accordance with the provisions of the law regarding the offense of false swearing. [Acts 1941, 47th Leg., p. 397, ch. 231.]

Section 7 of Acts of 1941, 47th Leg., p. 397, ch. 231, repealed article 879a—4.

Section 8 provided as follows: "If any section, clause, phrase, or provision of this Act shall be held to be invalid, such holding shall not affect the remaining provisions of said Act."

Art. 879b. Wild quail and Mexican pheasant.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild quail of all kinds, and wild Mexican pheasant or chachalaca in the North Zone, December 1st to the following January 16th, both days inclusive; in the South Zone, December 1st to the following January 16th, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879c. Wild turkey gobblers.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild turkey gobblers, in both the North and South Zones, November 16th, to the following December 31st, both days inclusive; provided, however, it shall be unlawful for any person or persons to hunt, take or kill wild turkey for a period of five years, from and after November 15, 1929, in any of the following counties: Callahan, Eastland, Stephens, Palo Pinto and Shackelford. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 52, ch. 32, § 1.]

Art. 879c—1. [Repealed by Acts 1945, 49th Leg., p. 427, ch. 270, § 1.]

The article repealed was Acts 1930, 41st Leg., 4th C.S., p. 10, ch. 10, § 1; amended by Acts 1931, 42nd Leg., Spec.L. p. 417, ch. 202, § 1.

Art. 879d. Wild rail and plover.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild rail (other than coot and gallinules), wild black-bellied plover and wild golden plover, and yellow-legs, the months of September and October of each year, in both the North and South Zones. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879e. Wild ducks, geese, brant, snipe and gallinules.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild ducks of all kinds (except wild wood ducks), wild geese, wild brant, wild snipe of all kinds, (except Ross' geese and cackling geese), wild gallinules and wild coot or mud hen, in the North Zone from 12:00 o'clock noon October 16th, to the following January 15th, inclusive; in the South Zone from 12:00 o'clock noon, November 1st to the following January 15th inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1931, 42nd Leg., p. 251, ch. 151, § 1.]

Art. 879e—1. Open season for wild ducks, geese and brant.—Sec. 1. The open season or period of time when it shall be lawful to take wild ducks, geese or brant shall be, for the North zone, from twelve o'clock noon November 1st to December 31st inclusive, and for the South zone from twelve o'clock noon November 16th to January 15th inclusive, except that there shall be no open season for Wood-duck, Ruddy-duck, Bufflehead-duck and Swans, and it shall be unlawful in any one day to take more than twelve (12) ducks of which not more than eight (8) of any one or eight (8) in the aggregate are of the following species: Canvasback, Redhead, Greater Scaup, Lesser Scaup, Ringneck, Blue-winged Teal, Green-winged Teal, Cinnamon Teal, Shoveler and Gadwall; and it shall be unlawful for any person to have in possession at any one time more than two days' bag limit of ducks. It shall be unlawful for any person, in any one day, to take more than four (4) geese and/or brant or to possess at any one time more than eight (8) geese and/or brant.

Sec. 2. The zone line referred to in this Act shall be the same as defined by Article 878, Penal Code, 1925, as amended by Chapter 222, Acts of Fortieth Legislature.

Sec. 3. Any person who takes any wild duck, goose or brant at any time other than the open season provided therefor, or who takes any wild duck, goose or brant for which there is no open season provided, or who takes any wild duck, goose or grant in excess of the daily bag limit, or any person who has in possession more than the possession limit of wild ducks, geese or brant, as defined in this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars and each such duck, goose or brant taken or possessed in violation of this Act shall constitute a separate offense. [Acts 1933, 43rd Leg., 1st C.S., p. 52, ch. 18.]

Section 4 of this Act repeals all conflicting laws or parts of laws.

Art. 879f. Wild prairie chickens.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild prairie chicken or pinnated grouse, in both the North and South Zones, September 1st to September 10th, of each year, both days inclusive, provided there shall be no open season on wild prairie chicken in the Counties of Col-

lingsworth, Donley, Wheeler and Gray until September 1st, 1929. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879f—1. Prairie chickens or pinnated grouse.—Sec. 1. It shall be unlawful for any persons to take, capture, kill or possess, or to attempt to take, capture or kill any prairie chicken or pinnated grouse at any time other than the open season provided therefor; provided that game lawfully taken during the open season may be held in possession for ten days after the close of the open season.

Sec. 2. The open season for prairie chickens or pinnated grouse shall be from the first day of September to the fourth day of September of each year, both days inclusive; provided that there shall be no open season on wild prairie chicken in Collingsworth and Wheeler Counties for a period of two years.

Sec. 3. It shall be unlawful to take, kill or have in possession more than ten prairie chickens or pinnated grouse in any one day or during the open season of each year.

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 Fifty ($50.00) dollars nor more than Two Hundred ($200.00) dollars, and each bird killed or possessed in violation of this Act shall create a separate offense. [Acts 1929, 41st Leg., p. 450, ch. 209.]

Section 5 of this Act repeals all conflicting laws and parts of laws.

Art. 879f—2. Open season for prairie chickens.—Sec. 1. The open season for prairie chicken shall be from the 1st day of September to the 4th day of September of each year, both days inclusive; provided that there shall be no open season on wild prairie chicken in Collingsworth and Wheeler Counties.

Sec. 2. Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars, and each bird killed or possessed in violation of this Act shall create a separate offense. [Acts 1931, 42nd Leg., Spec.L., p. 297, ch. 152.]

Section 3 of this Act repeals all conflicting laws and parts of laws.

Art. 879f—3. [Repealed by Acts 1933, 43rd Leg., p. 212, ch. 96.]

Article repealed was Acts 1932, 42nd Leg., 3rd C.S., p. 112, ch. 44.

Art. 879f—4. [Expired.]

This article, Acts 1937, 45th Leg., 1st C.S., p. 1800, ch. 25, effective 90 days after June 25, 1937, date of adjournment, made it unlawful to take, hunt, trap, shoot or kill prairie chicken for five years from the effective date of the Act.

Art. 879f—5. [Expired Sept. 1, 1946.]

This article, Acts 1941, 47th Leg., p. 261, ch. 177, made it unlawful to kill, take or possess prairie chickens until Sept. 1, 1946.

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. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 52, ch. 32, § 2; Acts 1937, 45th Leg., p. 878, ch. 433, § 1.]

Art. 879g—1. Black tail deer west of Pecos River.—Hereafter it shall be unlawful to hunt, take or kill any Black Tail Deer in any part of this State west of the Pecos River, except during the period from the sixteenth to the thirtieth day of November inclusive of each year, and in said territory during said open season it shall be unlawful to hunt, take or kill any such deer unless it be a buck, with pronged horn, and it shall be unlawful to kill more than one such pronged horn buck during any one open season in said territory. Any person violating any provision of this Act shall be subject to fine of not less than fifty dollars nor more than two hundred dollars. [Acts 1929, 41st Leg., p. 230, ch. 95, § 1.]

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; Acts 1939, 46th Leg., Spec.L., p. 832, § 1.]

Art. 879g—2a. Collared Peccary or Javelina in Dimmit, Frio, La Salle, Medina, McMullen, Starr, Uvalde, Webb, Zapata and Zavala counties.—Provided, however, that it shall be lawful to take, capture, shoot, or kill Collared Peccary or Javelina in the Counties of Crockett, Dimmit, Frio, Kinney, La Salle, Maverick, Medina, McMullen, Starr, Uvalde, Val Verde, Webb, Zapata, and Zavala, Texas, at any time, and an open season for Collared Peccary or Javelina in such Counties is hereby declared. Provided further, that it shall be unlawful in such Counties to have or take any Collared Peccary or Javelina, or any part of same, in possession for the purpose of barter or sale, or to sell or to offer for sale any Collared Peccary or Javelina, or any part of same, and any person violating the provisions of this Act 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, or any part thereof, 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, § 1a, added Acts 1941, 47th Leg., p. 445, ch. 281, § 1; as amended Acts 1945, 49th Leg., p. 158, ch. 110, § 1; Acts 1947, 50th Leg., p. 35, ch. 28, § 1; Acts 1947, 50th Leg., p. 264, ch. 160, § 1.]

Section 2 of the Act of 1947 repealed all conflicting laws or parts of laws and Acts 1947, 50th Leg., p. 35, ch. 28, § 1, previously amending this article.

Art. 879g—3. Penalty.—Any person violating any provision of this Act[1] 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.]

[1] This article and art. 879g—2.

Art. 879h. Wild squirrels.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild red or fox squirrels and wild gray squirrels, in both the North and South Zones, in the months of May, June and July, and in the months of October, November and December of each year; provided, however, that nothing in this Chapter shall prevent the keeping of squirrels in cages as domestic pets; and provided further, that it shall not be unlawful to kill squirrels in the following counties at any time, to wit: DeWitt, Caldwell, Guadalupe, San Saba, Mason, Gillespie, Llano, Kimble, Menard, Comal, McCulloch, Brown, Kerr, Burnet, Mills, Schleicher, Edwards, Gonzales, Austin, Real, Kendall, Victoria, Medina, Uvalde, Jackson, Wharton, Bandera, Lavaca, Fayette, Colorado, Callahan, Stephens, Eastland, Bastrop, Travis, Dimmit, Zavala, Blanco, Lampasas, Hamilton, Coryell, Matagorda, Brazoria, Washington, Throckmorton, Karnes, Wilson, Comanche, Hays, Goliad, Erath, Bosque, Hill, Waller, Tarrant, Wise, Cooke, Montague and Fort Bend. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1; Acts 1929, 41st Leg., p. 108, ch. 52, § 1.]

Art. 879i. Eagles, open season for.—From and after the passage of this Act it shall be lawful for any person to hunt, trap, shoot, or kill any Golden Eagle or Mexican Brown Eagle in the State of Texas. [Acts 1941, 47th Leg., p. 429, ch. 259, § 1.]

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, Sana 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. [Acts 1925, 39th Leg., p. 396, ch. 172, § 25; Acts 1926, 39th Leg., 1st C.S., p. 42, ch. 24; Acts 1927, 40th Leg., 1st C.S., p. 227, ch. 83; Acts 1929, 41st Leg., p. 463, ch. 214; Acts 1931, 42nd Leg., p. 853, ch. 361; Acts 1932, 42nd Leg., 4th C.S., p. 12, ch. 4; Acts 1934, 43rd Leg., 4th C.S., p. 57, ch. 23, § 1; Acts 1937, 45th Leg., 2nd C.S., p. 1947, ch. 47, § 1; Acts 1941, 47th Leg., p. 1320, ch. 593, § 1.]

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. Added Acts 1937, 45th Leg., 2nd C.S., p. 1950, ch. 49, § 1.]

Art. 881. Possessing more than bag limit.—It shall be unlawful to take, kill, or possess any birds or animals in greater number than the daily, weekly or seasonal bag limit or number of such game birds and game animals permitted to be killed or taken, such bag-limits to be as follows:

Wild mourning doves and wild white-winged doves, fifteen in any one day, and not more than forty-five in any one week of seven days.

Wild quail of all kinds, and wild Mexican pheasant or chachalaca, twelve in any one day, and not more than thirty-six in any one week of seven days, and all kinds and varieties of these shall be considered in making up the limit of twelve.

Wild turkey gobblers, three during the open season of any one year, as herein provided.

Wild geese and brant of all kinds, four in any one day, and not more than twelve in any one week of seven days.

Wild ducks of all kinds, wild snipe of all kinds, wild black-bellied plover, wild yellowlegs, wild gallinule or Indian hen, and wild coot or mud hen, twenty-five in any one day, and not more than fifty in any one week of seven days; provided, that all kinds and varieties of game birds mentioned in this section shall be considered in making up the daily limit of twenty-five or weekly bag-limit of fifty.

Wild prairie chicken or pinnated grouse, five in any one day, and not to exceed ten in the open season of any one year.

Wild buck deer, two during the open season of any one year, as provided in this chapter.

Wild bear, one during the open season of any one year, as provided in this chapter.

Wild squirrel, ten in any one day.

Art. 881a. Bag limit of wild ducks and geese.—Sec. 1. It shall be lawful for any person to take, capture or kill not more than fifteen wild ducks and not more than four wild geese in any one day and to have in possession not more than thirty wild ducks and to have in possession not more than eight wild geese at any one time. All laws or parts of laws relative to bag limit and possession limit of wild ducks and wild geese in conflict herewith are hereby repealed.

Sec. 2. It shall be unlawful for any one person to take, capture or kill more than fifteen wild ducks in any one day and it shall be unlawful for any person to take or kill more than four wild geese in any one day. It shall be unlawful for any person to have in possession more than thirty wild ducks at any time and it shall be unlawful for any person to have in possession at any time more than eight wild geese at any one time. Provided, that any ducks or geese killed, taken or possessed in accordance with this Act must be taken, killed or possessed during the open season or period of time when ducks and geese may be taken, killed and possessed.

Sec. 3. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten ($10.00) Dollars and not more than Two Hundred ($200.00) Dollars, and each fowl so taken, killed or possessed in violation of this Act shall constitute a separate offense. [Acts 1930, 41st Leg., 4th C.S., p. 8, ch. 7.]

Art. 881b. Open season and bag limit for migratory game birds; regulations.

Purpose; regulations

Section 1. The purpose of this Act is to provide for the making of suitable regulations to govern the taking of certain migratory game birds, the taking of which is also governed by regulations made under the authority of the United States Government because of treaties affecting the conservation of migratory game birds between the United States Government and the Governments of Great Britain and the United States of Mexico. Such regulations as may be provided for under the provisions of this Act shall apply only to wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jack snipe, woodcock, mourning doves, and white-winged doves, which for the purpose of this Act are hereafter referred to as migratory game birds.

Acts prohibited; definitions

Sec. 2. It shall be unlawful for anyone to hunt, take or pursue any migratory game bird at any time other than during the open season provided for taking, hunting or pursuing of such game bird, or to

have in possession or retain such game bird in excess of the bag limit or time provided therefor, or to kill in any one day, or in any one week or in any open season any migratory game bird in excess of the bag limit provided for such period; or to take or attempt to take any migratory game bird by any means, method or device other than that which may hereafter be permitted for the taking of same. For the purpose of this Act, "open season" is defined as the period of time when it shall be lawful to take, kill or pursue or attempt to take or kill any of the game birds named in this Act, and "bag limit," for the purpose of this Act, is defined as the maximum number of game birds or aggregate of same of the species named in this Act that any person may kill, take or possess during any period for which such a bag limit is provided.

Penalty

Sec. 3. Any person who takes, kills, pursues or attempts to take or kill any migratory game bird by any means or device other than that permitted under the authority given in this Act, or at any time other than during the open season provided for same; or any person who kills any migratory game bird in excess of the bag limit provided for the killing of same, or any person who possesses any migratory game bird in excess of the limit provided for the possession of same, or any person who retains such birds in his possession beyond the period prescribed for the retention of same, or any person who otherwise takes, kills, possesses or retains any migratory game bird except in accordance with the permission given because of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not less than Twenty-five Dollars ($25), nor more than One Hundred Dollars ($100), and shall automatically forfeit his right to hunt with a gun in this State for a period of one (1) year following the date of his conviction; and further provided that each migratory game bird killed or possessed or retained in violation of any provision of this Act shall constitute a separate offense.

Repeals

Sec. 4. All laws or parts of laws of this State, in so far as they provide an open season, bag limit, possession limit, retention or storage limit, or govern the means or devices that may be used for taking migratory game birds or any of them, be and the same are hereby repealed.

Duties of Game, Fish and Oyster Commission

Sec. 5. The Game, Fish and Oyster Commission of the State of Texas is hereby charged with the duty of providing the open season, bag limits, possession limits and retention limits for the taking, possession and retention of migratory game birds, and to declare the means, methods and devices by which such birds may be taken. An open season shall be provided for only such length of time as is justified by the supply of the species of migratory game birds affected in this State, or in the zone or section of the State to which such open season shall apply, and any bag limit or possession limit for any species of migratory game bird shall be provided so as to permit the most equitable harvest in this State of the species affected and which will grant only such privileges as experience has proven will not prevent a future normal supply of game birds of the species affected in this State or in the zone or section of the State to which such regulations may apply.

Investigations

Sec. 6. It shall be the duty of the Game, Fish and Oyster Commission to make such investigations and procure such information as will permit it to proclaim open seasons and bag limits for any migratory game bird when such is justified by the supply of same in order that said Commission shall carry out the mandate of the Legislature as expressed in this Act.

Proclamation of open season, bag limit, etc.

Sec. 7. Any open season, bag limit, possession limit, means, method or device, or retention limit for migratory game birds shall be issued by the Game, Fish and Oyster Commission in the form of a suitable proclamation which regulations shall become effective on the day named therein, which shall not be earlier than ten (10) days after same is issued. Such a regulation shall remain in full force and effect for the time specified therein or until same is suspended or amended by the Game, Fish and Oyster Commission after the manner of issuing the original proclamation. Whenever any proclamation as authorized under the provisions of this Act is issued by the Game, Fish and Oyster Commission the same shall be incorporated in the minutes of the meeting at which it was adopted, and a copy of same shall be filed in the office of the Secretary of State and a copy mailed to each County Clerk and each County Attorney of this State for filing in their respective offices.

Suit to contest validity of regulations

Sec. 8. Any interested party affected by the conservation regulations of this State, promulgated by the Game, Fish and Oyster Commission as directed in this Act, and who may be dissatisfied therewith, shall have a right to file a suit in a Court of competent jurisdiction in Travis County, Texas, and not elsewhere, against the Commission as defendant to test the validity of said regulations or any of them. Such suit shall be filed for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Court. In all trials under this Section, the burden of proof shall be upon the party complaining of such regulations, and such regulations or order so complained of shall be prima facie valid until otherwise shown. [Acts 1934, 43rd Leg., 3rd C.S., p. 114, ch. 61; Acts 1943, 48th Leg., p. 376, ch. 252, § 1.]

Art. 882. Closed season defined.—The term "Closed Season" shall, for the purpose of enforcement of the game laws of this State mean the period of time during which it is unlawful to hunt, kill, attempt to kill, or take any of the game animals, wild fowl, or birds enumerated in this chapter, and the term "Open Season" shall mean the period of time in which it is lawful to hunt, kill, or take certain game, game animals, wild fowl, and birds set forth in this chapter.

Art. 883. Five year closed season.—It shall be unlawful for any person to hunt, kill, or take or to have in possession, within a period of five years from the passage of this Act, any wild woodcock, wild wood duck, wild sandhill crane, or whooping crane, wild inca and ground dove, or wild pheasant, except as hereinafter provided. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and each bird killed or possessed in violation of this article shall constitute a separate offense.

Art. 884. Unlawful possession of game.—It shall be unlawful for any person to sell or offer for sale, or to buy or offer to buy, or to have in possession for sale, or to have in possession after purchase has been made (either by himself or by another) any wild bird, wild fowl, wild game bird or wild game animal, dead or alive, or any part thereof, protected by this Chapter, except deer hides and except as hereinafter provided. This Article and all other Articles in this Chapter, shall apply to any bird or animal coming from without this State; and in prosecution for violation of this Chapter, it shall be no defense

that such bird or animal was not taken or killed within this State.

It shall be further unlawful to bring into this State for any purpose whatever, during the closed season or time when it is unlawful to possess such bird or animal, dead or alive, any kind of bird or animal protected by this Chapter, except as hereinafter provided. [As amended Acts 1947, 50th Leg., p. 1014, ch. 432, § 2.]

Art. 885. Bringing game into this State.—Any person violating any of the provisions of Article 884 shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars; and the bringing in of each separate bird or animal protected by this chapter in violation of said article shall constitute a separate offense. Provided, that any person who shall buy any game bird or game animal, the sale of which is prohibited by this chapter, for the purpose of establishing testimony, shall not be prosecuted for such purchase, and a conviction may be had upon the uncorroborated testimony of such purchaser.

Art. 886. Wild ducks, geese and brant.—It shall be unlawful to hunt, kill, or take any wild duck, goose, or brant, by any means other than the ordinary gun, not to exceed ten gauge, capable of being held to and shot from the shoulder. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and each bird or fowl taken or killed in violation of this article shall constitute a separate offense.

Art. 887. Hunting at night.—It shall be unlawful to kill, hunt or shoot at any wild bird, wild game bird, wild fowl, or wild game animal protected by this Act [1] at any season of the year, between one-half hour after sunset and one-half hour before sunrise in any county in this State. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars, and each bird or animal so killed shall constitute a separate offense.

[1] So in enrolled bill. Pen.Code 1925 reads "his chapter".

Art. 888. Protection against depredation of wild fowls or animals.—Whenever any wild birds, wild fowls, or wild animals, protected under the provisions of this chapter, are destroying crops or domestic animals, the Game, Fish and Oyster Commissioner [1] is hereby authorized to permit the killing of such wild birds or wild animals, without regard to the open or closed season, bag limit, or night shooting; but before such permission shall be granted, the commissioner aforesaid, shall be furnished with a statement of facts, sworn to by persons whose property is being injured, with the endorsement of the county judge of the county in which the crops are being destroyed or domestic animals being injured or killed, to the effect that the sworn statement is true, and that such crops or domestic animals can only be preserved by the granting of such permit. Such permit when issued shall distinctly state the time for which it is granted, the area which it covers, and a designation of the person or persons permitted to kill the noxious birds and animals named in such permit. Such permit shall not authorize the killing of migratory birds protected by the Federal Migratory Bird Treaty Act, unless the applicant shall first procure a permit from the United States Department of Agriculture, in compliance with the regulations of such Migratory Bird Treaty Act.

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 888a. [883] Taking game bird by net or trap.—Whoever sets a net or trap or other device for taking any bird mentioned in article 872, or who snares or takes by such devices any such bird, without first obtaining from the Game, Fish and Oyster Commissioner [1] a permit in writing so to do, shall be fined not less than ten nor more than one hundred dollars. [Sec. 18, Id.]

[1] See note to Article 888, ante.

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repeals Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 889. Specimens for taxidermist.—Any person shall have the right to ship or carry to and from a taxidermist or tannery, for mounting or preserving purposes or to his home, any specimen or part of specimen of the wild birds or wild animals of this State, where same have been lawfully taken or killed by such person, and when such specimens or parts of specimens are not for sale, but before making shipment as herein provided, such person shall first make the following affidavit in writing before some officer authorized to administer oaths, and deliver same to the common carrier transporting same, or its agents:

State of Texas)
County of ———) Before me, the undersigned authority, on this day personally appeared ———, who after being duly sworn, upon oath says: I live at ——— in the County of ———, State of ———; that I have personally killed ———, which I desire to ship from ——— to ——— County, to ———, State of ———, which I have lawfully killed for my own use and not for sale, and which shall not be bartered or sold; that I have not killed during the present hunting season more than the bag limit, as provided by law, of any of the wild game birds, wild fowl, or wild animals. Signature ———

Sworn to and subscribed before me this ——— day of ———, A. D. 192—. ———
Office held ———

The affidavit thus prepared by the affiant shall be attached to the shipment, and shall not be removed during the period of transportation. If such game is carried by the person killing same, it shall not be necessary to attach the affidavit herein set forth.

Art. 890. Penalty.—Any person who so ships any game from any place within this State without making the foregoing affidavit; or any agent of any express company or other common carrier who receives any shipment without it being accompanied by such affidavit and list attached; or any auditor or conductor or other person in charge of any railroad train, who knowingly permits any person to carry any wild birds, wild fowl or wild animals without such affidavit being made, as herein provided, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

All express agents, conductors, and auditors of trains, captains of boats, and the Game, Fish and Oyster Commissioner [1] and his deputies are hereby empowered to administer oaths necessary to the shipment of game, and for administering such oaths they are hereby authorized to collect the sum of twenty-five (25c) cents from the person making such oath.

[1] See note to Article 888, ante.

Art. 891. Destroying nests or eggs of birds.—It shall be unlawful for any person to destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl, protected by this chapter, except as provided herein. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 892. Certain animals declared to be game animals.—Wild deer, wild elk, wild antelope, wild Rocky Mountain sheep, wild black bear, and wild gray

and red squirrels, cat squirrels or fox squirrels, are hereby declared to be game animals within the meaning of this Act.

Art. 893. Forfeiture of license.—Any person convicted of violating any provision of the game laws of this State shall thereby automatically forfeit his license for said season. Any such person so convicted of violating the game laws shall not be entitled to receive from the State a license to hunt for one year immediately following the date of his conviction; and it shall be unlawful for any person who is convicted of violating any of the provisions of the game laws of this State to purchase or possess a hunting license for a period of one year immediately following date of such conviction; and it shall also be unlawful for any person convicted of violating any of the game laws of this State to hunt with a gun in this State for a period of one year immediately following date of such conviction.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred ($100.00) dollars, nor more than two hundred ($200.00) dollars.

Art. 894. Form of license.—All hunting licenses issued shall have printed across their faces the year for which they are issued; they shall bear the name and address or residence of the person to whom issued, and shall give the approximate weight, height, age, color of hair, and color of eyes of such person, in order that proper identification may be had in the field, and shall have printed thereon a statement, to be subscribed to in ink by the person to whom issued, that such person will not exceed in any one day the bag limit as printed on the license. Such license shall be dated on the date of issuance, and shall remain in effect until the last day of August thereafter; provided that non-resident or alien licenses shall have printed thereon the following: This license does not entitle the holder thereof to hunt upon the enclosed and posted lands of another, without the consent of the owner or agent.

Art. 895. County clerk to issue license.—The county clerk of each county in this State, is hereby authorized to issue hunting licenses under his official seal, to all persons complying with the provisions of this Act, and shall fill out correctly and preserve for the use of the Game, Fish, and Oyster Commission, the stubs attached thereto; and the county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each license and the serial number and date of the license issued. Said license stubs and penalties and forfeitures of bonds imposed and collected for violation of any of the provisions of this chapter, shall belong to the special game fund of this State, and shall be paid over by the Game, Fish, and Oyster Commissioner,[1] to the State Treasurer during the first week of each month, and shall be credited to such special game fund; and such fund shall be used solely for the purpose of wild bird and game protection; for the creation, purchase, and maintenance of game sanctuaries and public hunting-ground; for the purchase, introduction, propagation, and distribution of game and wild birds; for the dissemination of information pertaining to the conservation and economic value of wild animal life; and in the employment of special deputy game commissioners, payment of their necessary expenses and the purchase and supply of means to enable the Game, Fish, and Oyster Commissioner and his deputies to enforce the game laws of this State. All expenditures shall be verified by affidavit to the Game, Fish, and Oyster Commissioner; and on the approval of such expenditures by the Game, Fish and Oyster Commissioner, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the special game fund. All moneys and all balances now in such fund from moneys already paid into the State Treasury, or that may hereafter be paid into said fund through or because of this chapter, are made available as soon as paid into the State Treasury, and are hereby specifically appropriated to the use of the Game, Fish and Oyster Commissioner for the several purposes herein specified. The county clerk shall, within ten days after the close of each calendar month, make out a detailed report under the seal of his office, showing the serial number and date of each license issued during the month covered by the report, and the name and address of the person to whom issued, and shall forward such report, with remittance of fees due the State, to the Game, Fish, and Oyster Commission at Austin, and said Commission shall credit such county clerk with the amount so remitted. As soon as possible after the licenses in a license book have all been issued, and only the stubs remain therein, such county clerk shall forward such used license book to the Game, Fish and Oyster Commission at Austin, in order that such Commission may furnish necessary information regarding holders of licenses to any officers in the State.

[1] See note to Article 888, ante.

Art. 896. License fees under control of council.—All license fees and hunting-boat registration fees collected under this Act, and all fines that may be made from this fund shall be expended for land or other real estate only upon the authorization of a majority vote of a council composed of Game, Fish and Oyster Commissioner,[1] the Attorney General of Texas, and the State Comptroller, who shall act on this council during their respective terms of office.

[1] See note to Article 888, ante.

Art. 897. Game unlawfully taken to be disposed of by commissioner.—All wild birds, wild fowl, or wild game animals, or parts thereof, which have been killed, taken in any way, shipped, held in storage, or found in a public eating place, contrary to the provisions of this chapter, shall be disposed of by order of the Game, Fish and Oyster Commissioner,[1] or one of his deputies by donating same to charitable institutions, hospitals, or needy widows and orphans.

If such birds, fowl or animals mentioned in this article are required to be placed in cold storage, the expense of such storage shall, upon his conviction, be placed in a bill of cost against the defendant or person from whom they were taken.

The Game, Fish and Oyster Commissioner, or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Game, Fish and Oyster Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile, or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to stop such vehicle when requested to do so by the Game, Fish and Oyster Commissioner, or his deputy, shall be fined not less than ten ($10.00) nor more than one hundred ($100.00) dollars.

[1] See note to Article 888, ante.

Art. 898. Commissioner to keep lists of fees and fines.—It shall be the duty of the Game, Fish and Oyster Commissioner [1] to keep in his office, at Austin, a complete list of the license fees and fines collected; said records shall be kept open for inspection of the State Comptroller and of the public. At the close of each calendar month the Game, Fish, and Oyster Commissioner, shall file with the Comptroller, a report in writing, showing all fines, licenses, and other fees collected, their disposition, and any other particulars which he may deem proper.

[1] See note to Article 888, ante.

Art. 899. Hunting under the license of another.—Any person who shall hunt under the license issued to any other person, or any person who shall permit any other person to hunt under a license issued to him, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 900. Hunting for hire.—It shall be unlawful for any person to hire or employ any other person, or to be hired or employed by any other person, by the payment, or by the promise of payment, of money or any other thing of value, to hunt any bird, wild fowl, or game animal protected by this chapter. Any person violating any of the provisions of this article shall be deemed guilty of misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five ($25.00) dollars, nor more than two hundred ($200.00) dollars. Provided, that if any person who has received money, or a promise of money or other thing of value, to hunt any wild bird, wild fowl, or game animal protected and mentioned by this chapter, testifies against the person employing him, all prosecutions against him in the case in which he testifies shall be dismissed.

Art. 901. Hunting from automobile, airplane or boat.—It is hereby declared unlawful for any person at any time and in any manner, to hunt, take, capture, or kill, or attempt to hunt, take, capture, or kill any of the wild game birds, wild game fowl, or wild game animals, protected by the laws of this State, from an automobile, an airplane, a power-boat, a sailboat, any boat under sail, or any floating device towed by power-boat or sailboat. Any person violating any of the provisions of this article shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars.

Art. 902. Hunting with headlight.—It shall be unlawful for any person at any time of the year to hunt deer or any other animal or bird protected by this chapter, by the aid of what is commonly known as a headlight or hunting-lamp, or by artificial light attached to an automobile, or by the means of any form of artificial light. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars, or by confinement in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. The possession of a headlight, or any other hunting light used on or about the head when hunting at night, between sunset and one-half hour before sunrise, by any person hunting in a community where deer are known to range, shall be prima facie evidence that the person found in possession of said headlight, or other hunting light, is violating the provisions of this article.

Art. 903. Boat owner to have license.—It is hereby declared unlawful for any person owning or navigating a sailboat or powerboat, to receive on board such boat for pay any person or persons engaged in hunting, before such person owning or navigating such boat shall have applied for and received a license from the Game, Fish, and Oyster Commissioner,[1] or one of his deputies, granting him the right for one year, to receive and carry on his boat persons engaged in hunting. Before such license is issued, the person applying for it shall pay to the Game, Fish, and Oyster Commissioner or one of his deputies, the sum of two ($2.00) dollars, and shall file with such Game, Fish and Oyster Commissioner, the name of his vessel, her accommodations for passengers, and the number of her crew and shall file with the Game, Fish and Oyster Commissioner, or one of his deputies, an affidavit to the effect that he will not violate any of the provisions of this chapter, and will endeavor to prevent anyone whom he carries on his boat from violating any of the provisions of this chapter, and that he will not carry any hunter on his boat who does not possess a hunting license. Whenever any boat owner or navigator fails or refuses to comply with any of the provisions of this section, the Game, Fish, and Oyster Commissioner is authorized and empowered to cancel his license without a refund or return of the license fee paid; and no license shall be renewed or issued to him thereafter for a period of one year.

Any person who carries out any hunting parties for reward or pay of any kind without first having procured his license, as provided in this article, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

[1] See note to Article 888, ante.

Art. 904. Hunting with gun; license for.—No citizen of this State shall hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commissioner,[1] or one of his deputies, or from any county clerk in this State, a license to hunt, and for which he shall pay either of such officers the sum of two ($2.00) dollars; fifteen cents of which amount shall be retained by said officer as his fee for collecting.

The fee for a non-resident citizen or alien hunting license shall be twenty-five ($25.00) dollars; three ($3.00) dollars of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining twenty-two ($22.00) dollars to the Game, Fish and Oyster Commission.

Any person hunting with a gun out of the county of his residence without a license authorizing him to hunt out of the county of his residence, or any person who fails or refuses on demand by any officer to show such officer his hunting license required of him by this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten ($10.00) dollars, nor more than one hundred ($100.00) dollars; provided, that the provisions of this article requiring hunting license shall not apply to persons under seventeen years of age.

[1] See note to Article 888, ante.

The amendment to this Article by Acts 1929, 41st Leg., 2nd C.S., p. 37, ch. 23, § 1, was repealed by Acts 1931, 42nd Leg., p. 848, ch. 356, § 1.

Art. 904a. Non-resident and alien license.—Any non-resident of this State or any alien who shall hunt wild game and birds in this State without first securing a license to hunt from the Commissioner [1] or his deputy or the county clerk shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 298.]

[1] See note to Article 888, ante.

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repeals Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 905. Commissioner to enforce game law.—The Game, Fish and Oyster Commissioner [1] and his deputies shall have the same power and authority as sheriffs to serve criminal processes in connection with cases growing out of the violations of this chapter, shall have the same power as sheriffs to require aid in executing such process, and shall be entitled to receive the same fees as are provided by law for sheriffs in misdemeanor cases.

Said Commissioner or any of his deputies may arrest without a warrant any person found by them in the act of violating any of the laws for the protection and propagation of game, wild birds or fish, and take such person forthwith before a magistrate having juris-

diction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest.

[1] See note to Article 888, ante.

Art. 906. Deputy commissioners to enforce law.—It is hereby made a special duty of the Game, Fish and Oyster Commissioner [1] to enforce the statutes of this State for the protection and preservation of wild game and wild birds; and to bring, or cause to be brought, actions and proceedings in the name of the State of Texas, to recover any and all fines and penalties provided for in the laws now in force, or which may hereafter be enacted, relating to wild game and wild birds. Said Game, Fish and Oyster Commissioner may make complaint and cause proceedings to be commenced against any person for violating any of the laws for the protection and propagation of game or birds without the sanction of the county attorney of the county in which such proceedings are commenced; and in such cases he shall not be required to furnish security for costs.

[1] See note to Article 888, ante.

Art. 907. Prima-facie evidence.—The possession of any wild game bird, wild game fowl, or wild game animal mentioned in this chapter, whether dead or alive, during the time when killing or taking is prohibited shall be prima facie evidence of the guilt of the person in possession during the time when killing or taking is prohibited by law; provided, however, that it shall not be unlawful to ship or bring any wild game birds, wild fowl, or wild game animals from the Republic of Mexico into this State at any season; provided, that the party bringing the same into this State shall procure from the Game, Fish and Oyster Commissioner,[1] or from one of his deputies, a permit to bring same into the State, and shall procure from the United States custom officer at the port of entry a statement showing that such game was brought from the Republic of Mexico; and provided, further, that such party comply with the provisions of this Act regulating the shipment and sale of such wild game birds, wild fowls, or game animals.

[1] See note to Article 888, ante.

Art. 908. Hunting on game preserves for pay.—It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as a guest or member of said club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game, Fish and Oyster Commissioner,[1] or one of his deputies, granting him the right for the year beginning September 1 and ending August 31, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

Before such license is issued the person applying for same shall pay to the Game, Fish and Oyster Commissioner the sum of five ($5.00) dollars, and shall file with the Game, Fish and Oyster Commissioner the name of said club, shooting resort, shooting preserve or premises leased for hunting purposes, and shall file with the Game, Fish and Oyster Commissioner an affidavit that he will not violate any of the provisions of this article and will endeavor to prevent guests of said club, shooting resort, shooting preserve, or premises leased for hunting purposes from doing so, and that no guest will be accommodated who has not previously secured a hunting license.

All such managers of clubs, shooting resorts, shooting preserves and premises leased for hunting purposes shall be required to keep a suitable record book, and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game, Fish and Oyster Commissioner by such manager of club, shooting resort, shooting preserve or premises leased for hunting purposes, not later than February 10 of each year.

Whenever any manager of any club, shooting resort, shooting preserve or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this article, the Game, Fish and Oyster Commissioner is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one year.

Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, who accommodates hunters for reward, without first having secured the necessary license as provided in this article, or failing to comply with all the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than one hundred ($100.00) dollars, nor more than two hundred ($200.00) dollars, or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

For the purpose of carrying out the provisions of this article, it shall be the duty of the Game, Fish and Oyster Commissioner to have prepared and to furnish to all deputy game commissioners blank license with stubs attached, numbered serially, such license to be called "Shooting Preserve License"; such shooting preserve license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of club, character of game found on such preserve or lease, and the expiration date of such license. Said license must bear the seal of the Game, Fish and Oyster Commission, and must be signed by the Commissioner or one of his deputies. On the reverse side of said license shall be printed the open seasons and bag-limit, as provided in this chapter.

[1] See note to Article 888, ante.

Art. 909. Storage after closed season.—It shall be unlawful for any person to place in any public cold storage plant, or for any operator or employee of any such cold storage plant to place or accept for placing in such cold storage plant, any game bird or game animal of this State at any time except during the open season provided for the taking of same and for a period of three days immediately thereafter.

The owner or operator of any public cold storage plant, which intends to accept or does accept, any game bird or game animal of this State for storage, before accepting same shall provide a book in which he shall keep a legible record. Such record shall show the name of each and every person placing any game bird or game animal on storage in such public cold storage plant, the name of the person for whom it is placed on storage, the number of same, the kind of game bird or game animal placed on storage and the date on which such game bird or game animal is placed on storage. For the purpose of this Act, any plant in which game is stored for any person, other than the owner of such plant, is hereby defined as a public cold storage plant. Any public cold storage plant, or the record book required to be kept in such a plant, shall be subject to inspection by any game and fish warden of this State at any time and no warrant shall be required therefor.

Provided, however, that it shall be unlawful to place on [1] storage or keep on storage, any migratory bird or migratory waterfowl protected under the provisions of the Migratory Bird Treaty Act with Great Britain, at any time other than during the open season for taking same and for a period of ten days thereafter.

Any person placing any game bird or game animal in any public cold storage plant, in violation of any provision of this Act and/or any person accepting any game bird or game animal for storage or keeping same in storage in violation of any provision of this Act, or any person failing to keep the record required under the provisions of this Act, or any operator of a public cold storage plant refusing to permit any game and fish warden to inspect his plant or the record book, as required under the provisions of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars. [As amended Acts 1933, 43rd Leg., p. 55, ch. 26.]

[1] So in enrolled bill. Session Laws read "an".

Art. 909a. [Repealed by Acts 1943, 48th Leg., p. 106, ch. 77, § 1.]

The article repealed was Act 1941, 47th Leg., p. 700, ch. 435.

Art. 909a—1. Possession in public or private storage plant of game birds or water fowls permitted.—It shall be lawful for any person to have in his possession or in any public or private storage plant any game birds, or water fowls, or migratory water fowls at any time, not in excess of the number or amount permitted by law, and provided such game birds, water fowls or migratory water fowls were killed or taken during the open season for same. All laws and parts of laws in conflict with this section are hereby repealed. [Acts 1943, 48th Leg., p. 106, ch. 77, § 1a.]

Art. 909a—2. Possession or storage of game birds, animals, etc., lawfully taken or killed; repeal of conflicting provisions.—Section 1. It shall be lawful for any person at any time to have in his possession, or to place in and have in any public or private storage plant, refrigerator or locker, any game birds, (migratory or other), game animals, water fowl or migratory water fowl, lawfully taken or killed, not in excess of the number or amount permitted by law to be possessed.

Sec. 2. All laws and parts of laws in conflict herewith are repealed hereby to the extent of such conflict; and specifically repealed hereby is that portion of House Bill No. 451, Chapter 252, Acts of the Regular Session, 48th Legislature,[1] relative to retention limits on certain migratory birds and fowl, and the fixing of retention limits thereon; and especially repealed hereby are any and all other laws, or parts of laws, to the extent which such place limitation upon the time within which game birds, game animals, water fowl or migratory water fowl, lawfully taken or killed, may be possessed, or placed in or kept in any public or private storage plant, refrigerator or locker. [Acts 1945, 49th Leg., p. 2, c. 2.]

[1] Article 881b.

Art. 910. Female deer, fawn or young buck.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt or possess, dead or alive, any wild female deer, wild fawn deer or any wild buck deer without a pronged horn, or to possess any deer carcass or green deer hide with all evidence of sex removed.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than fifty ($50.00) dollars, nor more than two hundred ($200.00) dollars.

Art. 911. Chief deputy to act as commissioner.—The Game, Fish and Oyster Commissioner [1] shall appoint a chief deputy commissioner, who shall maintain an office in the Capitol of this State; and said chief deputy commissioner shall take the constitutional oath of office, and shall act as general assistant to the said Game, Fish and Oyster Commissioner; and, during the absence, sickness, or disability of the commissioner, he shall exercise the duties of the said commissioner. Said chief deputy commissioner shall devote his entire time to the work of his office. The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the Secretary of State a good and sufficient bond in the sum of five thousand ($5,000.00) dollars, conditioned on the faithful performance of the duties of his office, which bond shall be approved by the Game, Fish and Oyster Commissioner. It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk, blank hunting licenses, with stubs attached, numbered serially; and said chief deputy commissioner shall cause an account to be opened in his office with each county clerk, and charge said clerk with the number of licenses furnished him. He shall also open an account with each deputy of the Game, Fish and Oyster Commission and charge such deputy with the number of licenses furnished him. Said accounts shall show the serial numbers of such licenses.

[1] See note to Article 888, ante.

Art. 912. Clerk and justice of the peace to remit fines.—It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State, receiving any fine or penalty imposed by any court for violation of any of the laws of this State pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wild life, within ten days from and after the receipt or collection of such fine or penalty, to remit same to the Game, Fish and Oyster Commission at Austin, giving docket number of case, name of person fined, and section or article of the law under which conviction was secured, when such laws are required to be enforced by the Game, Fish and Oyster Commission.

Art. 913. Propagation and scientific purposes.—Nothing in this Act shall prevent the capture, by any means and at any time, day or night, of wild birds or wild fowl and their nests and eggs, or of wild animals or wild quadrupeds, for zoological gardens or parks, or for propagation purposes, or for scientific purposes; but, before any birds, fowl, animals, quadrupeds, nests, or eggs are taken or molested for the aforesaid purposes, permission must be secured from the Game, Fish and Oyster Commissioner,[1] only, by the person desiring so to operate, such person shall make application in the form of an affidavit, in duplicate, setting forth what birds, fowls, animals, quadrupeds, nests, or eggs he desires, and the purposes for which he desires the same; and if such request is for collection of skins, nests, or eggs, for scientific purposes, such application should be accompanied by certificates from two well known ornithologists (where the specimens are birds or their nests or eggs) or mammalogists (where the specimens are animals or quadrupeds) residents of the United States, stating that the applicant is a fit person to be entrusted with such a permit and that they have known him for at least five years past, and the applicant should further be supplied with a Federal scientific collecting permit issued by the Bureau of Biological Survey of the United States Department of Agriculture, permitting him or her to collect migratory birds, and the serial number and date of said Federal permit should be furnished by the applicant on said affidavit, where

request is made for the collecting of birds and their nests or eggs. Such scientific collecting permit as issued by the State of Texas will authorize the holder thereof to take, possess, and transport, in any manner and at any time, birds and their nests and eggs, for scientific purposes; provided, that before migratory birds, or their nests or eggs, are taken the Federal permit indicated above must be obtained. Such scientific permit shall be issued for the fiscal year and shall be null and void after midnight of December 31st of the year issued.

If any person desires to bring into the State any wild birds or wild animals, dead or alive, or the nests or eggs, of any bird, he shall apply to the Game, Fish and Oyster Commissioner, for permission to do so, attaching to such application an affidavit setting forth the number and species of birds or animals, or the nests or eggs of birds, desired to be introduced.

The Game, Fish and Oyster Commissioner may refuse to issue permits for any of the purposes set forth in this article if, in his judgment, such application, or party making same, is not satisfactory.

The Game, Fish and Oyster Commissioner is empowered to prescribe rules and regulations governing the propagation of game birds and animals, and the taking of birds and animals for scientific purposes, and is authorized to cancel any permit issued, when, in his judgment, the holder thereof fails or refuses to comply with such rules and regulations.

In the shipment of skins of protected animals, or the skins or nests or eggs of birds, each package shall have clearly and conspicuously marked, on the outside thereof, the name and address of the sender, the number of the sender's permit, and the statement that it contains specimens of animals, or of birds or their nests or eggs for scientific purposes. A person operating under, or holding a permit for scientific collecting shall report, on or before January 10th, following the expiration of his permit, to the Game, Fish and Oyster Commissioner, the number of skins, nests or eggs of each species collected, or transported, together with the disposition of all such specimens not in his possession at the time of making said report, and also a statement covering any scientific data observed during his field collecting that, in his judgment, would be of interest to the ornithological or zoological public.

The Game, Fish and Oyster Commissioner shall, at all times have the power to take in any manner, keep, and transport, anywhere within the State, any of the wild birds or their nests or eggs, or any wild animals, for investigation, propagation, distribution, or scientific purposes.

Any person violating 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 two hundred ($200.00) dollars; and each bird, fowl, animal, quadruped, nest, or egg, taken or possessed in violation of this article shall constitute a separate offense.

[1] See note to Article 888, ante.

Art. 914. Special deputy game commissioners.—It shall be the duty of the Game, Fish and Oyster Commissioner [1] to appoint special deputy game commissioners, who shall be ex officio deputy game, fish and oyster commissioners to enforce conservation laws in the various districts of the State, with all the powers of the latter to enforce the game, fish and oyster laws of this State. Such special deputy game commissioners shall not receive more than one hundred and fifty ($150.00) dollars per month and expenses. Each special deputy game commissioner shall take the oath of office, and shall give a good and sufficient bond in the sum of one thousand ($1,000.00) dollars for the faithful performance of his duties, such bond to be approved by and filed with the Game, Fish and Oyster Commissioner. Such special deputy game commissioners shall hold office at the discretion of the Game, Fish and Oyster Commissioner, and shall have all the powers in the discharge of their duties as are conferred on the Game, Fish and Oyster Commissioner.

The Game, Fish and Oyster Commissioner, in order to enforce conservation laws in the various sections of the State, shall also have the power to appoint deputy game commissioners in any county of the State; and said deputies shall have, in the discharge of their duties, the same powers and authority as are herein provided for the Game, Fish and Oyster Commissioner, and shall be subject to the supervision and control of and removal by said Game, Fish and Oyster Commissioner; except that they shall not be authorized to carry on or about their person, saddle, or saddle-bags any pistol, dirk, dagger, slung-shot, sword-cane, spear or knuckles made of any metal or any hard substance, Bowie knife or other knife manufactured or sold for the purpose of offense or defense. Such deputy game commissioners shall not receive more than three ($3.00) dollars a day for each day of service performed, together with all necessary expenses incurred, when same have been rendered on sworn account, and when the performance of said services was authorized by the Game, Fish and Oyster Commissioner, the chief deputy commissioner, or a special deputy game commissioner, which account shall be approved by the Game, Fish and Oyster Commissioner or chief deputy commissioner, and paid on warrant drawn by the Comptroller.

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 915. Season for turkeys.—The open season for killing wild turkeys shall be during November and December. Whoever kills wild turkey hen, or more than three wild turkey gobblers during any one year shall be fined not less than ten nor more than one hundred dollars. Each gobbler killed above three shall be a separate offense.

Art. 915a. Special deputy commissioners required to enforce game law.—All special deputy game commissioners and deputy game commissioners [1] are hereby empowered and required to enforce the game, fish and oyster laws of this State, and such deputy who violates such laws shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than one hundred ($100.00) dollars nor more than two hundred ($200.00) dollars.

[1] See note to Article 914, ante.

Art. 916. Killing turkeys in certain counties.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt for, or possess, dead or alive any wild turkey gobbler, or turkey hen in the counties of Cameron, Hidalgo, Star, Willacy, Kennedy, Brooks, Kleburg, or Nueces until November 16, 1930, from and after which time it shall be lawful to kill only turkey gobblers as herein provided in this bill.

Art. 917. Game preserves—how acquired.—Any person, firm or corporation owning and in possession of lands in the State of Texas, may transfer by an instrument of writing, duly acknowledged before an officer, authorized under the laws of this State to take acknowledgments, to the State of Texas the right to preserve, protect and introduce for propagation purposes any of the game birds or game animals mentioned in this chapter on the lands mentioned therein, for a period of not less than ten years. Such instrument of writing shall be filed in the office of the Game, Fish and Oyster Commissioner,[1] whereupon the Game, Fish and Oyster Commissioner may at his discretion declare the lands described in said instrument a State Game Preserve, and thereafter for the period named therein shall for all the purposes relating to the preservation, protection and propagation of game birds and game animals be

under the control of the Game, Fish and Oyster Commissioner. The aggregate acreage of all preserves which may be designated in any one county shall never exceed ten per cent of the total acreage of such county. Such preserves shall be numbered in the order of the filing of the instrument therefor. The Game, Fish and Oyster Commissioner shall cause notices to be prepared containing the words "State Game Preserve," "Trespassing Prohibited," and cause such notices to be posted at each gate or entrance thereto. All State game preserves established under the provisions of this chapter shall for all purposes of preservation, protection and propagation of game birds and game animals thereon be under the control and management of the Game, Fish and Oyster Commissioner, and he and his deputies may at all times enter in and upon such preserves in the performance of their duties.

It shall be unlawful for any person to hunt, pursue, shoot at, kill, take, destroy, or in any manner molest any of the game birds or game animals within the exterior boundaries of any game preserve, and any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars.

[1] See note to Article 914, ante.

Art. 918. Cautioning sportsmen.—It shall be the duty of the Game, Fish and Oyster Commissioner [1] and his deputies, in addition to their duties provided for in this chapter, to caution sportsmen and other persons while in the woods, marshes, or prairies of the State of danger from fire; and, to the extent of their power, to extinguish all fires left burning by any one, and to give notice, when possible to any and all persons, interested, of fires ranging beyond control to the end that same may be controlled and extinguished.

[1] See note to Article 914, ante.

Art. 919. Power of commissioners to enter on lands.—The Game, Fish and Oyster Commissioner [1] and his deputies shall at all times have the power to enter upon any lands or water where wild game or fish are known to range or stray for the purpose of enforcing the game, and fish laws of this State, and for the purpose of making scientific investigations or for research work as to such wild game or fish, and no action in any court shall be sustained against the commissioner or any of his deputies to prevent their entrance upon lands or waters when acting in their official capacity as herein set forth.

[1] See note to Article 914, ante.

Art. 920. Citizen, non-resident and alien defined.—For the purpose of this chapter, any person, except an alien, who has been a bona fide resident of this State for a period of time exceeding six months, continuously and immediately before applying for a hunting license, shall be considered a citizen of this State.

An alien is any person who is not a natural born citizen of the United States of America, and who has not declared his intention to become a citizen of the United States of America.

A non-resident shall be any person who is a citizen of any other State, or who has not continuously or immediately previous to the time of applying for a hunting license, been a bona-fide resident of the State of Texas, for a period of time more than six months.

Art. 921. Constitutionality.—If any paragraph, section, or part of this chapter shall be held unconstitutional or inoperative, it shall not affect any other paragraph, section, or part of this chapter; and the remainder of this chapter, save the part declared unconstitutional or inoperative, shall continue to be in full force and effect.

Art. 922. Name of bill.—This bill shall be known as the "Boyd-Hubby Game Bill" and shall take effect and be in force from and after September 1, 1925.

Art. 923. Killing birds in closed season.—No person shall kill or take any of the birds or fowls enumerated in Article 872 except during the open season as fixed for each kind of bird or fowl, and if any person shall kill, take or have in his possession, any of the birds or fowls enumerated in Article 872 at any time of the year except during the open season as provided for in this chapter, he shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 290, Sec. 9.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 923a. Importing game in closed season.—It shall be unlawful to bring into this State for any purpose whatever during the closed season, either alive or dead, any kind of wild game birds or fowl or animal, enumerated in this chapter, or to bring into this State for sale or exchange or barter or shipment for sale any such bird or fowl or animal, during the open season as set out in this chapter except as provided in article 908. Any person bringing such game, bird or fowl or animal into the State during the closed season or bringing such game bird or fowl or animal for sale or barter or shipment for sale during the open season, shall be fined not less than ten nor more than two hundred dollars. The bringing in of each game bird or fowl or animal herein interdicted is a separate offense. [Acts C. S. 1919, p. 187.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Acts 1919, 2nd C.S., ch. 72, from which this article was taken. See note to article 871.

Art. 923b. Protecting bats.—Whoever wilfully kills or in any manner injures any winged mammal known as the common bat shall be fined not less than five nor more than fifteen dollars. [Acts 1907, p. 124.]

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.]

Art. 923c. Birds protected by Audubon Society.—After the recording of the lease made by the Commissioner of the General Land Office to the National Association of Audubon Societies for the purpose of protecting birds and bird life on and about the property leased in Kleberg County, known as North Bird Island and South Bird Island and on Green Island in Cameron County and on the group of three islands in Big Bay in Cameron County and on the flats and reefs and shallow waters near all of said islands as described in the laws of this State, it shall be unlawful for any person whomsoever except a representative, an agent or an employé of said Association or a peace officer of this State or of the United States to enter upon such leased area without the knowledge and consent of said association, for the purpose of catching or killing any bird or birds or for the purpose of taking any bird or bird eggs or to destroy any bird nests or bird eggs; it shall be unlawful for any person whomsoever to catch, kill or maim any bird or birds on such leased area or to catch, kill or maim or attempt to catch, kill or maim any bird or birds on or above said area by any

means whatsoever even though such person may be above or outside of such leased area; it shall be unlawful for any person whomsoever to discharge any firearms or other explosive on or above such leased area; or to land, tie or anchor any fishing boat within such leased area. Nothing herein shall be construed to prohibit any representative, agent or employé of said Association from catching, killing or destroying within any such leased area any bird or birds and any animals that may be known to prey upon bird life or bird eggs nor to prohibit such representatives, agent or employé from taking bird eggs and catching any bird for propagation or conservation or scientific purposes only, nor to prohibit persons from taking refuge on such area on account of storms. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail for not less than ten days nor more than six months, or both. [Acts 1st C.S. 1921, p. 33; Acts 1923, p. 188.]

Art. 923d. Refusing to stop vehicle for search.—The Commissioner [1] or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to stop such vehicle when requested to do so by the Commissioner or his deputy, shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 294.]

[1] See note to Article 914, ante.

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Art. 923e. Buying for evidence.—One who buys, for the purpose of establishing testimony, a game bird or animal the sale of which is prohibited by this chapter shall not be prosecuted for such purchase. [Acts 1919, p. 296.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Art. 923(g) [889a] Using deer call.—Any person who at any time of the year in hunting deer uses a deer-call, whistle, decoy, call pipe, reed or other device, mechanical or natural, for the purpose of calling or attracting any deer, except by rattling deer horns, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than twenty nor more than ninety days, or both. [Acts 1915, p. 162, Acts 1919, p. 295.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Sections 1 and 2, Acts 1929, 41st Leg., p. 410, ch. 191, provide a similar penalty for hunting deer, buck, doe or fawn in the limits of Bastrop County for a period of five years.

Art. 923f. Shipping deer.—Whoever ships any deer or any part thereof by common carrier without the person shipping it making the affidavit prescribed in Article 889, and whoever ships or receives for shipment as the agent of any transportation company any deer or any part thereof, shall be fined not less than ten nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 190.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919 36th Leg., 2nd C. S., ch. 72, from which this article was taken. See note to article 871.

Art. 923g. Deer in Bosque County.—For a period of five years after June 12, 1923, whoever shall hunt, trap, ensnare or kill any wild deer within Bosque County shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1923, p. 115.]

Art. 923g—1. Deer in Parker and Palo Pinto Counties.—Sec. 1. That for five years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer in Parker or Palo Pinto Counties.

Sec. 2. That whosoever shall violate the provisions of this act shall be guilty of misdemeanor and upon conviction thereof shall be fined not less than One Hundred ($100.00) Dollars and not more than two hundred ($200.00) Dollars, provided each deer so shot shall constitute a separate offense. [Acts 1929, 41st Leg., p. 507, ch. 243.]

Art. 923g—2. Deer in Hemphill and other counties.—Sec. 1. That for five years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer in Hemphill, Roberts or Hutchinson Counties.

Sec. 2. That whosoever shall violate the provisions of this Act shall be guilty of misdemeanor and upon conviction thereof shall be fined not less than One Hundred ($100.00) Dollars and not more than Two Hundred ($200.00) Dollars, provided each deer so shot shall constitute a separate offense. [Acts 1929, 41st Leg., p. 506, ch. 242.]

Art. 923h. Sale or purchase of game; sale by taxidermists or tanners of unclaimed heads or hides.—Whoever shall sell or offer for sale, or have in his possession after purchase, any wild deer, wild antelope or Rocky Mountain sheep killed in this State, or the carcass, hide or antlers of wild antelope or Rocky Mountain sheep, or the carcass or antlers of wild deer, shall be fined not less than Ten Dollars ($10), nor more than One Hundred Dollars ($100), but it shall be lawful to sell deer hides or to possess deer hides after sale.

Provided, further, that a taxidermist or tanner having in his possession heads or hides of any such animal mounted or tanned which has not been claimed by the owner thereof, within a period of ninety (90) days after notification by the tanner or taxidermist, and for which said tanner or taxidermist has not received compensation for labor performed on same, may sell said heads or hides for the amount due him, accompanied by the original affidavit of the person leaving same to be mounted or tanned with said taxidermist or tanner, as provided for in Article 889 of Chapter 6, Title 13, of the Penal Code of the State of Texas, as to manner of killing said animal in accordance with the laws of the State of Texas. Said taxidermist or tanner shall make immediate report of said sale to the Game, Fish and Oyster Commission of Texas, giving the name of the person to whom sold and accompanied by affidavit as to the manner in which said hide or head was obtained, as provided for in Article 889, Chapter 6, of the Penal Code of the State of Texas. [Acts 1911, p. 101; Acts 1933, 43rd Leg., p. 324, ch. 124; Acts 1947, 50th Leg., p. 1014, ch. 432, § 1.]

Section 2 of the Act of 1947 amended art. 884. Section 3 repealed conflicting laws.

Art. 923i. Liberty County squirrels.—Whoever shall ship or cause to be shipped beyond the limits of Liberty County, or any agent or employé of any express or railroad company or other common carrier who receives for the purpose of transportation, or who shall transport, carry or take beyond the limits of said county, any wild squirrels, shall be fined not less than ten nor more than one hundred dollars.

Art. 923k. [876] Montgomery County squirrels.—Whoever sells or offers for sale or ships for sale in Montgomery County any squirrels shall be fined not less than twenty-five nor more than one hundred dollars. [Act 1909, p. 117.]

Acts 1925, 39th Leg., p. 404, ch. 172, § 47, repealed Article 876 of the Penal Code of 1911 from which this article was taken. See note to Article 871, ante.

Art. 923l. Killing squirrels prohibited.—Whoever kills any squirrels in the counties of Angelina, Cherokee, Hardin, Liberty, Nacogdoches, Dallas, Rock-

wall, Tyler, Jefferson, Orange, Jasper, or Newton during the months of January to July inclusive, or kills more than five squirrels in any one day during any other month in any of said counties shall be fined not to exceed fifty dollars. [Acts 1917, 3rd C. S., p. 69.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Acts 1917, 35th Leg., 3d C. S., ch. 8, from which this article was taken. See note to article 871.

Art. 923*ll*. Hardin county squirrels.—Sec. 1. That from and after the passage of this Act it shall be unlawful for anyone to kill squirrels in Hardin County, Texas, during the months of February 1st to October 15th, inclusive.

Sec. 2. That during the other months of the year it shall be unlawful for anyone to kill more than ten squirrels in any one day.

Sec. 3. Every person violating any of the provisions of this Act shall upon conviction be punished by a fine of not less than ten dollars or more than one hundred dollars. [Acts 1927, 40th Leg., 1st C. S., p. 137, ch. 45.]

Art. 923*ll*—1. Open season for squirrels in certain counties.—Hereafter it shall be lawful to kill squirrels at any time in the Counties of Travis, Williamson, San Saba, Llano, Lampasas, Burnet, Goliad, Blanco, Hays, Tom Green. Irion, Sterling, Concho, Erath, Bell and Hood. [Acts 1929, 41st Leg., p. 304, ch. 141, § 1; Acts 1930, 41st Leg., 5th C.S., p. 230, ch. 72, § 1.]

Art. 923*ll*—2. Squirrels in Panola and other counties.—Sec. 1. It shall be unlawful for any one to hunt, take or kill any squirrel, except during the months of November, December and January of any year, in the following counties: Panola, Rusk, Angelina, Tyler, Sabine, San Augustine, Nacogdoches, Jasper, Newton, Cherokee, Jefferson, Orange, Hardin, Liberty, Shelby, San Patricio, Chambers.

It shall be lawful for any one to hunt, take and kill squirrels in the Counties of Marion, Cass, Bowie, Morris and Smith during the months of May, June, July, November, December and January of any year. [As amended Acts 1929, 41st Leg., 2nd C.S., p. 53, ch. 33, § 1.]

Sec. 2. Any one who shall hunt, take or kill any squirrel in the counties named in this Act at any time except during the months of November, December and January shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten ($10.00) Dollars nor more than Fifty ($50.00) Dollars and his hunting license shall be automatically cancelled and he shall not be entitled to receive another such license for a period of one year from the date of his conviction. Provided that each squirrel taken or killed in violation of this Act shall constitute a separate offense. [Acts 1929, 41st Leg., p. 449, ch. 208.]

Art. 923*ll*—3. Williamson county squirrels.—It shall be unlawful for any person to take or kill any squirrel or squirrels in Williamson County, Texas, during the months of January, February, March, April, August and September of any year, and the remainder of each year shall be an open season during which it shall not be unlawful to hunt or take wild squirrels in said county. Any person violating this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $10.00 nor more than $100.00. Any provision of any law in conflict with this act whether enacted at this Session or some other Session of the Legislature is hereby repealed insofar as Williamson County is concerned. [Acts 1929, 41st Leg., p. 431, ch. 199, § 1.]

Art. 923*ll*—4. Squirrels in Colorado and other counties.—Sec. 1. It shall be unlawful for any person to hunt, take or kill squirrel, except during the months of May, June, July, October, November and December of any year in the following named counties: Colorado, San Patricio, Titus, Morris, Smith, Walker, San Jacinto, Waller, Fort Bend, Rusk, Matagorda, Brazoria, Bowie, Cherokee, Austin and Panola.

Sec. 2. Any person who shall hunt, take or kill any squirrel in violation of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10.00), nor more than Fifty Dollars ($50.00). [Acts 1929, 41st Leg., 2nd C.S., p. 35, ch. 21; Acts 1931, 42nd Leg., Spec.L., p. 101, ch. 36; Acts 1933, 43rd Leg., Spec.L. p. 18, ch. 17.]

Art. 923*ll*—5. Squirrels in Marion, Cass and Bowie Counties.—Sec. 1. That from and after the passage of this Act it shall be unlawful for any person to hunt, take, or kill any squirrel except during the months of May, June, July, October, November, and December in the counties of Marion, Cass, and Bowie.

Sec. 2. Any person who shall hunt, take, or kill any squirrel in the counties named in this Act at any time except the above designated months shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten ($10.00) Dollars nor more than Fifty ($50.00) Dollars, provided that each squirrel killed in violation of this Act shall constitute a separate offense. [Acts 1930, 41st Leg., 4th C.S., p. 29, ch. 18.]

Art. 923*ll*—6. Bag limit on squirrels.—It shall be unlawful for any person to take or kill more than ten (10) squirrels in any one day or to have in possession at any time more than twenty (20) squirrels; provided, however, that the terms and provisions of this Act shall not apply to the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Blanco, Brown, Bosque, Brazoria, Burnet, Caldwell, Calhoun, Callahan, Chambers, Colorado, Cooke, Coryell, Comanche, Comal, Concho, Delta, DeWitt, Dimmit, Eastland, Edwards, Erath, Fayette, Fort Bend, Franklin, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hamilton, Hill, Hopkins, Jackson, Karnes, Kerr, Kendall, Kimble, Lamar, Lampasas, Lavaca, Live Oak, Llano, Mason, Matagorda, McCulloch, Menard, Medina, Mills, Montague, Real, Red River, Refugio, San Patricio, San Saba, Schleicher, Stephens, Tarrant, Throckmorton, Travis, Uvalde, Victoria, Waller, Washington, Wharton, Wilson, Wise, Zavala. [Acts 1931, 42nd Leg., Spec.L., p. 453, ch. 233, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 923*ll*—7. Squirrels in Polk and other counties.—Sec. 1. It shall be unlawful for anyone to hunt, take or kill any squirrel in Polk, Trinity, Nacogdoches, Shelby and Kaufman Counties, except during the months of November, December and January in each year; and unlawful for anyone to hunt, take or kill any squirrel in Jefferson County, except during the months of June, July, November, December and January of each year.

Sec. 2. Anyone who shall hunt, take or kill any squirrel in the counties named in this Act at any time, except during the months of November, December and January, for the Counties of Polk, Trinity, Nacogdoches, Shelby, Angelina and Kaufman; and June, July, November, December and January, for the County of Jefferson, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00), and his hunting license shall be automatically cancelled and he shall not be entitled to receive another such license for a period of one (1) year from the date of his conviction. Provided that each squirrel taken or killed in violation of this Act shall constitute a separate offense. [Acts 1932, 42nd Leg., 3rd C.S., p. 9, ch. 8.]

Art. 923m. Fur bearing animals defined.—All the fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter,

wild mink, wild ring-tail cat, wild badger, wild polecat or skunk, wild raccoon, wild muskrat, wild o'possum, wild fox and wild civet cat are hereby declared to be fur-bearing animals. [Acts 1925, 39th Leg., ch. 177, p. 434, § 1.]

Art. 923mm. Trapper defined.—The term trapper as used under the provisions of this Act is any person who traps, kills or takes any of the animals or pelts thereof, herein mentioned, for the purpose of sale or barter. [Acts 1925, 39th Leg., ch. 177, p. 434, § 2.]

Art. 923n. Trapping license.—All residents, non-residents, and alien trappers desiring to trap, kill or take any of the wild fur-bearing animals or the pelts thereof mentioned in Section 1, of this Act,[1] for sale or barter, shall procure a license to do so, as hereinafter provided, and any person who fails to procure such license as herein provided for, shall be deemed guilty of a misdemeanor; which license shall expire February 15th after date of issuance and shall entitle the holder to trap or take any of the fur-bearing animals or the pelts thereof, mentioned in Section 1 of this Act, for sale or barter, during the season when it is lawful to do so; which license shall state the residence, age, height, weight, color of hair and color of eyes of the licensee. The fee for each resident license shall be one dollar ($1.00), ten cents of which shall be retained by the officer issuing and reporting the same as his commission. The fee for a non-resident or an alien license shall be fifty dollars ($50.00) for each county in which said alien or non-resident shall take, kill or trap such animals, five dollars of which shall be retained by the officer issuing and reporting the same, as his commission. [Acts 1925, 39th Leg., ch. 177, p. 435, § 3.]

[1] Article 923m, ante.

Art. 923nn. Resident trapper; nonresident trapper; alien trapper; definitions.—For the purposes of this Act a resident trapper of this State is any person who has been a bona fide resident of this State for a period of time exceeding twelve months continuously and immediately before applying for a trapper's license. A non-resident is any person who is a citizen of any other State of the United States of America or who has not continuously and immediately preceding the time of applying for a trapper's license been a bona fide resident of the State of Texas for a period of twelve months. An alien is any person who is not a natural born American citizen or who has not received the final naturalization papers of United States citizenship. [Acts 1925, 39th Leg., ch. 177, p. 435, § 4.]

Art. 923o. Trapping license; commissioner to provide forms.—The Game, Fish and Oyster Commissioner[1] shall cause to be printed blank trapper's license which shall contain the requirements as provided for in Section 3 of this Act,[2] and shall distribute the same to his deputies and to various county clerks of the State of Texas, taking their receipts therefor by members and quantity, and it is hereby declared to be the duty of the Game, Fish and Oyster Commissioner, his deputies, and the county clerks of this State to issue licenses as provided in this Act, and to make reports and remittances therefor, which reports and remittances shall be made during the first week of the month, succeeding such sale. [Acts 1925, 39th Leg., ch. 177, p. 435, § 5.]

[1] See note to Article 914, ante.
[2] Article 923n, ante.

Art. 923oo. License not required for tenants and owners.—Owners and tenants and their children who are residents, as defined in this Act, shall have the right to kill or take from their premises any of the fur-bearing animals or pelts thereof for sale or barter during the time when it is lawful to do so, without procuring a trapper's license. [Acts 1925, 39th Leg., ch. 177, p. 435, § 6.]

Art. 923p. Tenant defined.—The term tenant as herein used shall mean any person who has resided on the land they occupy for a period in excess of twelve months continuously and who shall have the same rented or leased for agricultural or grazing purposes. [Acts 1925, 39th Leg., ch. 177, p. 435, § 7.]

Art. 923pp. Beaver, otter and fox protected.—It shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof. Provided that this Section shall not apply to wild fox in that portion of West Texas lying North and West of a line starting at the mouth of the San Antonio River where it empties into the Corpus Christi Bay; thence following the meanders of the said San Antonio River Northerly to the mouth of the Cibolo River where same empties into the San Antonio River; thence following said Cibolo River Northerly to the Northwest line of Guadalupe County, the boundary between Guadalupe and Comal Counties; thence easterly with the North boundary line of Guadalupe, Caldwell, Bastrop, Lee, Burleson and Brazos Counties to the Brazos River; thence following the meanders of the Brazos River North to the intersection of the East boundary line of Young County; thence North along the West boundary line of Jack and Clay Counties to the Red River; provided that the counties of Hays, Milam, and Williamson shall be exempted from the provisions of this Bill applying to the territory west of the boundary line herein set out and shall be in and under the full effects of the law applicable to the territory East of said Division Line; provided that it shall be unlawful to take, hunt, capture, or kill, or attempt to hunt, capture, or kill any wild game or wild animals by means of traps or any other mechanical device within the limits of Limestone County for a period of five years from and after the passage of this Act.

Provided that in Young County, it shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof. [Acts 1925, 39th Leg., p. 436, ch. 177, § 8; Acts 1927, 40th Leg., p. 49, ch. 35, § 1; Acts 1927, 40th Leg., 1st C.S., p. 102, ch. 34, § 1.]

This article was further amended by Acts 1929, 41st Leg., 1st C.S., p. 181, ch. 68, § 1, but that amendment was repealed by Acts 1931, 42nd Leg., p. 440, ch. 264, § 1, without reference to prior acts incorporated into this article.

Art. 923q. Fur bearing animals; closed season.

Open season for taking pelts

Sec. 1A. It shall be unlawful for any person to take or attempt to take the pelt of any furbearing animal of this State at any time other than the open season provided therefor. The open season for taking pelts of furbearing animals shall be during the months of December and January of each year, except muskrats, the open season for which shall be from the 15th day of November to the 15th day of March, both days inclusive.

Trapper's license

Sec. 2. Any person over the age of seventeen (17) years who takes or attempts to take the pelt or pelts of any of the fur-bearing animals of this State for the purpose of barter or sale, except persons who take the pelt or pelts of fur-bearing animals from their own land, or land on which such persons reside, before doing so, shall procure a trapper's license. If the trapper has been a resident of this State for twelve (12) months before applying for such license, he shall pay for such license the sum of One Dollar and Ten Cents ($1.10), Ten (10¢) Cents of which shall be retained by the officer issuing the license. If he has not been a resident of this State for twelve (12) months

prior to applying for such license, he shall pay for a nonresident trapper's license the sum of twenty-five Dollars (25.00). Such license shall be issued by the Game, Fish and Oyster Commission and shall be available on and after September 1st of each year, and shall expire August 31st of the following year. All trapper's licenses shall have blanks for the name of the trapper, his place of residence, age, height, weight, color of eyes and color of hair. [As amended Acts 1931, 42nd Leg., p. 188, ch. 109, § 1.]

Tax on pelts

Sec. 3. That there be and is hereby levied a tax of one cent on each pelt taken from the furbearing animal, except pelts of raccoons and mink, the tax for which shall be five cents on each pelt, which tax shall be payable as herein provided.

Tags for pelts

Sec. 4. It shall be the duty of the Game, Fish and Oyster Commission to provide suitable tags to be attached to the pelts of furbearing animals, as a receipt for the tax which has been paid thereon. Such tag shall be available on and after September 1st of each year and shall be valid until August 31st of the year following. Tags shall be printed with the words "State of Texas—fur tax received 1 cent" and "State of Texas—fur tax received 5 cents," and shall show date of expiration, and have a blank for date pelt was tagged. The Game, Fish and Oyster Commission, or its authorized agents, shall issue tax receipt tags upon payment of the amounts for which such receipts are issued.

Attaching tax receipt tag to pelts

Sec. 5. It shall be the duty of the trapper to attach to the pelt of each furbearing animal taken by him a tax receipt tag as described herein for the amount of tax due on such pelt and place on each tag date it was tagged, before such pelt may be shipped, bartered, sold or offered for sale, and providing that all pelts held by a trapper for the purpose of sale shall be tagged within 5 days after the close of the open season for taking such pelts. It shall be unlawful for any dealer to purchase a pelt taken in this State or shipped from any point in this State which does not bear a tax receipt tag.

License for dealers

Sec. 6. Any person, firm or corporation, except the trapper selling his own catch, who barters, buys, offers to barter, offers to buy, sells or offers for sale the pelt or pelts of any furbearing animal protected by the laws of this State, before engaging in such business in this State, shall procure a license as a dealer from the Game, Fish and Oyster Commission or its authorized agents by the payment of the sum of Five Dollars and ($5.50) fifty cents, fifty cents of which shall be retained by the officer issuing such license, provided that such applicant has been a resident of this State for 12 months prior to the application for license or is a resident firm or corporation organized 12 months prior to such application. All others shall be nonresidents and shall procure a non-resident dealer's license from the Game, Fish and Oyster Commission at Austin, Texas, by the payment of Fifty ($50.00) Dollars for each such license.

Reports by dealers

Sec. 7. That every dealer as defined in this Act must file with the Game, Fish and Oyster Commission not later than the 10th day of each month a complete sworn report on printed forms furnished by the Game, Fish and Oyster Commission of the kind and number of the pelts of furbearing animals purchased in this State and shipped out of this State during the preceding month. Provided that no report shall be required for those months during which no pelts are purchased in this State. And providing that those dealers who purchase pelts for manufacturing into a finished product in this State shall report by the 10th day of each month the number and kind of pelts purchased during the preceding month.

Possession in closed season as prima facie evidence

Sec. 8. The possession in this State of any undried pelt from a furbearing animal at any time other than during the open season for taking of such pelt, or within fifteen days after the close of such season, shall be prima facie evidence that such pelt was taken during the closed season.

Propagation permits

Sec. 9. Any person who desires to take alive any of the furbearing animals of this State for the purpose of sale before taking any of the furbearing animals of this State for such purpose shall apply to the Game, Fish and Oyster Commission at Austin, Texas, for a Propagation Permit for which he shall pay the sum of Five ($5.00) Dollars, which Permit shall be available on and after the first day of September of each year and shall be valid until August 31st of the following year. Any person holding a Propagation Permit may take and hold furbearing animals protected by the laws of this State, provided that such animals are taken during the period of time that it is lawful to do so, and provided that the pelts from such animals may not be taken at any time other than during the open season for taking such pelts. Any person who holds a Propagation Permit shall file a report with the Game, Fish and Oyster Commission not later than the 16th day of March of each year, showing the number of each kind of furbearing animals held in captivity and giving the Commission the number of each kind of furbearing animal and pelts disposed of during the year previous.

Pelts as state property until payment of tax

Sec. 10. The pelts of all furbearing animals of this State are declared to be and continue to be the property of this State until all taxes levied thereon are paid, receipts for such taxes are issued and attached to such pelts, and all regulations herein are followed; provided, however, that any pelts taken during the open season for the taking of such pelts shall not come within the provision of this Act, when they are held for personal use.

Seizure of illegal pelts

Sec. 11. The Game, Fish and Oyster Commission and all Game and Fish Wardens in its employ are hereby directed to seize any and all pelts illegally taken or held by anyone and to hold them as evidence until after trial of the person or persons charged with illegally taking or holding of such pelt or pelts, and if the defendant is found guilty of taking or possessing such pelt or pelts, in violation of any provision of this Act, the pelt or pelts so seized as evidence shall be delivered to the office of the Game, Fish and Oyster Commission by the Game and Fish Warden, and the Game, Fish and Oyster Commission is hereby directed to sell such pelt or pelts. Prosecutions under this Act may be begun and carried on either in the county in which the pelts or animals were taken or from where they were shipped or in the county of this State in which they are received for sale.

Forfeiture of license

Sec. 12. It shall be unlawful for any person, firm or corporation to take, sell, offer for sale or buy or offer to buy the pelts of furbearing animals in this State for a period of twelve months after date of conviction. Any person, firm or corporation violating any of the provisions of this Act upon conviction shall be fined in any sum not less than Ten ($10.00) Dollars and not more than One Hundred ($100.00) Dollars, and his trapper's or dealer's license shall be forfeited at time

of conviction, and he shall not be entitled to purchase another such license for a period of one year.

Monies credited to special game fund

Sec. 13. All monies collected from taxes, licenses, fines, sale of confiscated pelts and penalties for violation of this Act shall be deposited with the Treasurer of this State during the first week of each month and shall be credited to the Special Game Fund and used for the purposes provided for by law.

Sec. 13-A. Provided, that the open season for taking pelts of fur-bearing animals in Cottle County shall be during the months of December, January and until the 15th day of February of each year, except muskrats, the open season for which shall be from the 15th day of November to the 1st day of April, both days inclusive. [Acts 1925, 39th Leg., p. 436, ch. 177; Acts 1929, 41st Leg., p. 472, ch. 221; Acts 1930, 41st Leg., 5th C.S., p. 185, ch. 45; Acts 1931, 42nd Leg., Spec.L., p. 416, ch. 201, § 1.]

Section 14 of Acts 1929, 41st Leg., p. 472, ch. 221, as amended by section 1 of Acts 1930, 41st Leg., 5th C.S., p. 185, ch. 45, repeals all conflicting laws and parts of laws.

Section 15 as amended provides that, if any section is held unconstitutional, the validity of any other section shall not be affected.

Acts 1931, 42nd Leg., p. 188, ch. 109, amended section 2 of this Article. Acts 1931, 42nd Leg., Spec.L., p. 416, ch. 201, added section 13-A.

Art. 923q1. [Repealed by Acts 1929, 41st Leg., p. 70, ch. 36, § 1.]

Article repealed was Acts 1927, 40th Leg., p. 234, ch. 160.

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.]

(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.]

All licenses provided for in this Section shall be valid until August 31st following date of issuance.

Monies 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,[1] and specifically the law of this State now in existence requiring a Trapper's license[2] and a Resident Fur Dealer's license[3] or a Nonresident Fur Dealer's license,[4] are hereby repealed."

[1] See art. 923q, §§ 4, 5.
[2] See art. 923q, § 2.
[3] See art. 923q, § 6.
[4] 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.]

Section 3 of the Act of 1939 repealed conflicting laws.

Acts 1941, 47th Leg., Reg.Sess., p. 51, ch. 34, Pen.Code art. 978j note, repeals all special and local laws regulating the taking, possession, or sale of fur-bearing animals in so far as they apply to Panola County.

Art. 923qa—1. Trapping fur bearing animals in certain counties.—Sec. 1. For the purposes of this Act the wild beaver, wild otter, wild mink, wild ringtail cat, wild badger, wild polecat or skunk, wild o'possum, wild fox and wild civet-cat are hereby declared to be furbearing animals.

Sec. 2. It shall be unlawful for any person at any time to take any fur-bearing animals of this State with a steel trap, snare, or deadfall or any other mechanical device other than a gun or pistol in any of the counties to which this Act applies.

Provided, however, that this provision shall not apply to a trapper employed by the United States Government, the State of Texas, or by the Commissioners' Court of any of the counties mentioned herein, and that this provision shall not apply to trapping within the bounds of the State Game Preserves that may be located in any of the counties herein mentioned when doing so is under the direction of the Game, Fish and Oyster Commissioner.

Provided, however, that this Act shall apply only to the Counties of Panola, Shelby, Nacogdoches, Rusk, Cherokee, Angelina, San Augustine, Hardin, Harris, Harrison, Polk, San Jacinto, Trinity, Liberty, Anderson, Sabine, Brazos, Burleson, Washington, Madison, Grimes and Montgomery. [As amended Acts 1931, 42nd Leg., p. 847, ch. 355, § 1.]

Sec. 3. Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than $10.00 and not more than $200.00 and the setting of any trap, snare, or deadfall in any of the counties mentioned herein shall be prima facie evidence of guilt and the setting of each trap, deadfall, or snare shall constitute a separate offense. [Acts 1929, 41st Leg., 2nd C.S., p. 36, ch. 22.]

Acts 1931, 42nd Leg., p. 847, ch. 355, § 1, amended section 2 of this Article.

The Act of 1929, cited to the text, was amended by Acts 1930, 41st Leg., 5th C.S., p. 154, ch. 24, § 1, but the amendatory Act of 1930 was repealed by Acts 1931, 42nd Leg., p. 440, ch. 264, § 1, *without reference to the Act of 1929* or the amendatory Act of 1931, cited to the text.

Art. 923qa—2. [Expired.]

This article, Acts 1930, 41st Leg., 4th C.S., p. 80, ch. 41, made it unlawful to take or kill quail and fur bearing animals for three years.

Art. 923qa—3. Transportation of wolves forbidden.—Sec. 1. It shall be unlawful for any person to transport, or to cause to be transported, any live wolf within this State.

Sec. 2. It shall be unlawful for any person to possess or to receive, or to transport or to have for the purpose of transporting, or for the purpose of turning loose, or to turn loose, or to cause to be turned loose, any live wolf within this State.

Sec. 3. It shall not be unlawful for a State or County Official, in the performance of any official duty, to transport a live wolf, or for the owner or agent of any licensed circus, zoo or menagerie, to have, possess or transport any live wolf for exhibition or scientific purposes, only.

Sec. 4. Any person who violates any provision of the preceding Sections of this Act shall be guilty of a felony and shall upon conviction be confined in the penitentiary for not less than six months nor more than five years. [Acts 1930, 41st Leg., 4th C.S., p. 87, ch. 46.]

Art. 923qa—4. Trapping fur bearing animals, exception of certain counties.—Sec. 2. It shall be unlawful to take the pelts of any of the fur-bearing animals of this State at any time other than the open season provided therefor. The open season for taking the pelts of wild beaver, for that portion of the State of Texas lying west of the Pecos River, shall be during the month of January of each year. It shall be unlawful to take the pelts of wild beaver in any other portion of this State or to take the pelts of wild otter in any portion of this State within a period of ten (10) years following the passage of this Act. Provided that it shall be unlawful to trap any fur-bearing animal in Angelina County during any month of the year, but it shall be lawful to sell the pelts and furs of fur-bearing animals in said county during December and January.

Sec. 3. That there be and is hereby levied a tax of five (5) cents on each pelt taken from a wild beaver which shall be payable as provided in House Bill No. 86, Acts 5th Called Session of the 41st Legislature.[1]

Sec. 4. Any person who violates any provision of this Act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00) and his trapper's and dealer's license shall be forfeited at the time of conviction and he shall not be entitled to purchase another such license for a period of one (1) year.

Sec. 5. Provided that the provisions of this Act shall in no way apply to McLennan, Falls, Limestone, or Milam Counties nor to the Counties composing the following Senatorial Districts: eight (8), ten (10), eleven (11), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty (20), twenty-one (21), and twenty-eight (28); except, however, it shall be effective as to Brazos County of the Fourteenth (14) Senatorial District.

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.]

[1] Article 923q, ante.

Section 1 of this Act repealed Acts 1929, 41st Leg., 1st C.S., p. 181, ch. 68 and Acts 1930, 41st Leg., 5th C.S., p. 154, ch. 24.

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.

Art. 923qa—5. Trapping fur-bearing animals in Nacogdoches and Houston counties; exceptions.—Sec. 1. It shall be unlawful for any person at any time to take fur-bearing animals of this State with a steel trap, snare or deadfall or any other mechanical device other than a gun or pistol in any of the Counties to which this Act applies; provided, however, that this provision shall not apply to a trapper employed by the United States Government, the State of Texas, or by the Commissioners' Court of any of the Counties mentioned herein, and that this provision shall not apply to trapping within the bounds of the State Game Preserves that may be located in any of the Counties mentioned, when doing so is under direction of the Game, Fish and Oyster Commission; provided, how-

ever, that this Act shall apply only to the Counties of Nacogdoches and Houston.

Sec. 2. Any person who violates any provisions of this Act shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than Ten Dollars ($10.00), nor more than One Hundred Dollars ($100.00), and his trappers' and dealers' license shall be forfeited at the time of conviction and he shall not be entitled to purchase another such license for a period of one year. [Acts 1932, 42nd Leg., 3rd C.S., p. 7, ch. 6; Acts 1933, 43rd Leg., Spec.L., p. 15, ch. 15.]

Art. 923qa—6. Animals designated as fur bearing; application to certain counties.—Section 1. All the fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter, wild mink, wild ringtail cat, wild badger, wild polecat or skunk, wild raccoon, wild muskrat, wild opossum, wild fox, and wild civet cat are hereby declared to be fur-bearing animals.

Sec. 2. It shall be unlawful for any person to kill, take, or have in his possession for barter or sale, after the passage of this Act, any wild beaver, wild otter, or wild fox, or the pelts thereof. Providing that this Section shall apply to Nacogdoches, Walker, San Jacinto, Shelby, Rusk, and Jefferson Counties.

Sec. 3. Every person violating any provision of this Act shall, upon conviction, be punished by a fine of not less than Ten Dollars ($10), nor more than One Hundred Dollars ($100). [Acts 1932, 42nd Leg., 3rd C.S., p. 8, ch. 7; Acts 1941, 47th Leg., p. 410, ch. 239, § 1.]

Art. 923qa—7. Beaver or otter; license required to trap outside county of residence.—Section 1. It shall be unlawful for any resident of this State to trap or attempt to take or trap beaver or otter outside the county of his residence without first obtaining from the Game, Fish and Oyster Commission, or one of its authorized agents, a Beaver-Otter Trapping License, for which he shall pay the sum of Fifty Dollars ($50), Fifty (50) Cents of which sum shall be retained by the officer issuing said license, balance of which shall be promptly remitted to the Game, Fish and Oyster Commission and deposited in the State Treasury to the credit of the Special Game Fund, where it shall be used for the purposes provided by law.

Sec. 2. It shall be unlawful to take or attempt to take or trap any beaver or otter in this State, or for any person to sell or offer for sale, the pelt of any beaver or otter for a period of five (5) years from and after the passage of this Act. Providing, however, that it shall be lawful to take or trap beaver and sell the pelts of same in that portion of the State of Texas west of the Pecos River and in Val Verde and Kimble Counties. The open season for taking or trapping beaver in that portion of the State west of the Pecos River and in Val Verde and Kimble Counties shall be only during the period January 1st to January 15th of each year, and it shall be unlawful for any person during any open season provided for in this Section of this Act to take more than three (3) beaver.

Sec. 2a. Provided further, that all of the provisions of this Act shall also apply to and prevail in Maverick County. [Added Acts 1945, 49th Leg., p. 157, ch. 109, § 1.]

Sec. 3. Any person who takes any beaver at any time it is unlawful to do so, or attempts to sell the pelt of a beaver in any county of this State unless same is permitted under the provisions of this Act, or any person who otherwise violates any provision of this Act, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not less than One Hundred Dollars ($100), nor more than Two Hundred Dollars ($200). [Acts 1943, 48th Leg., p. 287, ch. 183.]

Section 4 of the Act of 1943 and section 2 of the Act of 1945 repealed conflicting laws.

Art. 923qq. Fund for enforcement.—All moneys collected from the fines and penalties for the violation of this Act, and all moneys collected from the sale of trapper's licenses shall belong to the special game fund of this State, and shall be paid over by the Game, Fish and Oyster Commissioner [1] to the Treasurer of the State during the first week of each month, and shall be credited to such special game fund for the enforcement of this Act and the game laws in general, provided county attorneys shall receive ten per centum and officers making collection five per centum of any fines or fine assessed for violation of this Act. [Acts 1925, 39th Leg., ch. 177, p. 436, § 10.]

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 923r. Trapping without owner's consent prohibited.—It shall be unlawful for any person to trap, or set any trap or deadfall on the inclosed lands of another without the consent or permission of the owner of said land. [Acts 1925, 39th Leg., ch. 177, p. 436, § 11.]

Art. 923rr. Trapping, killing or possession of muskrats without consent of land owner or lessee; punishment for violation.—Section 1. It shall be unlawful for any person, at any time, to set a trap for or trap or kill any muskrat upon any land of another, or be in possession of a muskrat or the hide of such animal taken from such land, without the consent of the owner or lessee of such land to trap thereon; provided that such person may, in relief against this provision, show a rightful, legal possession of such muskrat or the hide of such animal.

Sec. 2. Every person violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars. [Acts 1925, 39th Leg., p. 436, ch. 177, § 12; Acts 1941, 47th Leg., p. 173, ch. 125.]

Art. 923s. Molesting muskrat beds and nests.—It shall be unlawful for any person to destroy the beds, nests or breeding places of any muskrat or muskrats, or to take or kill any of such animals except by trapping; provided, however, that any person shall have the right to kill such animal upon his own premises at any time or by any means. [Acts 1925, 39th Leg., ch. 177, p. 436, § 13.]

Art. 923ss. Purchase of muskrats trapped on lands of another.—It shall be unlawful for any person to purchase the hide or furs of muskrats on the land of another, taken or trapped on the land of another, from any person other than the owner of such land or the duly authorized agent of such owner. [Acts 1925, 39th Leg., ch. 177, p. 436, § 14.]

Art. 923t. Inclosed lands defined.—By inclosed land is meant any land inclosed by a fence or fences, or by water, or partly by fence and partly by water, or by any barrier, natural or artificial, that is used by owners as methods or means of inclosure. [Acts 1925, 39th Leg., ch. 177, p. 436, § 15.]

Art. 923tt. Posted land defined.—Posted land within the meaning of this Act shall have signs at the gate or gates and at any streams entering said inclosure reading "Posted" in a conspicuous place, shall be deemed posted within the meaning of this Act. [Acts 1925, 39th Leg., ch. 177, p. 436, § 16.]

Art. 923u. Refusal to carry and exhibit license to officer.—Any person required to procure a license under this Act and who fails to carry said license on his

person when trapping, killing or taking any of the fur-bearing animals or the pelts thereof for sale or barter, or who fails or refuses to exhibit the same to any officer authorized to enforce the laws of this State, or who uses the license of another or permits another to use his license shall be deemed guilty of a misdemeanor. [Acts 1925, 39th Leg., ch. 177, p. 436, § 17.]

Art. 923uu. Trapping license required.—It shall be unlawful for any person required by this Act to procure a trapper's license to kill or take any of the fur-bearing animals or the pelts thereof mentioned in this Act, for the purpose of sale or barter, without having procured a license to do so, as required by Section 3 of this Act.[1] [Acts 1925, 39th Leg., ch. 177, p. 437, § 18.]

[1] Article 923n, ante.

Art. 923v. Commissioner to enforce.—It shall be the duty of the Game, Fish and Oyster Commissioner [1] and his deputies to enforce the provisions of this Act. [Acts 1925, 39th Leg., ch. 177, p. 437, § 19.]

[1] See note to Article 923qq, ante.

Art. 923vv. Penalty.—Every person violating any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one hundred dollars. [Acts 1925, 39th Leg., ch. 177, p. 437, § 20.]

Art. 923w. Repeal of conflicting laws.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Acts 1925, 39th Leg., ch. 177, p. 437, § 21.]

Art. 923ww. Partial invalidity.—If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections save the one that may be declared unconstitutional shall continue to be in full force and effect. [Acts 1925, 39th Leg., ch. 177, p. 437, § 22.]

Art. 924. Explosives and poisons.—It shall be unlawful for any person to place in any of the waters of this State any poison, lime, dynamite, nitroglycerin, giant powder [1] or other explosives or to place in such waters any drugs, substances or things deleterious to fish life for the purpose of catching or attempting to catch fish by the use of such substances or things, or for any other purpose whatsoever, provided however that in event it becomes necessary to place any explosive in waters in connection with construction work, same may be authorized by written order of the County Judge of the County where the work is to be done.

Any one violating any provision of this Act shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than Fifty Dollars ($50), nor more than One Hundred Dollars ($100), and shall serve a sentence in the county jail of not less than sixty (60) days, nor more than ninety (90) days. [As amended Acts 1935, 44th Leg., p. 646, ch. 260, § 1.]

[1] So in enrolled bill. Session Laws read "power".

Art. 925. [870] Taking fish without consent of owner.—Whoever shall take, catch, ensnare or trap any fish by means of nets or seines or by poisoning, polluting, or by use of any explosive, or by muddying, ditching or draining in any lake, pool or pond in any county in this State without the consent of the owner of such lake, pool, or pond, shall be fined not less than ten nor more than one hundred dollars. In prosecutions hereunder the burden to prove such consent shall be upon the defendant. [Acts 2nd C. S. 1919, p. 191.]

Art. 926. Fresh water streams defined.—For the purpose of establishing the dividing line between the salt and fresh waters of this State, in so far as it pertains to the fishing laws, all fresh water rivers and streams in this State, and all lakes, lagoons, and bodies of rivers, except tidal bays or coastal waters, such as bays and gulfs, shall be and are hereby declared to be fresh water streams and rivers to their mouths, and it shall be unlawful to set nets or drag seines or fish in other ways in such streams, rivers and their connecting lakes, lagoons, and bodies of water mentioned, except in conformity with the laws enacted to govern, apply and control in fresh water fishing.

Art. 927. [923f] Fishing in fresh waters.—Except the ordinary hook and line or trot line, or a set or drag net or seine, the meshes of which shall be three or more inches square, or a minnow seine not more than twenty feet long used for catching bait, no person shall place in any fresh water river, creek, lake, bayou, pool, lagoon or tank, in this State, any net, trap or other device for catching fish, or take or catch any fish from said waters with any net, seine, device, or hook and line or trot line, other than as permitted herein. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1913, p. 274; Acts 1917, p. 410; Acts 2nd C.S. 1919, p. 210.]

Art. 927a. Fresh water fish; no closed season; size and limits; penalty; repeal of conflicting local, general or special laws.—Section 1. There shall be no closed season or period of time when it shall be unlawful to take, catch or retain fresh water fish by the use of ordinary hook and line or artificial lures. Other devices, the use of which is permitted by law, may be used for the purpose of taking fresh water fish at any time of the year, but only in compliance with such other restrictions as are placed on their use by the laws of this state.

Sec. 2. It shall be unlawful for any person to take from public fresh waters and retain, or place in any container, boat, creel, live-box or on any fish-stringer any large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of large-mouth black bass, small-mouth black bass, spotted bass, that is less than seven (7) inches in length.

Sec. 3. It shall be unlawful for any person in any one day to catch and retain, or to place on or in any device or container for holding same while he is fishing, any fish that is taken from the public fresh waters of this state in excess of the following limits: large-mouth black bass, small-mouth black bass, spotted bass, or any sub-species of the same, singly or in the aggregate, fifteen (15), of which not more than ten (10) shall be of greater length than eleven (11) inches; white bass, twenty-five (25); blue catfish, channel catfish and yellow catfish, singly or in the aggregate, twenty-five (25); crappie or white perch, twenty-five (25).

Sec. 4. Any person who violates any provisions of this Act, upon conviction shall be fined in a sum not less than Five ($5.00) Dollars, nor more than Fifty ($50.00) Dollars.

Sec. 5. All laws or parts of laws, local, general or special, insofar as they provide a closed season or period of time when it is unlawful to take or catch fish or to use artificial lures, or insofar as they provide a size limit, possession limit or daily catch limit, or otherwise conflict with any provision of this Act, shall be and the same are hereby repealed; except that nothing herein contained shall repeal Chapter 213, House Bill No. 654, Regular Session, 48th Legislature,[1] or regulations made thereunder to govern the taking of fish in Lake Texoma, which is the body of water impounded by the dam at Denison, Texas. [Acts 1945, 49th Leg., p. 13, c. 9.]

[1] Article 978l—3.

Art. 928. Fishing in closed fresh waters.—The commissioner [1] is authorized to close any fresh water river, creek, lake, pool, bayou, lagoon or tank in this State, against the use of nets or seines or any particular kind of such nets and seines whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. Before closing such waters against the use of seines or nets

or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks, at not less than three stores or other places in proximity to such waters. Whoever shall fish with a net or seine in such closed waters, or who shall use such particular kind of net or seine as forbidden in such waters after the notice given as above required, shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 210.]

[1] See note to Article 923qq, ante.

Art. 928a. Fresh water fish sanctuaries.

Reservation of portions of streams for propagation of fish

Section 1. It shall be the duty of the Game, Fish & Oyster Commission with the approval of the Commissioners' Court of any county of the State of Texas to set aside and reserve portions of each public fresh water stream or other body of water as fish sanctuaries in the said county for the propagation in their natural state of fresh water fish. The Commission shall by this means increase and preserve the supply of such fish in any and all such waters where from any cause such supply has been reduced below the maximum number of fish such waters will support in their natural state without the existence of the cause or causes of the diminished supply. Provided, that the provisions of this Act shall not apply to Wichita, Clay, Baylor and Wilbarger Counties.

Designation of sanctuaries

Sec. 2. When the Commission shall determine that any such public fresh water has a lesser supply than it can support in its natural state, said Commission shall without delay set aside and designate one or more portions of such water as a fish sanctuary or sanctuaries. Such sanctuary or sanctuaries so set aside and designated shall be used by the Commission for the purpose of propagating fresh water fish therein in order to increase the supply of fish in this State. In no event shall a sanctuary be set aside or designated for a longer period than five (5) years. In no event shall more than fifty (50%) per cent of the public fresh waters in any county be set aside or designated as such sanctuary or sanctuaries.

Proclamation

Sec. 3. When a sanctuary or sanctuaries shall be set aside or designated, the Commission shall immediately give notice of such action by a proclamation, signed by the Chairman. Typewritten or printed copies of such proclamation shall be posted at the Courthouse door of each county where such sanctuary or sanctuaries are set aside or designated. Such proclamation shall describe as near as may be the area or areas which are set aside or designated as fish sanctuaries, the reason such area or areas are so set aside, the time when the same shall take effect, and the length of time the same shall be effective, and shall state that such area or areas have been set aside or designated fish sanctuaries under the provisions of this Act, and shall make special reference to this Act. In addition to the proclamation herein ordered, the Commission shall cause a brief notice of its contents to be published in any newspaper in each county or counties where such sanctuary or sanctuaries shall be set aside or designated for five (5) consecutive issues if the same be a weekly newspaper, and once each week for five (5) weeks if the same be published more often than once each week, and if there be no newspaper in such county, then in any newspaper in an adjoining county. The Commission shall in addition to issuing such proclamation and publishing such notice, along and around the boundaries of such areas so set aside and designated, post any number of signs, not less than six (6), bearing the following conspicuous inscription: "State Fish Sanctuary No Fishing." Said proclamation shall become effective on and after the last publication of notice of same herein ordered.

Fishing in sanctuaries forbidden

Sec. 4. It shall be unlawful for any person to fish in any fish sanctuary set aside or designated by the Game, Fish & Oyster Commission, with nets, trot lines, seines, hooks and lines, artificial bait, or otherwise or in any manner to take or catch or remove, or attempt to take or catch or remove any fish from such fish sanctuary.

Punishment for violations

Sec. 5. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Twenty-five ($25.00) Dollars, nor more than Two Hundred ($200.00) Dollars. [Acts 1931, 42nd Leg., p. 840, ch. 351.]

Art. 928b. Taking fish from waters of public park under control of State Parks Board.—Whoever shall take, catch, ensnare, or trap any fish by any means whatsoever in any waters which are within the confines of any public park under the control of the Texas State Parks Board, without the consent of the keeper, caretaker, or superintendent of said public park, shall be fined not exceeding One Hundred Dollars ($100). Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of this Act. [Acts 1941, 47th Leg., p. 1410, ch. 642, § 1.]

Art. 929. Oversize or undersize fish for sale.—It shall be unlawful for any person to sell, or offer for sale, or to have in his possession, or to have on board any boat or to have in any mercantile business establishment, or in any market where merchandise is disposed of, any redfish or channel bass of greater length than thirty-two inches, or less than fourteen inches; any salt water or speckled sea trout of less length than twelve inches; any sheephead of less than nine inches in length; any flounder of less than twelve inches in length; any pompano of less than nine inches in length; any mackerel of less than fourteen inches in length, and any salt water gafftopsail of less than eleven inches in length.

The place of sale or offering for sale or possession shall for the purpose of this chapter to establish venue, be either the place from which such fish are shipped, or where the fish are found, or offered for sale. It shall be unlawful in selling or offering for sale any fish mentioned in this article to sever the head from the body, except in case of the redfish and catfish in which case the head shall only be severed through the gill-cavity and the gill-fins shall remain on the body of such redfish or catfish. Such headless body of a redfish shall not measure more than twenty-seven inches in length, and such headless body of a catfish shall not measure less than eight inches in length; and all fish marketed or sold as mentioned in this article, must be weighed and sold with the head attached, except redfish and catfish as mentioned herein.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars.

Art. 930. Venue for under or oversize fish.—A prosecution for a sale of fish of unlawful size may be begun and carried on either in the county where such fish were shipped or in the county where they were received or offered for sale, or in any county through which such shipments may pass. [Acts 2nd C. S. 1919, p. 211.]

Art. 931. Undersize bass, etc.—Whoever shall take or catch from the fresh waters of this State, or have in his possession any bass of less length than eleven inches or any white perch or crappie of less

length than seven inches shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 932. Injuring small fish.—Whoever at any time shall catch or take from any fresh water river, lake, bayou, creek, pond, or other natural or artificial stream or pond of water by use of any means whatever any crappie or bass of less length than he is permitted to catch or take from such water, shall immediately return the fish back into such water; and unnecessary injuring of such fish shall be an offense under this article. Whoever violates any provision hereof shall be fined not exceeding one hundred dollars. [Acts 3rd C. S. 1917, p. 69, Acts 4th C. S. 1918, p. 188.]

Art. 933. Closed season on crappie or bass.—Any person who shall take or catch or have in possession any bass or crappie from the fresh waters of this State during the months of March or April of any year; or shall take, catch or have in possession any bass of less length than eleven inches, or any white perch or crappie of less length than seven inches, shall be deemed guilty of a misdemeanor, and on conviction shall be fined a sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 933a. Sale of bass and crappie prohibited.—It shall be unlawful for any person, firm or corporation, or their agents, to buy or sell, or offer for sale, or offer to buy, or have in his or their possession for sale, or to carry, transport or ship for the purpose of sale, barter or exchange, any fresh water crappie or bass within the State of Texas.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars, and each sale or shipment or act in violation hereof shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 178, p. 447, § 4.]

Art. 933½. [Expired.]

This article, Acts 1925, 39th Leg., p. 374, ch. 163, § 1, protected rainbow trout for a period of two years from and after the passage of this act.

Art. 933½a. Same; closed season after expiration of two years.—From and after the expiration of the closed season on rainbow trout as provided in Section 1 of this Act,[1] it shall be unlawful for any person to take, possess, sell or barter any rainbow trout from any of the fresh waters of Texas during the months of January, February, March, April and May of each year, which months shall constitute a closed season on rainbow trout. [Acts 1925, 39th Leg., ch. 163, p. 374, § 2.]

[1] Article 933½, ante.

Art. 933½b. Same; size limit.—It is hereby made unlawful for any person to take or have in his or her possession any rainbow trout from any of the fresh waters of Texas, of a less length than fourteen inches, or to take and have in his or her possession more than five rainbow trout during any one day. [Acts 1925, 39th Leg., ch. 163, p. 374, § 3.]

Art. 933½c. Same; sale prohibited.—It is hereby made unlawful for any person to sell, barter, or offer for sale or barter any rainbow trout taken from any of the fresh waters of Texas. [Acts 1925, 39th Leg., ch. 163, p. 374, § 4.]

Art. 933½d. Same; penalty.—Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). [Acts 1925, 39th Leg., ch. 163, p. 375, § 5.]

Art. 934. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 934a. Commercial fisherman and wholesale dealer's license.

Definitions

Sec. 1. The following words, terms and phrases used in this Act are hereby defined as follows:

(a) A "Commercial Fisherman" is any person who takes fish or oysters or shrimp or other edible aquatic products from the waters of this State, for pay, or for the purpose of sale, barter or exchange.

(b) A "Wholesale Fish Dealer" is any person engaged in the business of buying for the purpose of selling, canning, preserving or processing, or buying for the purpose of handling for shipments or sale, fish or oysters or shrimp or other commercial edible aquatic products, to Retail Fish Dealers, and/or to Hotels, Restaurants or Cafes and to the Consumer.

(c) A "Retail Fish Dealer" is any person engaged in the business of buying for the purpose of selling either fresh or frozen edible aquatic products to the consumer.

(d) A "Bait Dealer" is any person engaged in the business of selling either minnows, fish, shrimp or other aquatic products, for fish bait.

(e) A "Fish Guide" is any person who operates a boat for pay or anything of value, in accompanying or transporting any person engaged in fishing in the waters of this State.

(f) "Person" shall include the plural as well as the singular, as the case demands, and shall include individuals, partnerships, associations and corporations.

(g) "Population" is determined as shown by the last or any subsequent Federal Census.

License required

Sec. 2. Before any person in this State shall engage in the business of a "Commercial Fisherman," "Wholesale Fish Dealer," "Retail Fish Dealer," "Bait Dealer," "Fish Guide"; or use or operate a shrimp trawl, net or seine, oyster dredge, boat or skiff, for the purpose of catching or taking any edible aquatic life from the waters of this State for pay, barter, sale or exchange, the proper license provided for in this Act privileging them so to do shall first be procured by such person from the Game, Fish and Oyster Commission of Texas or from one of its authorized agents.

License fees; sizes of fish which may be sold

Sec. 3. The licenses and the fees to be paid for the same are hereby provided for in this Act and are as follows:

1. Commercial Fishermen's License, fee Three Dollars ($3).

2. Wholesale Fish Dealers' License, fee for each place of business, Two Hundred Dollars ($200).

2-a. Wholesale Truck Dealers' Fish License, fee for each truck, One Hundred Dollars ($100).

3. (a) Retail Fish Dealers' License, fee Three Dollars ($3) for each place of business in each city or town of less than seven thousand, five hundred (7,500) population.

(b) Retail Fish Dealers' License, fee Ten Dollars ($10) for each place of business in each city or town of not less than seven thousand, five hundred (7,500) and not more than forty thousand (40,000) population.

(c) Retail Fish Dealers' License, fee Fifteen Dollars ($15) for each place of business in each city or town of more than forty thousand (40,000) population.

(d) Retail Oyster Dealers' License, permitting the sale of oysters only, fee Five Dollars ($5) for each place of business in each city or town of more than seven thousand, five hundred (7,500) population. The sale of any fresh or frozen edible aquatic products, other than oysters, by a retail fish dealer possessing the license named in this subsection, shall constitute a violation of this Act.

(e) Retail Dealers' Truck License, permitting the sale of edible aquatic products from a motor vehicle to consumers only, fee Twenty-five Dollars ($25) for each truck; provided the owner of any retail fish dealers' license issued since September 1, 1934, for a place of business in a city or town of more than five thousand (5,000) population, shall be entitled to a rebate on the same when said owner of such license shall furnish the Game, Fish and Oyster Commission a claim sworn to for said amount. When such claim is found to be correct and is approved by the Executive Secretary of said Commission, same shall be paid out of any moneys available in the State Treasury upon warrant issued by the State Comptroller.

4. Bait Dealers' License, fee Two Dollars ($2) for each place of business.

5. (a) Shrimp Trawl License, for each boat operating or towing a trawl not more than ten (10) feet in width at the mouth, and not more than twenty (20) feet in length, fee Two Dollars ($2).

(b) Shrimp Trawl License, for each boat operating or towing a trawl more than ten (10) feet wide at its mouth or more than twenty (20) feet in length, fee Fifteen Dollars ($15); which said license shall permit the use of a "try net" as auxiliary to said trawl.

6. Seine or Net License, to be of metal, for and to be firmly attached to each one hundred (100) feet or fraction thereof, fee One Dollar ($1) for each one hundred (100) feet of the length thereof.

Provided, no license shall be issued for any seine or net longer than eighteen hundred (1800) feet, and also provided that after the passage of this Act no license shall be issued for any seine or net, the meshes of which are less than one and one-half (1½) inches from knot to knot.

7. Fish Boat License, for boats equipped with a motor of any kind or with sails, fee Three Dollars ($3).

8. Skiff License, for boat propelled by oars or poles, to be of metal and firmly attached to skiff, fee One Dollar ($1).

9. Oyster Dredge License, fee Fifteen Dollars ($15).

10. Fish Guide License, fee Two Dollars ($2).

11. Place of business, as used in this Act, shall include the place where orders for aquatic products are received, or where aquatic products are sold, and if sold from a vehicle, the vehicle on which, or from which such aquatic products are sold, shall constitute a place of business. The license shall at all times be publicly displayed by the dealer in his place of business so as to be easily seen by the public and the employees of the Game, Fish and Oyster Commission. And if any aquatic products are transported for the purpose of sale in any vehicle the license required of such dealer shall be displayed inside of such vehicle. Provided that no person shall bring into this State any aquatic products and in this State offer same for sale without procuring the license required for such a transaction by a dealer in this State, and the fact that such aquatic products were caught in another State shall not entitle the person claiming to have caught them to sell same in this State as a commercial fisherman. [As amended Acts 1934, 43rd Leg., 3rd C.S., p. 83, ch. 40, § 1; Acts 1935, 44th Leg., p. 808, ch. 345, § 1.]

12. Place of business as used in this Act shall not apply to a public cold storage vault, nor to a temporary receiving station or vehicle from which no orders are taken or from which no shipments or deliveries are made other than to the place of business of the licensee in the State of Texas. [Added Acts 1945, 49th Leg., p. 289, ch. 209, § 1.]

13. Provided that it shall be unlawful for any person engaged in the business of commercial fishermen, wholesale or retail fish dealer as defined in this Chapter, to have in his possession, place of business, on a boat or vehicle for the purpose of sale, or for any person to buy, sell, or offer for sale, any of the following species of fish of greater or less length than hereafter set out:

Salt Water Species	Maximum Length	Minimum Length
Red Fish or Channel Bass	35 inches	14 inches
Flounder and Speckled Sea Trout	None	12 inches
Sheephead and Pompano	None	9 inches
Mackerel	None	14 inches
Gafftopsail	None	11 inches

Fresh Water Species. No fresh water fish of less length than provided by Section 3, Senate Bill No. 9,[1] page 13, Acts of the Forty-ninth Legislature,[2] provided that such limitations as to the numbers of catfish in possession shall not apply to persons licensed under this Chapter, where the same are caught or passed in accordance with other laws of this State and which provisions shall not apply in any county having a local or special law in conflict herewith.

Proof of the possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle, shall constitute prima facie evidence of possession for the purpose of sale. Venue under this Act shall be established when such illegal fish are found in possession, where such fish are sold or offered for sale or the place from which said fish are shipped. Provided that it shall be lawful for any licensee to process and sell any lawful fish by cutting, filleting, wrapping, and freezing or otherwise preparing the same for market. [Added Acts 1945, 49th Leg., p. 289, ch. 209, § 1.]

[1] So in enrolled bill. Probably should read "S.B. # 93."
[2] Article 927a.

14. Provided that all laws and parts of laws in conflict therewith are hereby repealed; providing for the repeal of Chapter 334, Acts of the Regular Session of the Forty-eighth Legislature;[1] Sections 1c, 1d, and 1e of Article 941 of the Penal Code, State of Texas; and providing for the repeal of Section 1 and Section 1a of Article 941, Penal Code, State of Texas, as amended, in so far as they apply to the tidal waters of Cameron County north of a line due east and west from a point on Padre Island shore, four (4) miles north of the North Brazos Santiago Jetties and by repealing Chapter 487, Acts of the Regular Session of the Forty-fifth Legislature.[2] [Added Acts 1945, 49th Leg., p. 289, ch. 209, § 1.]

[1] Article 978j note.
[2] Article 978m.

Inspection

Sec. 4. All aquatic products handled by or in the possession of any Commercial Fisherman, Wholesale Fish Dealer, or Retail Fish Dealer in this State, shall at all times and at any place, be subject to inspection by any employee of the Game, Fish and Oyster Commission of Texas; and the refusal to grant for such inspection shall constitute a violation of this Act.

Rebate on existing licenses

Sec. 5. All Wholesale Dealer's Licenses, Oyster Dredge Licenses, Commercial Fishing Licenses, Boat Captain Licenses, Boat Registration Permits, and Seine, Net and Trawl Permits heretofore issued by the Game, Fish and Oyster Commission of Texas, shall become null and void on the effective date of this Act; provided, that the owner of any such license or permit, shall be entitled to a rebate on the amount paid for same for the unused period of time as shown on such license or permit, when said owner shall return such license or permit to said Commission attached to a claim for the amount of rebate due therefor. When such claim is found to be correct and approved by the Executive Secretary of the said Commission, the same shall be paid out of any moneys available in the State

Treasury upon warrant issued by the State Comptroller.

Penalty

Sec. 6. Any person failing to comply with or violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not less than Ten Dollars ($10.00), nor more than Two Hundred Dollars ($200.00), and his license shall be automatically cancelled and he shall not be entitled to receive another such license or permit for one year from the date of such conviction.

Repeals

Sec. 7. All laws or parts of laws in conflict herewith, or contrary to this Act, and especially Articles 934, 936, 937, 938, 939, 940 of the Penal Code of the State of Texas, and Articles 4031, 4032, 4033, 4034 and 4044 of the Revised Civil Statutes of the State of Texas, be and the same are hereby repealed. Provided, however, that all license fees and taxes accruing to the State of Texas by virtue of laws repealed by this Act, before the effective date of this Act, shall be and remain valid and binding obligations due the State for all fees and taxes accruing under the provisions of prior or existing laws and all such taxes 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. And further provided, that no offense committed and no fine, forfeiture or penalty incurred under such above repealed laws before the effective date of this Act, shall be affected by the repeal herein of any such laws, but the punishment of such offense and the recovery of such fines and forfeiture shall take place as if the law repealed had remained in force. Also providing, any person now or hereafter shown by a final judgment of a Court of competent jurisdiction to be indebted to and owing the State of Texas any amount for any license, fees or taxes on aquatic products handled, shall not receive any license named in this Act, until the time such indebtedness shall have been paid the Game, Fish and Oyster Commission of Texas.

Annual fees

Sec. 8. All license fees provided for in this Act, are annual fees and all licenses shall be effective on and after September 1st of each year and shall be valid until August 31st of the year following.

All moneys collected under the provisions of this Act, or because of fines paid for violations of the provisions of this Act, shall be remitted to the Game, Fish and Oyster Commission 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.

Provided, however, this Act shall become effective on January 1, A. D. 1934, and the license fees from that date until August 31, A. D. 1934, shall be two-thirds the amount of the annual fees provided for in this Act.

Monies to fish and oyster fund

Sec. 9. All moneys collected under the provisions of this Act, or because of fines paid for violation of the commercial fishing Laws, shall be remitted to the Game, Fish and Oyster Commission at its office in Austin, Texas, not later than the tenth day of the month following their collection, and shall be deposited by the Game, Fish and Oyster Commission in the State Treasury to the credit of a special fund designated as "Fish and Oyster Fund."

Such Fish and Oyster Fund shall be used for the enforcement of the Fish, Shrimp and Oyster laws of this State; for the dissemination of useful information pertaining to the economical value of marine life; for the making of scientific investigations and surveys of the sea food fishes and the marine life; for the better protection and conservation of the sea food fishes, oysters, shrimp and the other useful marine life; for the purchase, repair, and operation of boats and dredges; for employment of deputies; and for supplies, equipment and all necessary expenses for the proper administration of the Fish, Shrimp and Oyster laws of this State. [Acts 1935, 44th Leg., p. 808, ch. 345, § 2A.]

Constitutionality

Sec. 10. If any paragraph, section or any part of this Act shall be held unconstitutional or inoperative, it shall not affect any other paragraph, section or part of this Act; and the remainder of this Act, except the part declared unconstitutional or inoperative shall continue to be in full force and effect. [Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29; Acts 1935, 44th Leg., p. 808, ch. 345, § 3.]

Acts 1934, 43rd Leg., 3rd C.S., p. 83, ch. 40, and Acts 1935, 44th Leg., p. 808, ch. 345, amended section 3 of this Article. Section 9 is Acts 1935, 44th Leg., p. 808, ch. 345, § 2A, and section 10 is Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 9, and Acts 1935, 44th Leg., p. 808, ch. 345, § 3. Section 2 of Acts 1935, 44th Leg., p. 808, ch. 345, contained a penal provision the same as section 6 of the original act.

Art. 934b—1. Nonresident commercial fisherman and fishing boats; license.

Non-resident commercial fisherman

Section 1. A "Non-resident Commercial Fisherman" for the purposes 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 inhabitant of this State for a period of time more than twelve (12) months; the word person shall include partnerships, associations and corporations who have not continually had a bona fide place of business in this State for a period of time more than twelve (12) months, and who takes, 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.

Non-resident commercial fishing boat

Sec. 2. A "Non-resident Commercial Fishing Boat" for the purposes of this Act is hereby defined as follows:

Any boat or vessel, which is registered in any other State, or which has not continually been registered in this State for a period of time more than twelve (12) months, or which is not owned by any person, partnership, association of persons or corporation which has had a bona fide place of business in this State for a period of time more than twelve (12) months, and which is used for the purpose of taking, or assisting in taking or catching, fish, shrimp, 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. 3. 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 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 Non-resident Commercial Fisherman's License shall be Two Hundred Dollars ($200).

License for Non-resident Commercial Fishing Boat required; amount of fee

Sec. 4. Before any "Non-resident Commercial Fishing Boat" shall be used for the purpose of taking or assisting in taking or catching, fish, shrimp, 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, a license to be known as "Non-resident Commercial Fishing Boat 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 Non-resident Commercial Fishing Boat License shall be Two Thousand, Five Hundred Dollars ($2,500).

Resident boat fishing license only required when; prerequisites to license

Section 4A. Provided however that the foregoing definition of a "Non Resident Commercial Fishing Boat," shall not apply to, nor shall other than the resident boat fishing license be required of any boat or vessel, which is numbered or which is duly registered in the State of Texas and bona fidely owned by any person, partnership, association of persons or a corporation which has had and maintained actual physical residence or a bona fide place of business within the State of Texas for a period of twelve (12) months next preceding the date of application for any such commercial fishing boat license, when said boat or vessel qualifies under any of the following conditions:

Provided said boat or vessel, prior to the effective date of this Act, has been duly licensed and operated under a residential commercial fishing boat license of Texas;

Provided said boat or vessel is being employed to replace a boat or vessel previously licensed, where the licensed boat or vessel has been lost or destroyed due to fire, storm or abandonment;

Provided said boat or vessel be newly constructed or has not heretofore engaged in commercial fishing in some State other than Texas within a period of two (2) years next preceding such date of application.

a. Provided, however, no person, firm or corporation shall be entitled to apply for, purchase, or receive any license as required by Article 934 or Article 934a or Article 934b—1 as amended, for the privilege of taking commercial marine products from the territorial waters of this State or for the sale thereof, or for the licensing of any boat, vessel, equipment, or operation thereof, unless and until said applicant shall have produced for inspection of the licensing officer or agent of the Game, Fish and Oyster Commission, the license required of the applicant for the prior year or a duplicate thereof. In the event such applicant has not heretofore received for the prior year such license as applied for, or does not have the original or a duplicate thereof, such applicant shall make in writing, under oath, duly acknowledged in the State of Texas, an application addressed to the Game, Fish and Oyster Commission of Texas, giving in full detail information regarding the domicile, residence of the applicant, name, age, description, social security number, nationality, place of birth or naturalization; and if a resident of Texas the date such residence was acquired, and the place and State of former residence; whether or not the applicant has been convicted of violating the game and fish laws of the State of Texas, and if so the number, dates and places where conviction was had; and such other information as the Game, Fish and Oyster Commission of Texas may require. Provided that if such application be for the purpose of licensing any boat or vessel, such application shall give full details regarding the building, registration, equipment, and ownership of such boat or vessel, the amount of any mortgages or liens outstanding, the owners and holders of the same, and the addresses thereof, and such other information as the Game, Fish and Oyster Commission of Texas shall require in order to determine the proper license and the right of the applicant to receive or be denied such license or permit.

b. The failure of any applicant to give all of the information required herein shall constitute grounds for the refusal of such permit, and it shall be mandatory upon the Department to refuse such permit. The making of any false statement shall constitute a felony, the crime of perjury punishable under the General Laws of this State. [Added Acts 1947, 50th Leg., p. 86, ch. 59, § 1.]

Suspension of Paragraph 3 of Section 4A. Acts 1947, 50th Leg., p. 149, ch. 817, § 1, effective April 15, 1947, incorporated in art. 952*l*—11, by section 1b thereof, suspends the third paragraph of section 4A of this article for a period of two years.

Reciprocity provisions

Sec. 5. The Game, Fish and Oyster Commission of Texas, or its authorized agent or agents, shall have the right and authority to refuse to sell or grant any such Non-resident Commercial Fisherman's License or Non-resident Commercial Fishing Boat License to the residents of any State that may now or hereafter refuse to sell or grant equal privileges or licenses to the citizens of this State.

Boundaries of commercial fishing region

Sec. 6. The licensed commercial fishermen, resident or non-resident, 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.

Bringing aquatic products into state for sale

Sec. 7. It shall be unlawful for any Non-resident Commercial Fishermen to bring into this State or carry out of this State any aquatic products on any boat for pay, or for the purpose of sale, barter or exchange, without first having procured a "Non-resident Commercial Fisherman's License."

Bringing in or taking out aquatic products in fishing boats

Sec. 8. It shall be unlawful for any person, corporation or association of persons to bring into this State or carry or take out of this State in any Non-resident Commercial Fishing Boat, as herein defined, any aquatic products for pay, or for the purpose of sale, barter or exchange, without first having procured a "Non-resident Commercial Fishing Boat License."

Penalty

Sec. 9. Any person, corporation or association of persons failing to comply with, or who violates any provision of this Act shall be 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 imprisonment in jail not less than one month nor more than one year; or by both such fine and imprisonment; and providing 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 the possession of any Violator or violators of this Act, as evidence until after trial of the defendant or defendants, and no suit shall be maintained against the Game, Fish and Oyster Commission of Texas, or its authorized agent or agents therefor.

Inspection of cargo; fees; enforcement; ports of entry; venue for prosecutions

Sec. 10. Whereas, the taking of fish and marine life outside of the territorial waters of the State of Texas affects and endangers the supply within the State; and whereas the State of Texas has no adequate means of supervision and inspection of the sani-

tary conditions, and of sanitary control and inspection of the personnel of unlicensed boats or vessels operating outside of the territorial waters of this State and engaged in commercial fishing; and whereas such boats and vessels may discharge their cargo and sell their marine products in Texas ports without license or supervision; and whereas such practice endangers the life and health of the citizens of the State of Texas; and the supply of game and fish within the State; therefore:

(a). It shall be unlawful for any boat or vessel engaged in commercial fishing, which said boat or vessel is not licensed under Article 934 of the Penal Code of Texas as amended, to discharge or unload any commercial cargo of fish, shrimp, oysters or other marine products, or to sell or process the same within the State of Texas unless and until the same has been duly inspected at a port of entry as hereinafter provided and found to be in a sanitary condition under the rules and regulations as hereinafter provided and shall have paid or secured the payment of the inspection fee or tax as hereinafter provided for the inspection thereof.

(b). There is hereby levied an inspection fee or tax of Ten Dollars ($10) for each one hundred (100) pounds or fraction thereof of any cargo of fish, shrimp, oysters or other marine products sought to be discharged or unloaded from any unlicensed commercial fishing boat or vessel within the territorial limits of Texas. And the same shall be paid or secured to be paid by a cash or security bond made payable to the Game, Fish and Oyster Commission of Texas, as a prerequisite for inspection and the unloading and discharge thereof.

(c). The Game, Fish and Oyster Commission is hereby authorized to employ such necessary personnel and patrol boats in order to enforce the provisions of this Act and the jurisdiction of the State of Texas, within territorial limits as provided by law.

(d). The Game, Fish and Oyster Department shall provide a suitable number of ports of entry for such unlicensed commercial fishing vessel, and no such cargo as above provided may be unloaded or discharged except in such ports of entry, and then only after notice and application to the official and agent of the Department at such port of entry and after inspection. And the Department is hereby authorized, acting in conjunction with the State Health Department of Texas to provide for rules and regulations governing such inspection including such bacteriological, chemical, and toxic tests as may be required, and for blood tests and personal examinations of the personnel and members of the crew of such unlicensed boats or vessels; and based upon such rules and regulations to determine whether or not the unloading, discharge, processing or sale of such cargo shall be detrimental to the health and welfare of the citizens of the State of Texas; and no suit shall ever be filed or judgment granted against the Game, Fish and Oyster Commission, its officials or agents by reason of any delay resulting in the damage to any cargo or by reason of the failure to grant any permit for the unloading, discharge, processing or sale of such cargo.

(e). Venue for the prosecution of any violation of the provisions of this Act, or for the violation of any of the laws of the State of Texas, occurring in or upon the Gulf of Mexico within the territorial waters of this State, shall vest in the several Courts of any coastal county of this State bordering upon the Gulf of Mexico, and the same shall have concurrent jurisdiction in the same manner as if any such part of the Gulf of Mexico within the territorial waters of this State were included within the body of any such county.

Provided that when any such violation shall occur or be committed within the view of any peace officer of any coastal county, or of any officer or deputy of the Game, Fish and Oyster Commission, or of any county or State health officer of this State, that such officer is authorized to make arrest of any such person or persons, without a warrant, and is hereby authorized to arrest or seize any vessel with which upon or from which such offense is committed and to bring the same into any port in this State and hold the same as evidence pending trial. And the State of Texas shall have a lien upon said vessel, her tackle or cargo to secure the payment of such fine or fines as may be levied upon the trial or trials for any such offense.

Provided further that upon any trial for any violation of this Act the State shall be entitled to prove venue, by the introduction, as evidence, maps and charts as prepared by the U. S. Engineers or the U. S. Geodetic Survey disclosing areas, locations and soundings of the coast of Texas and the Gulf of Mexico, which correlated with soundings for depth taken by sonic instruments or by lead line at the approximate location of said offense, or by evidence as to visible fixed objects, or by the employment of navigation aids and instruments. And such testimony shall constitute prima-facie evidence that such violation occurred within the territorial waters of this State.

(f). Provided that if any provision, sentence, section or clause of this Act shall be held unconstitutional the same shall not affect the remaining parts, and the remaining parts shall be and remain in full force and effect. [As amended Acts 1947, 50th Leg., p. 87, ch. 59, § 2.]

Moneys to Fish and Oyster Fund

Sec. 11. All moneys collected under the 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, not later than the 10th day of the month following that collection, and shall be deposited by said Game, Fish and Oyster Commission of Texas in the State Treasury to the credit of the Fish and Oyster Fund.

Civil Proceedings

Sec. 12. All penalties provided herein shall be enforced against corporations violating any of the provisions of this Act by civil proceedings instituted by the proper enforcement officers of this State.

Repeal; partial invalidity

Sec. 13. All laws or parts of law in conflict with this Act are hereby expressly repealed; and if any Section or part whatsoever of this Act shall be held to be invalid, as in contravention of the Constitution such invalidity shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid. [Acts 1939, 46th Leg., p. 238; Acts 1945, 49th Leg., p. 78, ch. 55, § 1.]

Art. 935. Refusal to show license.—Any person fishing for market or for the sale of marine life and having a license therefor who refuses to show it to the Commissioner,[1] or his deputy when requested to do so, shall be fined not less than five nor more than twenty-five dollars. [Acts 2nd C. S. 1919, p. 200.]

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Arts. 936, 937. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 937a. Tax on fish, crabs, and shrimp; "barrel of oysters" tax.—There shall be and is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish, crabs and shrimp, whether from private or public waters, taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters, sold or offered for sale in this State whether from private or public beds, and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than

twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Game, Fish and Oyster Commissioner [1] shall prescribe. For all purposes mentioned in this title or section, a barrel of oysters shall be deemed and taken to consist of three boxes of oysters in the shell; said boxes to be the following dimensions; ten inches wide by twenty inches long, and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall not be placed or deposited in such box in a way that will make them fill the box more than two and one-half inches in the center above the height of the box. Provided that two gallons of shucked oysters without their shells shall be considered and deemed by this Act as equal to one barrel of oysters in the shell. It is hereby specially provided that the title to the shells, from which oysters are taken shall remain in the State and the Game, Fish and Oyster Commissioner is directed to handle, control or sell same as he may see fit. Provided such oyster shells shall not be sold for a lower price than twenty-five cents the cubic yard. All moneys and royalties collected under and by the provisions of this article shall be deposited by the Game, Fish and Oyster Commissioner to the credit of the fish and oyster fund, hereinafter provided for. [Acts 1925, 39th Leg., ch. 178, p. 438, § 1 (art. 10).]

[1] See note to Article 935, ante.

Repealed by Acts 1939, 46th Leg., Spec.L., p. 816, § 3, in so far as applicable to the waters of Calhoun, Matagorda, and Jackson Counties.

Arts. 938—940. [Repealed by Acts 1933, 43rd Leg., 1st C.S., p. 85, ch. 29, § 7.]

Art. 941. Using seines or gigs.—It shall be unlawful for any person to place, set, use or drag any seine, net or other device for catching fish and shrimp other than the ordinary pole and line, casting rod and reel, artificial bait, trot line, set line, or cast net or minnow seine of not more than twenty 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 Commissioners [1] or by his authorized deputy in or on any of the waters of any of the bays, streams, bayous or canals of Orange, Jefferson, Chambers, Harris, Galveston and Brazoria Counties, or in or on any of the inland waters, streams, lakes, bayous or canals of Matagorda County, or within or on the waters of Agua Dulce Creek, Oso Creek, Shamrock Cove, Nueces Bay, Ingleside Cove; Red Fish Cove, Shoal Bay, Mud Flats, Shallow Bay, which are more clearly defined as beginning at the South West end of "Red Fish Cove", thence South on a line intersecting Corpus Christi Channel, and all the waters lying from this line, the said Channel, and between Harbor Island and the Mainland to Aransas Bay; all of Aransas Bay between Port Aransas and Corpus Christi Bayou and lying between Harbor Island and Mud Island; Copano Bay, Mission Bay in Refugio County, Puerto Bay, St. Charles Bay, Hynes Bay, Contec Lake, Powderhorn Lake, Oyster Lake; Sabine Pass, leading from Sabine Lake to the Gulf of Mexico; San Luis Pass, leading from Galveston West Bay to the Gulf of Mexico; Turtle Bay; Brown's Cedar Pass; Mitchell's Cut, Pass Cavallo, leading from Matagorda Bay to the Gulf of Mexico; Cedar Bayou, leading from Mesquite Bay to the Gulf of Mexico; North Pass or St. Jo Pass; Aransas Pass, leading from Aransas Bay to the Gulf of Mexico; Corpus Christi Pass, leading from Corpus Christi Bay to the Gulf of Mexico; Brazos Santiago Pass, leading from the Lower Laguna Madre to the Gulf of Mexico, or the pass on the north of Laguna Madre, leading into Corpus Christi Bay, which pass shall be defined as beginning one-fourth of a mile southwest of Peat Island and running from said point to Flour Bluff in Nueces County, or in or on the waters within one mile of the passes herein mentioned, connecting the bays and tidal waters of this State with the Gulf of Mexico or in or on or within a mile of any other such passes, or within the waters of any pass, stream or canal leading from one body of Texas bay or coastal waters into another body of such waters; providing that nothing in this article shall prevent the use of spear or gig and light for the purpose of taking flounders. [As amended Acts 1929, 41st Leg., p. 269, ch. 119.]

Repealed in Part. Sections 1 and 1a of this article were repealed, in so far as they apply to the tidal waters of Cameron County north of a line due east and west from a point on Padre Island shore, four miles north of the North Bragos Santiago Jetties by Act 1945, 49th Leg., p. 289, ch. 209, § 1.

Sec. 1a. Provided that it shall be unlawful for any person to drag any seine, or use any drag seine, or shrimp trawl for catching fish or shrimp, or to take or catch fish or shrimp with any device other than with the ordinary pole and line, casting rod, rod and reel, artificial bait, trot line, set line, or cast net, or minnow seine of not more than twenty feet in length for catching bait, or to use a set net, trammel net or strike net, the meshes of which shall not be less than one and one-half inches from knot to knot, in any of the tidal bays, streams, bayous, lakes, lagoons, or inlets, or parts of such tidal waters of this State not mentioned in Section 1 hereof. [As amended Acts 1929, 41st Leg., p. 269, ch. 119.]

Sec. 1b. Provided that shrimp trawls may be used for taking shrimp in Matagorda Bay, San Antonio Bay or that part of Aransas Bay and all that part of Corpus Christi Bay not mentioned in Section 1.

Secs. 1c to 1e Repealed by Acts 1945, 49th Leg., p. 289, ch. 209, § 1.

Sec. 1f. Any person who shall violate any of the provisions of this Article shall be deemed guilty of a misdemeanor, and on first conviction shall be fined in a sum of not less than twenty-five ($25) dollars nor more than one hundred ($100) dollars; and on second or more convictions shall be fined in a sum of not less than one hundred ($100) dollars nor more than two hundred ($200) dollars and his fisherman's license or dealer's license or both shall be automatically canceled 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 Commissioner of Texas or his deputy 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 him therefor. [As amended Acts 1929, 41st Leg., p. 269, ch. 119.]

[1] See note to Article 935, ante.

Acts 1929, 41st Leg., p. 269, ch. 119, amended entire Article, and Acts 1930, 41st Leg., 5th C.S., p. 130, ch. 13, amended section 1e.

Section 1g of said Acts 1929, 41st Leg., p. 269, ch. 119, repeals all conflicting laws and parts of laws.

Art. 941—1. [Repealed by Acts 1941, 47th Leg., p. 63, ch. 48.]

The article repealed was Acts 1939, 46th Leg., Spec.L. p. 823.

Art. 941a. Suckers, buffalo, shad and carp.—Any and all persons shall be permitted to take or catch sucker, buffalo, carp, shad and gar at any time except during the months of March, April and May, in any fresh water rivers, creeks, or lakes in the counties of Burnet, Williamson, Lampasas, Dimmit, Zavala, Medina, Uvalde, DeWitt, Brown, Hamilton, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Gillespie, Kendall, Blanco, Llano, Mason, McCulloch, San Saba, Cooke, Denton, Jefferson, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, and Fannin with a seine, or net with not less than four-inch size mesh; provided, however, that any catfish, crappie, perch, bass or any other kind of fish caught by the above methods shall be immediately released in the waters from which they are caught; and provided, further, that the owner or the one in possession of any seine or net used for the purpose of seining shall first obtain a permit to seine such fish from the Game, Fish

and Oyster Commissioner of this State under the regulations prescribed by the Department, and shall within five days from and after the using of any seine or net for the purpose of catching fish make a report under oath, to the Game, Fish and Oyster Commissioner, giving in said report the names of each and every person in the party, and showing in said report that all fish not permitted to be caught or taken with a seine or net were released in the waters from which they were taken immediately after they were caught.

Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than One Hundred ($100.00) Dollars, and any person making a false affidavit shall be guilty of false swearing. [Acts 1925, 39th Leg., p. 170, ch. 38, § 2; Acts 1927, 40th Leg., p. 91, ch. 65, § 1; Acts 1929, 41st Leg., p. 109, ch. 53, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 40, ch. 25, § 1.]

Acts 1929, 41st Leg., 2nd C.S., p. 40, ch. 25, makes no reference to Acts 1929, 41st Leg., 2nd C.S., p. 195, ch. 91, amending Pen.Code, Art. 941a, to read as follows:

"Any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad and gar, at any time in any fresh water rivers, creeks or lakes, in the counties of Lampasas, Dimmit, Zavala, Medina, Uvalde, DeWitt, Brown, Hamilton, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Cooke, Denton, Jefferson, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, and Fannin, with a seine of not less than four inch size mesh; provided however that any cat fish, crappie, perch, bass or any other kind of fresh water fish caught by the above methods shall be immediately released in the waters from which they were caught; and provided further, that the owner or the one in possession of the seine or net used for the purpose of seining shall within five days from and after the using of any seine or net, for the purpose of catching fish, make a report, under oath, to the Game, Fish and Oyster Commission, giving in said report the names of each and every person in the party, and showing in said report that all fish not permitted to be caught or taken with a seine or net, were released in the waters from which they were taken immediately after they were caught."

"Sec. 2. Any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad and gar at any time in any fresh water rivers, creeks or lakes in the counties of Williamson, Burnet, Llano, Lampasas, Mills, McCulloch, San Saba and Travis with a seine of any size mesh, or by the use of wire, rope or grab hooks, during the months of June, July and August, provided, however, that any catfish, crappie, perch, bass or any other kind of fish caught by the above methods, except suckers, buffalo, carp, shad and gar, shall be immediately released in the waters from which they are caught; and provided further, that the owner or one in possession of any seine or net used for the purpose of seining, shall within five days from and after the using of any seine or net, for the purpose of catching fish, make a report, under oath, to the Game, Fish and Oyster Commission, giving in said report the names of each and every person in the party and showing in said report that all fish not permitted to be caught or taken with a seine or net, were released in the waters from which they were taken immediately after they were caught."

"Sec. 3. Any person violating any of the provisions of this Article, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than $10.00 nor more than $100.00 and any person making a false affidavit shall be guilty of false swearing."

Art. 941a—1. Sucker fish in Gin and Glade creeks.—Sec. 1. It shall not be unlawful for any person or persons to catch sucker fish in the streams of the Gin and Glade creeks during the months of February, March and April with any kind of trammel net.

Sec. 2. Any person catching or destroying any sucker fish in the streams named in Section 1 hereof by poisoning, trapping or dynamiting or in any manner except as provided in Section 1 hereof shall be punished in the manner provided by the General Laws of the State of Texas. [Acts 1929, 41st Leg., p. 443, ch. 203.]

Art. 942. Unlawful possession of seine.—Whoever shall carry on, or over, or into the waters of any pass leading from the inland bays or tidal waters of this State to the Gulf of Mexico any seine or net except a cast net used for catching bait, or a minnow net not exceeding twenty feet in length, or shall carry by vehicle or in any other way, any seine or net except a cast net used for catching bait or a minnow seine not exceeding twenty feet in length to any point or place within one mile of such pass or shall have in his possession within one mile of any such pass any net or seine except a cast net for catching bait, or a minnow seine not exceeding twenty feet in length, shall be fined not less than twenty-five nor more than two hundred dollars, and be confined in the county jail not less than thirty nor more than ninety days. Nothing in this law shall apply to the carrying of nets or seines over closed waters within one mile of any town. [Acts 2nd C. S. 1919, p. 205, Acts 1923, p. 298.]

Art. 943. Exceptions.—Nothing in the foregoing article shall apply to vessels engaged in carrying freight or passengers, and engaged as seagoing vessels in coast and foreign trade, and licensed and recognized as such by the Federal Government; provided further that the Game, Fish and Oyster Commissioner [1] may grant permits to persons desiring to fish, to carry their boats, nets and seine, and vehicles into, over and on such passes or closed waters or on land to within the mile limits of such passes, and such permits shall state at what time such boats, vehicles, nets and seines shall be taken away from such mile limit and such passes.

[1] See note to Article 935, ante.

Art. 944. Proof of possession.—In all prosecutions under articles 941 and 942 the identification of the boat or vehicle or the seine or net by which or from which the violation of the law occurred, shall be prima facie evidence against the owner or party last in charge of such boat, or against the owner of the vehicle or seines or net. [Id.]

Art. 945. [912] Seining in salt water.—The mesh of all seines and nets used for taking fish in salt waters of this State, not including the bag, shall not be less than one and one-half inch square mesh. The mesh of the bags and for fifty feet on each side of the bags, shall not be larger than a one inch square mesh. No seine or net of any kind of over two thousand feet shall be dragged or pulled in the salt water of this State, and any person dragging such seine, or dragging two or more seines which are connected or tied together with a combined length of more than two thousand feet, shall be upon first conviction thereof fined not less than twenty nor more than one hundred dollars; upon second conviction thereof shall be fined not less than fifty nor more than two hundred dollars, and shall have his license revoked for a period not less than thirty nor more than ninety days; and upon third conviction thereof shall be confined in jail for not less than thirty nor more than ninety days, and shall have his license revoked for a period of not less than one year. [Acts 2nd C. S. 1919, p. 201.]

Art. 945a. Permit to use pound net in Gulf.—It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner.[1] Such commissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this Act, a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation; provided, further, that no pound net shall ever be placed or operated closer than three miles of any pass mentioned in this Act. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than

fifty ($50.00) dollars nor more than two hundred ($200.00) dollars. [Acts 1925, 39th Leg., ch. 178, p. 447, § 3.]

[1] See note to Article 935, ante.

Art. 946. To tag seines and nets.—All seines and nets used in the salt waters of this State shall be examined by the Commissioner [1] or one of his deputies to see if they conform to the requirements of this law as to length and size of mesh, and if they are found to conform to such requirements, the Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net; the cost of such tag to be paid by the owner of such seines or net. The Commissioner shall then issue to the owner of it a permit to use such seine or net for one year from the date of such permit; such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and the length and kind of such net. It shall be the duty of the owner of the seine or net to keep the tag attached to such seine or net, and where a seine or net is used without such tag being attached, it shall be a prima facie evidence that such seine or net is an unlawful seine or net; and any person who shall drag, haul or set any seine or net in the salt waters of this State without first having such seine or net examined by the Commissioner, or his deputy, and tagged, or who shall fail to have a permit therefor issued by said Commissioner or his deputy, or shall not keep such tag attached to such seine or net or attached to its floats, as prescribed in this article shall be fined not less than twenty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 201; Acts 1923, p. 296.]

[1] See note to Article 935, ante.

Art. 947. [906] Seining within one mile from city.—It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this State, within the limits or within one mile of the limits of any city or town in this State, with seines, drags, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this article shall be the collection of one hundred families within an area of one square mile. Anyone violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. In all prosecutions the identification of the boat from which such violation occurs shall be prima facie evidence against the owner, lessee, person in charge or master of such boat. It shall be the duty of such town to establish and maintain the buoys, stakes or other marks designating the limits of the one mile within which such seines shall be hauled and such nets set. [Acts 1897, p. 269, Acts 2nd C. S. 1919, p. 201.]

Art. 948. Metallic seines.—It shall be unlawful for any person to set or drag in any of the fresh waters of this State any net or seine made of wire or other metallic substance.

It shall be unlawful for any person to take or catch or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons, or in lakes or sloughs, subject to overflow from rivers or streams in this State, by any other means, other than by the ordinary hook and line or trotline, or by a set or drag net or seine or trammel net, the meshes of which are three or more inches square, or by a minnow seine, not more than twenty feet in length, and it shall be unlawful for any person to place in the fresh water rivers, creeks, lakes, bayous, lagoons, of this State any net or other device or trap for taking or catching fish other than as designated and permitted by this Article.

Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars.

Any fish trap, net or seine or other seine or other fishing device found in the waters of this State, in violation of this article are hereby declared to be a nuisance, and it shall be the duty of the Game, Fish and Oyster Commissioner [1] and his deputies to destroy same whenever found, and no suit shall be maintained against them therefor.

The Game, Fish and Oyster Commissioner is authorized to close any of the waters mentioned in this article against the use of nets or seines or any particular kind of such nets and seines, whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. But before closing such waters against the use of seines or nets or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks at not less than three stores or other places in proximity to such waters.

Any person who shall fish with a net or seine in such closed waters or shall use such particular kind of net or seine, as forbidden in such waters, after the notice given as above required, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five ($25.00) dollars and no more than one hundred ($100.00) dollars.

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 949. [912] Seiners shall return small fish.—Any person dragging a seine or engaging in taking fish in a set net shall return to the water all fish under and above size according to the measure or weight established in this chapter, and all other fish except sharks, gars, rays, turtle and terrapin, saw fish and cat fish, except the gulf-topsail cat, which may be retained, and any person not returning such fish to the water as required by this article shall be fined not less than fifty nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 211.]

Art. 950. Net for shrimp.—The Commissioner [1] is hereby authorized to permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner, or his deputy, for a permit to use such seine, net or other contrivance for catching shrimp and such Commissioner or his deputy shall fix and establish the mesh, construction, depth and length of such seine or net or other contrivance so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine officially and issue such permit and shall state in what waters and localities such seines or nets shall be used. Any person using such shrimp seine or other contrivance for catching shrimp in the tidal waters of this State without the permit herein provided for, or who shall use any seine or contrivance or net in any waters or locality other than that stated in such permit, shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 205.]

[1] See note to Article 948, ante.

Art. 951. March and April closed to seines and artificial bait.—It shall be unlawful for any person to catch any fish in the fresh waters of this State, with any seine or net other than minnow seine, not exceeding twenty feet in length, or to drag any seine, except such specified minnow seine, or to set any net, in the fresh waters of this State during the months of March and April, or to fish with any artificial bait of any kind in the fresh waters of this State during the months of March and April. Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and shall be upon conviction fined a sum of not less than twenty ($20.00) dollars nor more than one hundred ($100.00) dollars. This article shall not apply to any artificial lake, pond or pool, owned by any person, firm, corporation, city or town, that does not have as its source of water supply a river or creek or is not subject to overflow from a river or creek.

Art. 951a. [872] Fish ladder.—It shall be the duty of every person, firm or corporation, municipal

or private who has erected, or who may erect any dam, water weir, or other obstruction on any regular flowing stream within this State, on the written order of the commissioners' court in the county in which such obstruction is erected, to construct and keep in repair fish ways or fish ladders at such dam, weir or obstruction, at the discretion of the Fish Commissioner,[1] so that at all seasons of the year fish may ascend above such dam, weir or obstruction to deposit their spawn. Whoever erects or owns or maintains any such dam, obstruction or weir, and shall fail or refuse to build, construct and keep in repair such fish way or fish ladder, within 90 days after having been notified by such Commissioner to do so, shall be fined not less than twenty-five nor more than five hundred dollars. Each week, after the expiration of 90 days after receiving such notice, of such failure or refusal is a separate offense. [Acts 1881, p. 83; Acts 1915, p. 118; Acts 2nd C.S. 1919, p. 203.]

[1] See note to Article 948, ante.

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 Guadalupe, Bexar, Kerr, Bandera, Medina, and Wilson shall be fined not less than Five Dollars ($5), nor more than Fifty Dollars ($50). [As amended 1939, 46th Leg., Spec.L. p. 812, § 1; Acts 1943, 48th Leg., p. 270, ch. 169, § 1.]

Sec. 2. Whoever shall use any dynamite, powder or other explosive in any of the fresh water streams of said counties and shall destroy any fish thereby shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in jail not exceeding one year.

Sec. 3. No person shall take or catch any fish in the fresh waters, creeks, lakes, bayous, pools, lagoons, or tanks in said counties by any other means than by the ordinary hook and line, or trot line or artificial baits, and no person shall place in the fresh waters, rivers, creeks, lakes, bayous, lagoons, ponds, or tanks in said counties any seine, net or other device or trap for taking or catching fish; any person may use a minnow seine which is not more than ten feet in length, and the meshes of which are not less than one-fourth inch square, for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted to take any fish other than minnows for bait.

Sec. 4. No person, firm or corporation or their agents shall take, catch, seine, entrap by any means, or have in their possession any bass, perch, or crappie, or catfish taken from any fresh waters in said counties from the first of February to the first of May of any year.

Sec. 5. If any person shall at any time, catch or take from any fresh water river, lake, bayou, lagoon, creek, pond, or other natural or artificial stream or pond of water within said counties by use of any means whatsoever any bass of less than eleven inches in length he shall immediately return same back into such water; and unnecessarily injuring such fish shall be deemed an offense under the provisions hereof. Each such fish shall constitute a separate offense.

Sec. 6. No person shall take from the fresh waters of said counties more than ten bass and ten crappie in any one day.

Any person violating any provision of Sections 3, 4, 5 and 6 of this article shall be fined not less than ten nor more than fifty dollars. [Acts 1923, p. 126; Acts 1927, 40th Leg., p. 365, ch. 246, § 1.]

Art. 952a. Fish in Big Wichita River waters; sale prohibited.—It shall be unlawful for any person, firm or corporation, or their agent, or agents, to barter, or sell, or offer for barter, or sale, or to buy any bass, perch, crappie or catfish, or any other fish, except minnows taken from any of the waters which are located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, which was built by the Wichita County Water Improvement District No. 1, in the northeast corner of Archer County, Texas, and from said dam and above the same up the valley of said Big Wichita River to the storage dam on said river built by said Wichita County Water Improvement District No. 1, in Baylor County, Texas, and up the valley of said river from said storage dam as far as the water by said storage dam is impounded in said river in Baylor County, Texas, or in any water which is impounded in Archer County, Texas, and in Baylor County, Texas, by said diversion dam, or in any water which is in Baylor County, Texas, by said storage dam, or in any water in Lake Wichita in Wichita County, Texas, and in Archer County, Texas, or in any water impounded by the dam across Holliday Creek forming said Lake Wichita in Wichita County, Texas, or in any water in the Big Wichita River in Baylor County, Texas, connecting with the big reservoir, or Lake Kemp, created by the storage dam, with the diversion reservoir, or Diversion Lake, formed in Baylor County or Archer County, Texas, by said diversion dam, or in any water of the irrigation canals connected with said Lake Kemp or said diversion dam, or in any water in laterals leading off from said canals in Baylor County, Texas, Archer County, Texas, Wichita County, Texas, or Wilbarger County, Texas, or in any water in Wichita County, Texas, or Archer County, Texas, in the lateral, canal, or drainage ditch leading from what is known as the South Side Canal out of said Diversion Lake from a point in the said South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita and Archer Counties, Texas. [Acts 1925, 39th Leg., ch. 37, p. 166, § 1.]

Art. 952aa. Fishing in Harrison and other counties.—Sec. 1. It shall be unlawful for any person to take or attempt to take any fish in the public fresh waters, creeks, lakes, bayous, lagoons, pools, or tanks in the Counties of Harrison, Marion, and Rusk, State of Texas, by any method or device other than by the ordinary hook and line, rod and reel, set hook and line, trotline, or artificial bait.

Sec. 2. Provided that nothing herein shall prohibit the use of a minnow seine not more than twenty feet in length, for the purpose of catching minnows for bait but that all fish other than minnows, sun perch for bait, not of a game fish variety, taken in such seine, shall be returned to the water immediately and while alive.

Sec. 3. Provided that nothing herein shall prevent the use of a hoop net, set net, or trammel net, the meshes of which are not less than three and one-half inches square, for the purpose of taking or attempting to take buffalo fish, garfish, catfish, shad, and bowfin or grindle at any time except during the months of February, March, April, and May of each year; and providing that all other fish taken by such nets shall be returned to the waters from which they were taken immediately and while alive. It shall be unlawful for any person to have in possession any fish, other than those mentioned in this Section, at any time a net is being used or while engaged in the use of such a net.

Sec. 4. All seines, nets, and fish traps, except minnow seines not more than twenty feet in length and hoop nets, set nets, and trammel nets, the meshes of which are not less than three and one-half inches square are hereby declared to be a nuisance when found in the public fresh waters of the Counties of Harrison, Marion, and Rusk, State of Texas, and it shall be the duty of all Game and Fish Wardens and other officers of this State to destroy same whenever found in such waters and no suit shall be maintained against them therefor.

Sec. 5. Any person who shall set any seine, net, or fish trap or operate any seine, net, or fish trap or who is found in possession of any seine, net, or fish trap

or takes or attempts to take or has in his possession any fish, contrary to the provisions of this Act, shall be deemed guilty of a misdemeanor and shall be fined in a sum not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars and shall forfeit his right to take or attempt to take fish in this State for a period of one year following date of conviction. Any person who attempts to take fish in this State within a period of one year after he has been convicted for violation of the provisions of this Act shall be guilty of a misdemeanor and shall be fined in a sum not less than One Hundred ($100.00) Dollars and by confinement in the county jail not less than thirty (30) days nor more than ninety (90) days. [Acts 1927, 40th Leg., p. 275, ch. 193; Acts 1927, 40th Leg., 1st C. S., p. 98, ch. 32, § 1; Acts 1929, 41st Leg., p. 131, ch. 64, § 1; Acts 1929, 41st Leg., 3rd C.S., p. 233, ch. 3, § 1; Acts 1931, 42nd Leg., Spec. L., p. 204, ch. 97, § 1.]

Section 2 of Acts 1931, 42nd Leg., Spec.L., p. 204, ch. 97, repeals all conflicting laws and parts of laws.

Art. 952aa—1. Fishing in Jackson county.—It is hereby made unlawful for any person to take or catch fish from any of the fresh water lakes, streams, bayous, and lagoons in Jackson County, Texas, by any other means than hook and line or trot line or flounder gig and light or by the use of cast net or minnow seine, not exceeding twenty feet in length, used in catching bait. Any person dragging a seine or setting a net in any of the fresh water streams, lakes, bayous, or lagoons in Jackson County, or any person catching or taking fish by any other means than hook and line or trot line or cast net and minnow seine not exceeding twenty feet in length, shall be deemed guilty of a misdemeanor and shall be fined in a sum of not less than Ten Dollars or more than One Hundred Dollars. [Acts 1927, 40th Leg., 1st C. S., p. 251, ch. 93, § 1.]

Art. 952aa—2. Fishing in Cherokee and other counties.—Sec. 1. That from and after the passage of this Act it shall be unlawful for any person to take or catch, or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons or in lake or sloughs, subject to overflow from the rivers or streams in the counties of Cherokee, Nacogdoches, San Augustine, Angelina, Sabine, Newton, Jasper and Tyler, by the use of a net; provided, however, the use of a minnow seine not more than twenty feet in length shall not be unlawful.

Sec. 2. That whoever shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five ($25.00) nor more than One Hundred ($100.00) Dollars. [Acts 1929, 41st Leg., p. 369, ch. 167.]

Acts 1933, 43rd Leg., Spec.L., p. 45, ch. 37, repeals this article in so far as it relates to Cherokee County and also all laws or parts of laws, so far as they may be in conflict with this Act.

Art. 952aa—3. Fishing in Cass and other counties.—It shall be unlawful for any person to take or catch any fish in the public fresh waters, creeks, lakes, bayous, pools, lagoons or tanks in the Counties of Cass, Bowie, Morris and Titus, State of Texas, by any other means than by the ordinary hook and line, set hook and line, gig or artificial bait, and it shall be unlawful for any person to place in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons, or tanks in the Counties of Cass, Bowie, Morris and Titus any seine, net or other device or trap for taking or catching fish; provided, however, that persons may use a minnow seine which is not more than twenty feet in length for the purpose of catching minnows for bait; provided, that in seining for minnows for bait as herein permitted, all fish and all minnows more than two and one-half inches in length shall be returned to the water at once while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait; provided, however, that nothing in this Act shall be construed to prevent the taking or catching of buffalo, carp and catfish by the use of a hoop, trammel or gill set with meshes not less than three inches square in the fresh waters of Cass, Bowie, Morris and Titus Counties, State of Texas, save and except during the months of March and April of each year, and provided, further, that pond nets are hereby entirely prohibited.

Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars. All laws and parts of laws in conflict herewith are hereby repealed. [Acts 1930, 41st Leg., 5th C.S., p. 159, ch. 27, § 1.]

Art. 952b. Fish in Big Wichita River waters; explosives and poisons prohibited.—Any person who shall use any dynamite, powder or other explosive, or any poison in any of the waters described in Section 1 of this Act,[1] and shall injure or destroy any fish thereby shall be deemed guilty of misdemeanor and upon conviction shall be fined in any sum of not less than $100 nor more than $1,000, and may be imprisoned in the county jail for any time not exceeding one year. [Acts 1925, 39th Leg., ch. 37, p. 167, § 2.]

[1] Article 952a, ante.

Art. 952c. Same; seining prohibited.—It shall be unlawful for any person to take or catch any fish in the waters described in Section 1 of this Act [1] by any other means than the ordinary hook and line, or trot-line or artificial bait; and it shall be unlawful for any person to place in any of the waters described in Section 1 of this Act by any seine, net or other devise [2] or trap for taking or catching fish; provided, however, that any person may use a minnow seine which is not more than twenty feet in length and the meshes of which are not less than one-sixth inch square for the purpose of catching minnows for bait; provided, further, that in seining for minnows for bait, as herein permitted, all bass, species of bass, crappie, and white perch, calico bass, blue gill bream and strawberry bream of whatever size that may be taken by seining shall immediately be returned to the waters uninjured and all other fish more than three inches in length, except minnows, shall be immediately returned to the waters uninjured; provided, further that no person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnow for bait. [Acts 1925, 39th Leg., ch. 37, p. 167, § 3.]

[1] Article 952a, ante.

[2] So in enrolled bill. Should probably read "device".

Art. 952d. Same; closed season.—It shall be unlawful for any person, firm or corporation, or their agent, or agents, to take, catch, seine, entrap by any action, or to have in their possession any bass, perch, crappie or catfish, or any other fish taken from any of the waters described in Section 1 of said Act, the said Section 1 being Article 952a of the Penal Code of Texas, on and from the first day of March to the first day of May of any year. [Acts 1925, 39th Leg., p. 168, ch. 37, § 4; Acts 1943, 48th Leg., p. 292, ch. 187, § 1.]

Art. 952e. Same; size and daily bag limit.—It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length or to catch or retain, or have in his possession, in any one day a total aggregate of more than ten (10) bass, or other fish of the bass species, taken from the waters described in Section 1 of this Act: [1] provided that it shall be unlawful for any person to catch and retain, or have in his possession from those waters in any one day bass, or other fish of the bass species, of any aggregate weight in excess of twenty (20) pounds; to catch and retain, or have in his possession any crappie or white perch or calico bass which are less than seven (7) inches in length, or catch and retain, or have in his possession any blue gill bream which are

less than five (5) inches in length or to catch or retain, or have in his possession in any one day more than a total aggregate of twenty (20) crappie, or white perch or calico bass or blue gill bream or of any of or all those fish, taken from the waters described in Section 1 of this Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or blue gill bream or of any or all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section 1 of this Act, bass, or any other fish of the bass species, crappie, white perch or sun fish, or calico bass or blue gill bream, or other fish of the crappie, white perch or bream of sun fish species, or an aggregate weight in excess of thirty (30) pounds. [Acts 1925, 39th Leg., ch. 37, p. 168, § 5; Acts 1927, 40th Leg., p. 274, ch. 192, § 1.]

[1] Article 952a, ante.

Art. 952f. Same; return of undersized fish.—If any person shall at any time catch or take from any of the waters described in Section 1 of this Act [1] in the counties named in that section by use of any means whatsoever any bass, or other fish of the bass species, of less than eleven inches in length, or any crappie or white perch, or calico bass of less than seven (7) inches in length, or any blue gill bream of less than five (5) inches in length he shall immediately return the same into such water without unnecessarily injuring such fish; and the failure to immediately return such fish into such waters or the unnecessarily [2] injuring of such fish shall be deemed an offense under this Act. [Acts 1925, 39th Leg., ch. 37, p. 168, § 6; Acts 1927, 40th Leg., p. 274, ch. 192, § 2.]

[1] Article 952a, ante.
[2] So in enrolled bill. Should probably read "unnecessary".

Art. 952f—1. Daily limit of fresh water fish.—Sec. 1. It shall be unlawful for anyone to catch and retain in any one day or have in his or her possession, caught in any one day in this State, more than fifteen (15) bass, fifteen (15) crappie or white perch, thirty-five (35) bream, or thirty-five (35) goggle-eyed perch from the fresh water rivers, lakes, ponds or lagoons of this State; provided however, that a person may catch and retain or possess during any one day, an aggregate of fifty (50) of the fish mentioned herein, and provided further, it shall be unlawful for any one person to have in his or her possession at any time more than thirty (30) bass, thirty (30) crappie or white perch, seventy (70) bream, or seventy (70) goggle-eyed perch, caught or taken from the fresh water rivers, lakes, ponds or lagoons of this State, and exempting the following counties, to-wit: Johnson, Hill, Ellis, Hood, Somervell, Wharton, Fort Bend, Matagorda, Brazoria, Galveston, Chambers, Kerr, Kendall, Bexar, Bandera, Scurry, Eastland, Callahan, Taylor, Nolan, Mitchell, Throckmorton, Fisher, Jones, Haskell, Shackelford, Stephens, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin, Howard, Zavala, Frio, McMullen, LaSalle, Dimmit, Webb, Duval, Jim Hogg, Zapata, Jim Wells, Kenedy, Nueces, Kleberg, Willacy, Brooks, Starr, Hidalgo, and Cameron from the provisions of this Act.

Sec. 2. Anyone taking more than the daily limit, or anyone possessing more than the possession limit of fresh-water fish as provided for herein, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than Fifty ($50.00) Dollars, and any person convicted of violating any provision of this Act shall thereby, automatically forfeit his artificial lure license for said season. Any such person so convicted of violating any provision of this Act shall not be entitled to receive from the State a license to fish with an artificial lure for one year immediately following the date of his conviction, and it shall be unlawful for any person who is convicted of violating any of the provisions of this Act to purchase or possess an artificial lure license for a period of one year immediately following date of such conviction, and it shall be unlawful for any person so convicted of violating any of the provisions of this Act to fish in any of the fresh-water rivers, lakes, ponds or lagoons of this State for a period of one year immediately following date of such conviction. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than Ten ($10.00) Dollars, nor more than Fifty ($50.00) Dollars. [Acts 1931, 42nd Leg., p. 857, ch. 364.]

Art. 952g. Fish in Big Wichita River waters; trout and char, taking prohibited.—It shall be unlawful for any person to catch and retain or have in his possession any rainbow trout, or other species of trout or of any species of char within a period of six (6) years from the taking effect of this Act. [Acts 1925, 39th Leg., ch. 37, p. 168, § 7.]

Art. 952h. Same; leaving dead fish on banks.—It shall be unlawful for any person, or persons, knowingly to place, throw or deposit upon the banks or grounds adjacent to any of the waters described in Section 1 of this Act [1] in the counties named in Section 1 of this Act, any bass, crappie, white perch, sun fish, drum, catfish, or other edible fish, and leave such fish to die without any intent upon the part of such person to eat such fish, or in like manner to leave any minnows without any intent to use the same for bait. Any person found guilty of the violation of any provisions of this section shall be fined in any sum not less than $1.00 nor more than $25.00, and each fish so allowed to die shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 37, p. 168, § 8.]

[1] Article 952a, ante.

Art. 952i. Same; penalty.—Any person violating any of the provisions of Sections I, III, IV, V, VI, of this Act [1] shall be guilty of a misdemeanor and upon conviction shall be fined not less than $5.00 nor more than $50.00 for each violation of the law, and each fish caught, held in possession, sold or purchased in violation of this Act shall be deemed a separate violation hereof and a separate offense, and the person guilty thereof may be prosecuted either in the county where the fish are caught, where he is found, with them in his possession or where the fish are sold or bartered or offered for sale or bartered or bought. [Acts 1925, 39th Leg., ch. 37, p. 169, § 9.]

[1] Articles 952a, 952c–952f, ante.

Art. 952j. Same; enforcement.—It is made the duty of the district judges of the judicial districts in which the counties of Archer, Baylor, Wilbarger and Wichita are situated to give a special charge upon this law to the grand juries of these counties. [Acts 1925, 39th Leg., ch. 37, p. 169, § 10.]

Art. 952k. Same; act cumulative.—This law shall be cumulative of all General Laws relating to fish and the protection thereof. [Acts 1925, 39th Leg., ch. 37, p. 169, § 11.]

Art. 952l. Same; partial invalidity.—If any court should hold unconstitutional or invalid any provisions of this Act such unconstitutionality or invalidity of that part shall in no way effect [1] the constitutionality and validity of the remainder of this Act. [Acts 1925, 39th Leg., ch. 37, p. 169, § 12.]

[1] So in enrolled bill. Should probably read "affect".

Art. 952l—1. Fishing in Gillespie and other counties.—Sec. 1. It shall be unlawful for any person to fish for, take or attempt to catch any fish in any of the public fresh waters or tributaries of such waters in the Counties of San Saba, Gillespie, Blanco,

Kendall, Kerr, Comal, Llano, Mason or Kimble by any means or device other than by ordinary pole and line, set line or throw line equipped with more than two hooks, except in the waters of the Colorado River; and providing that these restrictions shall not apply to artificial lures; and provided that the possession of any tackle, the use of which is prohibited by the provisions of this Act, within two hundred (200) yards of any fresh waters in the Counties named herein, shall be prima facie evidence of the violation of this Act.

Sec. 2. It shall be unlawful in the Counties of San Saba, Gillespie, Blanco, Kendall, Kerr, Comal, Llano, Mason, Kimble or Val Verde to sell, offer for sale or have in possession for the purpose of sale any black bass, crappie, catfish, or sunfish, commonly called perch.

Sec. 3. No person, firm or corporation or their agents shall take, catch or have in their possession any black bass, perch or crappie taken from any fresh waters in said Counties from the 1st day of March to the 1st day of May of any year or to have in possession at any time any black bass of less length than eleven (11) inches, any catfish of less length than nine (9) inches or any crappie (commonly called white perch) of less length than seven (7) inches.

Sec. 4. 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 Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00). [As amended Acts 1929, 41st Leg., 1st C.S., p. 258, ch. 108; Acts 1929, 41st Leg., 2nd C.S., p. 44, ch. 28; Acts 1930, 41st Leg., 4th C.S., p. 43, ch. 23; Acts 1931, 42nd Leg., Spec.L., p. 374, ch. 187; Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3; Acts 1933, 43rd Leg., Spec.L. p. 7, ch. 6.]

Sec. 5. Any person violating any of the provisions in Sections 1, 3 and 4 of this Act shall be fined not less than Ten ($10.00) Dollars nor more than Fifty ($50.00) Dollars. [Acts 1929, 41st Leg., p. 442, ch. 202; Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3, § 1.]

Acts 1929, 41st Leg., 1st C.S., p. 258, ch. 108, Acts 1929, 41st Leg., 2nd C.S., p. 44, ch. 28, Acts 1930, 41st Leg., 4th C.S., p. 43, ch. 23, Acts 1931, 42nd Leg., Spec.L., p. 374, ch. 187, Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3, and Acts 1933, 43rd Leg., Spec.L., p. 7, ch. 6, amended section 4 of this Article. Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3, amended section 5.

Section 6 of Acts 1931, 42nd Leg., 1st C.S., p. 5, ch. 3, repeals all conflicting laws and parts of laws.

Acts 1929, 41st Leg., p. 442, ch. 202, was amended by Acts 1929, 41st Leg., 1st C.S., p. 184, ch. 70, sections 1 and 2, by omitting McCulloch County from the counties enumerated, but its provisions as to penalties being conflicting with Acts 1929, 41st Leg., 1st C.S., p. 258, ch. 108, was repealed by section 6 thereof.

Acts 1933, 43rd Leg., Spec.L., p. 43, ch. 35, makes it unlawful to have in possession any bass, catfish, perch, or crappie taken from any of the fresh waters of the Counties of Gillespie and Mason during the months of March and April of any year.

Acts 1933, 43rd Leg., 1st C.S., p. 269, ch. 97, makes it unlawful to fish in the fresh waters of Kendall County by any means or device other than by ordinary pole and line, etc., or to have in possession any bass, perch, crappie, or catfish taken during the months of February, March, and April of any year.

Art. 952*l*—2. Fishing in Denton County.—It shall be unlawful for any person to take in one day from the public fresh waters in Denton County, more than twenty white perch or crappie, or more than fifteen bass, or more than twenty such fish combined. Any person violating this Act shall upon conviction be fined not less than twenty-five dollars and not more than one hundred dollars. [Acts 1929, 41st Leg., 2nd C.S., p. 89, ch. 50, § 1.]

Art. 952*l*—3. [Repealed Acts 1935, 44th Leg., p. 723, ch. 314, § 1.]

Article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 150, ch. 75.

Art. 952*l*—4. Regulating taking of shrimp.—Sec. 1. It shall be lawful for any person at any time to take shrimp of any size for bait from any of the tidal waters of this State with a minnow seine of not more than 20 feet in length, with a cast net of a shrimp trawl, provided that such shrimp trawl shall not be more than 10 feet in width at the mouth and not more than 25 feet in length and providing that any and all persons who offer such bait shrimp for sale shall comply with the provisions of the laws of this State requiring a license before any of the marine products of this State may be taken for the purpose of sale.

Sec. 2. The towing of any shrimp trawl of a greater size than that herein specified in any of the waters of this State in which the use of shrimp trawls is otherwise prohibited shall be prima facie evidence of guilt.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $25.00 nor more than $100.00. [Acts 1930, 41st Leg., 4th C.S., p. 11, ch. 11.]

Art. 952*l*—5. Fishing in Harrison and Marion counties.—Whoever shall take or catch from the fresh waters of Harrison or Marion Counties, Texas, or have in his possession in either of these counties any crappie under the length of eight inches or any bass under the length of eleven inches, or whoever shall take or catch in either of these counties more than fifteen bass or more than twenty-five crappie or white perch in any one day or whoever shall have in his possession in either Harrison or Marion Counties more than thirty bass or more than fifty crappie or white perch shall be fined in any sum not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars, and each fish taken or possessed in violation of this Act shall constitute a separate offense. [Acts 1930, 41st Leg., 4th C.S., p. 42, ch. 22; Acts 1930, 41st Leg., 5th C.S., p. 211, ch. 65, § 1.]

Art. 952*l*—6. Deer and turkeys in San Saba and Harrison counties.—Sec. 1. That for three years from and after the passage of this Act, it shall be unlawful for any person to shoot at, or kill, any wild deer or wild turkey in San Saba and Harrison Counties.

Sec. 2. That whosoever shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty ($50.00) Dollars and not more than One Hundred ($100.00) Dollars, provided each deer or wild turkey so shot shall constitute a separate offense. [Acts 1930, 41st Leg., 4th C.S., p. 89, ch. 48.]

Art. 952*l*—7. Regulating fishing in Dimmit and other counties.—Section 1. Any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad, or gar in any of the fresh waters of Bosque, Dimmit, Zavala, Medina, Uvalde, DeWitt, Coryell, Gonzales, Lamar, Bell, Collin, Grayson, Gillespie, Kendall, Menard, Kimble, McLennan, Mills, Jefferson, Blanco, Llano, Mason, McCulloch, San Saba, Cooke, Denton, Orange, Mitchell, Fisher, Nolan, Chambers, Travis, Hardin, Lampasas, Fannin, Burnet, Williamson and Parker counties with a seine or net, the meshes of which shall not be less than one inch square, and any and all persons shall be permitted to take or catch suckers, buffalo, carp, shad, or gar with wire, rope, or gig at any time of the year; provided, however, that any bass, crappie or white perch, catfish, perch, bream, or trout caught by the above mentioned methods shall be immediately released in the waters from which they are caught. [As amended Acts 1933, 43rd Leg., Spec.L., p. 41, ch. 33; Acts 1941, 47th Leg., p. 392, ch. 224, § 1; Acts 1947, 50th Leg., p. 439, ch. 245, § 1.]

Sec. 2. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout at the time that such person has in possession any suckers, buffalo, carp, shad or gar taken by methods permitted in this Act.

Sec. 3. It shall be unlawful for any person to have in possession any bass, crappie or white perch, catfish, perch, bream or trout caught while using a seine of not less than one inch square mesh or using wire rope or gig for the purpose of taking suckers, buffalo, carp, shad or gar from any of the fresh waters of the Counties mentioned in Section 1.

Sec. 4. Any person violating any of the provisions in Sections 1, 2 and 3 of this Article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars. Provided that this Act shall not apply to that part of Hamilton County drained by the tributaries of the Bosque River, which shall be controlled by the provisions of House Bill No. 671. [Acts 1931, 42nd Leg., Spec.L., p. 194, ch. 90.]

Acts 1933, 43rd Leg., Spec.L., p. 41, ch. 33, amended section 1 of this Article.

Section 5 of this Act repeals all conflicting laws and parts of laws.

Section 2 of the Act of 1947, read as follows: "All laws or parts of laws in conflict with this Act, except Acts 1943, 48th Legislature, page 203, Chapter 123 [Vernon's Ann.P.C. art. 978j note] Acts 1943, 48th Legislature, page 5, Chapter 6 [Vernon's Ann.P.C. art. 978j note] Acts 1941, 47th Legislature, page 668, Chapter 410 [Vernon's Ann. P.C. art. 978j note] Acts 1939, 46th Legislature, Special Laws, page 793, Chapter 44 [Vernon's Ann.P.C. art. 978j note] are hereby repealed."

For fish and game laws applicable only to the named counties, see notes under Vernon's Ann.Pen.Code, Art. 978j.

Art. 952l—8. Protection of deer in Marion and other counties.—Sec. 1. It shall be unlawful for any person to hunt, trap, ensnare, kill, or attempt to kill, by any means whatsoever, any wild deer, buck, doe, fawn, or wild turkey in the Counties of Marion, Harrison, Red River, Cass, Bowie, Morris, Lamar, Camp, Titus, and Upshur, in the State of Texas, for a period of five (5) years from and after the passage of this Act.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in any sum of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), and shall forfeit his right and license to hunt with a gun in this State for a period of one year following the date of his conviction. [Acts 1931, 42nd Leg., 1st C.S., p. 26, ch. 13.]

Art. 952l—9. Sale of fish from Sabine and other rivers and tributaries.—It shall be unlawful for any person to sell, offer for sale or have in his possession for the purpose of sale, any black bass, trout, white perch, or catfish of less than eighteen (18) inches in length, that shall have been taken from the waters of the Sabine, Attoyoc, Angelina and Neches Rivers, or any of their tributaries, or lakes through which the flood stream of said Rivers or any of their tributaries flow, in the counties of Newton and Jasper.

Sec. 2. It shall be lawful for any person in the Counties of Angelina, Tyler, Newton and Jasper to use a net not under three (3) inches square mesh for the purpose of catching any fish allowed by law to be caught in said Counties. Any use of a net of smaller mesh than herein mentioned is hereby declared illegal.

Sec. 3. Any person violating the provisions of this Act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five Dollars ($25.00) or more than Five Hundred Dollars ($500.00), or be imprisoned in the county jail not less than ten (10) days or more than thirty (30) days or by both imprisonment and fine, and each sale or each violation of the provisions hereof shall constitute a separate offense. [Acts 1931, 42nd Leg., 1st C.S., p. 35, ch. 22; Acts 1932, 42nd Leg., 3rd C.S., p. 100, ch. 35.]

Art. 952l—10. Regulating taking of fish and shrimp in tidal waters and Galveston Bay.

Nets and Trawls

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 Intracoastal 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 Baffle 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.[1]

1 Article 941.

Possession of seines, nets or trawls

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.

Arrest; disposition of seine, nets or trawl seized

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 term time 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.

Violations; punishment; cancellation of license

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.

Repeal

Sec. 5. All laws or parts of laws in conflict herewith shall be and the same are hereby repealed. [Acts 1932, 42nd Leg., 3rd C.S., p. 91, ch. 28; Acts 1939, 46th Leg., Spec.L., p. 818, § 1.]

Art. 952*l*—11. Shrimp; classification of fish; taking nongame fish.

Closed season; shrimp trawl; means of taking; possession

Section 1. It shall be unlawful to catch or have in possession any shrimp from the inland salt waters of this State during the period of time from and between the 15th day of July and the 31st day of August and during the period of time from and between the 15th day of December and the 1st day of March of any year.

It shall be unlawful to use, operate, or possess any shrimp trawl in or on any of the salt waters of this State except the Gulf of Mexico, or except to have such a shrimp trawl aboard a duly licensed boat while in port, or while in any channel en route to or from open waters of the Gulf, during such inland closed season as provided above, except as hereinafter provided in this Act.

Provided it shall be unlawful to take or catch shrimp, or to use or operate any shrimp trawl in the waters of the Gulf of Mexico within the territorial limits of the State of Texas between the hours of thirty (30) minutes after sunset and thirty (30) minutes before sunrise.

Provided that it shall be unlawful during the open season for taking shrimp from the inland tidal waters of this State, for any person, firm or corporation, to use or employ, or to permit the use or employment of a shrimp trawl of greater width, as measured along the cork line, than sixty-five (65) feet, for the taking or catching of shrimp.

Provided it shall be unlawful for any person aboard any commercial fishing vessel engaged in taking shrimp from the inland tidal waters of the State or from the territorial waters of the Gulf of Mexico, to head any such shrimp aboard said boat or to dump or deposit any shrimp heads at or near any place or area where shrimp are ordinarily taken.

Provided it shall be unlawful for any person, firm, or corporation to have in possession or on board of any commercial fishing boat or vessel, within the territorial waters of this State, any amount of shrimp of any salt water species, which said shrimp shall average in count of individual specimens, more than sixty-five (65) (headless shrimp or tails) to the pound, or if said amount of shrimp be in their natural state with heads attached, which said shrimp shall average in count of individual specimens with heads attached, more than thirty-nine (39) to the pound; which said counts shall be taken in the following manner and means:

The officer, agent or deputy of the Game, Fish and Oyster Commission shall, in the presence of any owner thereof, his or its officials, employees or agents, possessing said shrimp, select at random from said quantity of shrimp not less than three (3) samples; each sample shall consist of sufficient specimens to weigh out five (5) pounds; each five (5) pound sample shall be weighed and counted, and the count divided by five (5); after three (3) or more such counts shall have been taken, the averages obtained by each count shall be totaled and the final average count determined by dividing that total by the number of samples counted. Such average count so determined shall constitute prima-facie evidence of the average count of said shrimp in the entire cargo or quantity in possession.

Provided that the above limitations shall not apply to shrimp taken for bait, or by the use of a bait trawl, where the same is taken and possessed not in violation with the following provisions:

It shall be unlawful to take shrimp for bait by any means other than a cast net, a minnow seine of not more than twenty (20) feet in length, or by the use of a bait trawl of a legal size and under legal operations.

It shall be unlawful for any person to take or assist in the taking of shrimp from the inland waters of this State by the use and operation of a bait trawl towed by a power boat, which said bait trawl shall be more than ten (10) feet at the mouth, as measured along the webbing attached to the cork line, or twenty-five (25) feet in length, or by the use and employment of doors or other boards to spread and open said bait trawl which are of greater size or dimension than twelve (12) by eighteen (18) inches, or to tow or assist in the towing of more than one such bait net or trawl from a power boat, or to tow other boats engaged in taking bait shrimp; and it shall be unlawful for any person operating a bait trawl to have on board any boat any amount of bait shrimp during the closed season in inland waters as above provided, in excess of one hundred and fifty (150) pounds of shrimp in their natural state with heads attached. Provided that during such closed season in Galveston County it shall be lawful to take shrimp for bait by the use and employment of doors or boards of not greater dimension than twenty (20) by sixty (60) inches and to possess not more than two hundred and fifty (250) pounds of shrimp with heads attached.

It shall be unlawful for any person during the closed season as above provided, to ship or transport any amount of bait shrimp in excess of twenty-five (25) pounds to any point of destination in the interior not within fifty (50) miles of any county bordering on any salt water bay on the coast of Texas. [As amended Acts 1947, 50th Leg., p. 149, ch. 87, § 1.]

Violations

Sec. 1a. Any person, firm or corporation violating any of the provisions of the foregoing Act shall be deemed guilty of a misdemeanor, and upon conviction, if the same be the first offense, shall be fined not less than Twenty-five Dollars ($25) and not more than Two Hundred Dollars ($200). If the same be a second offense, then in the event of conviction in addition to such fine all commercial fishing or other commercial licenses shall automatically be cancelled and the offender shall not be entitled to receive other fisherman's license or dealer's license for a period of three (3) months from the time of such conviction. [Added Acts 1947, 50th Leg., p. 149, ch. 87, § 1.]

Repeal—suspension; partial invalidity

Sec. 1b. All laws and parts of laws in conflict herewith are hereby repealed in so far as they conflict herewith; especially provided that the third paragraph of Section 4A of House Bill No. 379,[1] Acts of the Fiftieth Legislature is hereby suspended for a period of two (2) years; and in the event any provision of this Act be held unconstitutional, the same shall not affect the remaining parts, and the same shall remain in full force and effect. [Added Acts 1947, 50th Leg., p. 149, ch. 87, § 1.]

[1] Article 934b—1.

Repeal

Sec. 2. Providing that Section 1-D of Article 941 of the Penal Code is hereby repealed and that all laws or parts of laws in so far as they may conflict with the provisions of this Act be, and the same are hereby repealed.

Classification of salt water fish; permits to take nongame fish

Sec. 3. It shall be the duty of the Game, Fish and Oyster Commission to make continued investigations and classify and reclassify the salt-water fish of this State into two divisions, (1) the game fish, and (2) the nongame fish.

The game fish shall include all fish which strike or bite at a hook baited with natural or artificial lures and which species is desirable to be encouraged and repropagated because of its value for sport and recreation.

The nongame fish shall include those having no sporting value, the predators, bony or rough-fleshed species, or any species of fish whose numbers should be controlled in order to protect and encourage the other game fish of this State.

In order to control such nongame marine species and to permit their utilization and when it has been found that the taking of such nongame species will not adversely affect the conservation of game species, it shall be the duty of the Game, Fish and Oyster Commission to issue permits for the use of any net or device for the taking of such nongame species under the terms, conditions, and stipulations herein provided.

(a) Permits shall be granted only to citizens of the United States who have continuously resided in the State of Texas for a period of at least six (6) months prior to their application for such permit, and who have not been convicted of violating any of the fishing regulations of this State for a period of two (2) years. For such permit the applicant shall pay to the Game, Fish and Oyster Commission the sum of Five Dollars ($5), which it shall be the duty of the said Commission to deposit in the State Treasury to the credit of the Fish and Oyster Fund. A permit issued hereunder shall be valid for one year from date of issuance unless earlier revoked or suspended in accordance with the provisions of this Act.

(b) It shall be unlawful for the holder of a permit issued hereunder to operate any net or device that is not now legal in any of the tidal waters of this State in which a trammel net, set net, or gill net is now prohibited by law. And it shall be unlawful to operate a device permitted under the terms of this Act until such device has been inspected, approved, and tagged, and while in operation bears a metal tag identifying said device, issued by said Commission.

(c) It shall be unlawful to use a device otherwise prohibited by the laws of this State but permitted under the terms of this Act for the taking and possession of any game fish or any other species of salt-water fish, excepting those specifically named in the permit authorizing the use of said device; or to operate or permit the operation of such a device in a manner that will or does needlessly or carelessly injure marine products other than those permitted to be taken in the especially authorized net or device.

Seizure of devices used unlawfully

Sec. 4. Whenever an agent of the Game, Fish and Oyster Commission finds that any device for which a permit has been issued under the laws of this State is being used contrary to any provisions of this Act, it shall be the duty of said officer to immediately seize such device and hold same until after the trial of this defendant, and no suit shall be maintained therefor. Pending the trial of the defendant, it shall be unlawful for said defendant to operate any device such as is permitted under the provisions of this Act in any of the tidal waters of this State.

Violations

Sec. 5. Any person violating any provision of this Act, or any of the conditions of a permit issued hereunder, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10), nor more than Two Hundred Dollars ($200), and shall automatically forfeit all privileges granted under this Act. [Acts 1941, 47th Leg., p. 525, ch. 322.]

[1] Article 941, ante.

Acts 1934, 43rd Leg., 3rd C.S., p. 123, ch. 65, opens the waters of Espiritu Santo Bay in Calhoun County, for trawling for shrimp during the months of September, October, November, and December of each year.

Art. 953. [Repealed by Acts 1927, 40th Leg., p. 365, ch. 246, § 2.]

Art. 953a. Fishing in Young county.

Barter or sale; devices, size of mesh; length of fish taken

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). [As amended Acts 1936, 44th Leg., 3rd C.S., p. 2031, ch. 491, § 1.]

Use of lime, dynamite, etc.

Sec. 2. Any person who shall use any lime, dynamite, nitroglycerin, giant powder or other explosive, or shall use any poisons, drugs, substances or things deleterious to fish life, in catching, taking or attempting to catch or take any fish in any of the rivers, creeks, lakes, sloughs, bayous, tanks or ponds that flow or are situated within the boundary lines of Young County, including the Brazos River, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars and in addition thereto be imprisoned in the County Jail for any term not exceeding one year.

Seines, nets or traps

Sec. 3. It shall be unlawful for any person to take or catch any fish in the waters described in Section One of this Act by any other means than the ordinary hook and line, or trot line or artificial baits; and it shall be unlawful for any person to place in any of the waters described in Section One of this Act any seine, net or other device or trap for taking or catching fish; provided, however, that any person may use a minnow seine which is not more than twenty feet in length, and the meshes of which are not less than one-sixth of an inch square for the purpose of catching minnows for bait, provided further that in seining for minnows for bait, as herein permitted, all bass, species of bass, crappie, white perch, calico bass and bream of whatever size that may be taken by seining shall be immediately returned to the waters uninjured and all other fish more than three inches in length except minnows, shall be immediately returned to the waters uninjured provided further than no person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait.

Trolling from motor boat

Sec. 4. It shall be unlawful for any person to take or catch or attempt to take or catch any fish in the waters described in Section One of this Act by trolling from or in a motor boat. By a motor boat, as used in this section, is meant any boat to which is attached a gasoline motor, and electric motor or other means of propelling said boat other than by oars operated by hand, whether said motor or other means of propelling said boat is running or not; and providing further that any person desiring to troll from any boat commonly propelled by an outboard motor, shall dismount the motor or other means of power from its accustomed place, and either leave it on the shore or place it in the bottom of floor of said boat.

Closed season

Sec. 5. It shall be unlawful for any person, firm or corporation, or their agent or agents to take or catch from or have in their possession any bass, crappie, white perch or bream taken from any of the waters named in Section One of this Act, on and from the First of February to the First day of May of any year. Provided, however, that the owner of any private lake, tank or pond, that is stocked with fish purchased from a commercial hatchery, may take or catch any fish said waters may contain at any time during the year; and provided further that any privately owned lake, tank or pond that has been stocked with fish from a State or Federal hatchery shall be closed to the taking of any bass, crappie, white perch, or bream, except for the purpose of transferring said bass, crappie, white perch or bream to other waters for breeding purposes only, during the period between the First day of February and the First day of May of any year; and further provided that after five years from date of last stocking said lake tank or pond with fish from a State or Federal hatchery, said owner may catch or take, or permit to be caught or taken from said waters, any bass, crappie, white perch or bream, at any time during the year, for any purpose except to sell or barter them to any other person, firm or corporation, or their agent or agents.

Limits

Sec. 6. It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length, or to catch or retain, or have in his possession, in any one day a total aggregate of more than eight (8) bass, or other fish of the bass species, taken from the waters described in Section One of this Act; provided that it shall be unlawful for any person to catch or retain, or have in his possession from those waters in any one day bass or other fish of the bass species, of an aggregate weight in excess of twenty (20) pounds; to catch or retain, or have in his possession any crappie or white perch or calico bass which are less than eight (8) inches in length, or catch and retain or have in his possession any bream which are less than five (5) inches in length, or to catch or retain from, or have in his possession in any one day more than a total aggregate of sixteen (16) crappie or white perch or calico bass or bream or of any or all of those fish taken from the waters described in Section One of this Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or bream or of any or of all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further, that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section One of this Act, bass, or any other fish of the bass species, crappie, white perch or sun fish, or calico bass, or bream, or other fish of the crappie, white perch or bream or sunfish species, of an aggregate weight in excess of thirty (30) pounds.

Size of fish

Sec. 7. If any person shall at any time catch or take from any of the waters described in Section One of this Act in the county named in that section by use of any means whatsoever any bass, or other fish of the bass species, of less than eleven (11) inches in length, or any crappie or white perch, or calico bass of less than eight (8) inches in length, or any bream of less than five (5) inches in length he shall immediately return the same into such water without unnecessarily injuring such fish; provided further that the owner of any private lake, tank or pond which has been stocked with fish from a State or Federal hatchery, is not exempt from this provision, except he be removing said fish to other waters for rearing or breeding purposes; and further provided, that the owner of any private lake, tank or pond that has been stocked with bass, crappie, white perch or bream purchased from a commercial hatchery, may take or catch said fish at his discretion and is exempt from this provision; and further provided that failure to return any bass, crappie, white perch or bream of less than the length set forth in this section, or the unnecessarily injuring of such fish shall be deemed an offense under this Act.

Waste

Sec. 8. It shall be unlawful for any person, or persons, knowingly to place, throw or deposit upon the banks or grounds within five hundred (500) feet of any of the waters described in Section One of this Act

in the County named in Section One of this Act, any bass, crappie, white perch, bream, sunfish, drum, catfish, or other edible fish, and leave such fish to die without any intent upon the part of such person to eat such fish, or in like manner to leave any minnows without intent to use the same for bait. Any person found guilty of the violation of any provisions of this section shall be fined in any sum not less than $2.00 nor more than $25.00, and each fish so allowed to die shall constitute a separate offense.

Penalties

Sec. 9. Any person violating any of the provisions of Sections I, IV, V, VI, VII of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $5.00 nor more than $50.00 for each violation of the law, and each fish caught, held in possession, sold or purchased, in violation of this Act shall be deemed a separate violation hereof and a separate offense, and the person guilty thereof may be prosecuted either in the county where the fish are caught, where he is found with them in his possession or where the fish are sold or bartered or offered for sale or barter or bought; provided that any person guilty of using a net or other device or trap for taking or catching fish as prohibited in Section Three of this Act, shall upon conviction thereof, be fined not less than $10.00 nor more than $100.00 upon each conviction and in addition said seine, net or other device or trap so used for taking or catching fish or attempting to take or catch fish, shall be forfeited to the State of Texas, and shall thereupon become the property of the State of Texas to be held, used and disposed of by the Fish and Game Commission of the State of Texas. [Acts 1929, 41st Leg., 1st C.S., p. 41, ch. 12.]

Section 10 of this Act makes it cumulative of all general laws relating to fish and the protection thereof, and section 11 provides that if any provision is held invalid such holding shall not affect the remainder.

Art 954. Fish pound in gulf waters.—It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner.[1] Such commissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this chapter, a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation. No pound net shall ever be placed or operated closer than three miles of any pass mentioned in this chapter. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars.

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 955. Sale of fish caught in Anderson and other counties.—If any person shall sell or offer for sale any bass, white perch, crappie, channel or catfish, caught, trapped or ensnared in the streams of the Counties of Anderson, Burnet, San Saba, Mills, Brown, McCulloch, Edwards, Coleman, Concho, Menard, Mason, Gillespie, Kimble, Sutton, Kinney, Uvalde, Real, Kerr, Comal, Val Verde, Bandera, Reeves, Ward, Loving, Pecos, Medina, Bexar, Hunt, Runnels, Rains, Williamson, Zavala, Dimmit, Lampasas, or Llano, State of Texas, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Five ($5.00) Dollars, nor more than Fifty ($50.00) Dollars. No person shall take or catch any fish in the fresh water rivers, creeks, lakes, bayous, pools or lagoons in the Counties above named by any other means than by ordinary hook and line or trot line or artificial bait, and no person shall place in the fresh water rivers, creeks, lakes, bayous, pools or lagoons of the counties above mentioned, any seine, net or other device, or trap for taking or catching fish; provided, however, that persons may use a minnow seine which is not more than twenty feet in length for the purpose of catching minnows for bait; or a net, the meshes of which are not less than three inches for the purpose of catching carp and suckers in the Colorado River. In seining for bait as herein permitted, all fish and minnows more than three inches in length shall be returned to the waters at once while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait. Any person violating any provisions of this Section shall be fined not less than Five ($5.00) Dollars nor more than One Hundred ($100.00) Dollars.

No person shall take from the fresh waters of any County mentioned more than thirty-five of such fish in any one day. Any person violating this provision of this Article shall be fined not less than Five ($5.00) Dollars nor more than One Hundred ($100.00) Dollars. The taking of such fish in excess to the number herein allowed shall be a separate offense.

No person shall knowingly place, throw or deposit upon the banks or grounds adjacent to any of the fresh waters, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in the Counties above named any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave such fish to die without any intention upon the part of such person either to eat such fish or use same for bait. Any person found guilty of the violation of this Provision shall be fined not to exceed Twenty-five ($25.00) Dollars. The allowing of each fish to die shall be a separate offense. [Acts 1923, p. 166; Acts 1925, 39th Leg., p. 174, ch. 41½, § 1; Acts 1929, 41st Leg., p. 111, ch. 55; Acts 1929, 41st Leg., p. 533, ch. 257; Acts 1931, 42nd Leg., p. 764, ch. 304; Acts 1931, 42nd Leg., 2nd C.S., p. 20, ch. 11; Acts 1933, 43rd Leg., Spec.L., p. 16, ch. 16; Acts 1933, 43rd Leg., Spec.L., p. 113, ch. 86.]

Art. 955a—1. [Repealed by Acts 1930, 41st Leg., 4th C.S., p. 77, ch. 38, § 1.]

Article repealed was Acts 1929, 41st Leg., p. 534, ch. 258, as amended Acts 1929, 41st Leg., 1st C.S., p. 219, ch. 88.

Art. 956. Mischief in prohibited waters.—Whoever shall wilfully and with intent to injure the owner, take any boat, seine or net or other device for fishing into prohibited waters, or shall use said articles for the unlawful taking or catching of fish, so as to cause the destruction of same, shall be fined not less than ten nor more than two hundred dollars, and be confined in jail not less than thirty nor more than ninety days. [Acts 1913, p. 275.]

Art. 957. Season for salt water terrapin.—Whoever kills, takes or has in his possession any salt water terrapin at any time except during November, December, January and February shall be fined not less than fifty nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 208.]

Art. 958. [910] Underweight turtle or terrapin.—Whoever sells or ships any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell shall be fined not less than ten nor more than two hundred dollars. [Acts 1895, p. 173, Acts 1913, p. 270.]

Art. 959. [905] Buoy or marker.—Whoever shall deface, injure, or destroy or remove any buoy, marker or fence or any part thereof, used to designate or enclose a private oyster bed or a location where oysters have been deposited to be prepared for market, without the consent of the owner thereof, or any buoy, marker or sign placed or used by the Commissioner [1]

for the purpose of designating any waters closed against fishing or oyster taking, without the consent of said Commissioner, shall be fined not less than fifty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 200.]

[1] See note to Article 954, ante.

Art. 960. Public or private oyster bed.—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found within twenty-five hundred square feet of any position of said reef or bed and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner,[1] but this shall not apply to a reef or bed that has been exhausted within a period of eight years. [Acts 2nd C. S. 1919, p. 193.]

[1] See note to Article 954, ante.

Art. 961. Right to private oyster bed.—When any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting, or sowing oysters within the metes and bounds of the official grant or patent. The Commissioner [1] may require the owner of oysters produced in said water when offered for sale, to make an affidavit that such oysters were so produced. The failure of the person claiming that such oysters were produced on his private oyster bed or bottoms, to have and to show such affidavit to the Commissioner or one of his deputies, or to whoever he offers such oysters for sale, shall be presumptive that such oysters were taken from a public bed, and on prosecution for the same it shall devolve on the defendant to show that such oysters were taken from his private bed, or bottom of oysters. [Acts 2nd C. S. 1919, p. 193.]

[1] See note to Article 954, ante.

Art. 962. [920] Theft of oysters.—Whoever fraudulently takes the oysters placed on private reefs without the consent of the owner of the private reef or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who has deposited them to prepare them for market under the provisions of law, shall be confined in the penitentiary not less than one nor more than two years. [Acts 2nd C. S. 1919, p. 200.]

Art. 963. [904] License to dredge oysters.—Anyone who is an American citizen or any firm or any corporation composed of such citizens desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner [1] or his deputy a license to do so. It is unlawful to use a dredge or any means other than hand tongs in removing oysters from such reefs in bodies of water less than four feet deep, and it is unlawful to use a power dredge except one operated by hand power for removing oysters from such reefs in bodies of water less than six feet deep. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1891, p. 157, Acts 1913, p. 269, Acts 2nd C. S. 1919, p. 207, Acts 1923, p. 298.]

[1] See note to Article 954, ante.

Art. 964. [923b] Oysters from closed reef.—Whenever the Commissioner [1] believes that any public reef is being overworked or damaged in any way, or where such reef has been worked under his supervision, he may close such reef against anyone taking oysters from it, but before he closes it he shall give two weeks' notice of such closing by posting notices in such fish houses as are in two towns nearest such reef. In such notices he shall state the date of closing and the time for which such reef shall be closed. Whoever takes oysters from such reef within the time closed by the Commissioner shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1913, p. 274, Acts 2nd C. S. 1919, p. 207.]

[1] See note to Article 954, ante.

Art. 965. Oysters from insanitary reef.—It shall be unlawful to ship, sell or possess for the purpose of sale any fish or oysters taken from insanitary or polluted reefs or beds. Any reef or bed of oysters which has been declared by the State Health Department as insanitary or polluted is within the meaning of this article insanitary and polluted. Whoever sells or has in his possession for the purpose of sale fish or oysters taken from such insanitary or polluted reef or bed shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 209.]

Art. 966. [914] Taking oysters in closed season.—Whoever shall take or catch oysters from any public beds or reefs for sale or for market from the first day of April to the first day of September, shall be fined not less than ten nor more than two hundred dollars. Each day is a separate offense. That part of the Laguna Madre which is South and West of Baffin's Bay is exempt from the operation of this article. [Acts 2nd C. S. 1919, p. 206.]

Art. 967. [904] [1] Buying or planting oysters in closed season.—Whoever plants or buys oysters for planting, bedding, marketing or any other purpose from the first day of May to the first day of September in any year without the consent of the Commissioner [2] shall be fined not less than ten nor more than one hundred dollars. [Acts 1891, p. 155, Acts 1913, p. 269.]

[1] So in enrolled bill. Should probably read "[902]".
[2] See note to Article 954, ante.

Art. 968. [903] Shipping oysters in closed season.—No transportation company operating within this State, its officers, agents or employés, shall receive for shipment, or ship, within the boundaries of this State, from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing; provided, that nothing in this chapter shall be construed to prohibit any such transportation company, its officers, agents or employés, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed, such fact to be established by the affidavit of the person or persons offering such oysters for shipment. Any officer, agent or employé of such transportation company violating any provision of this article shall be fined for each offense not less than ten nor more than one hundred dollars. [Acts 1907, p. 238, Acts 1913, p. 269, Acts 2nd C. S. 1919, p. 203.]

Art. 969. Scattering oyster culls.—It shall be unlawful for any person to fail, or refuse to scatter the culls of such oysters as he may take from the oyster reefs as directed by the Game, Fish and Oyster Commissioner,[1] and it is hereby declared to be unlawful for any person to open or shuck oysters for market near or on the reefs or beds from which such oysters were taken, or to open or shuck oysters for market on any fishing vessel or barge, except when such vessel or barge be in some part or place where oysters are commonly sold. The shell from oysters opened or shucked on board any vessel or barge must be deposited on shore as directed by the Game, Fish and Oyster Commissioner. Any one violating any of the provisions of this article shall be fined in a sum not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars; and on such conviction the Game, Fish and Oyster Commissioner in his discretion may cancel the license of the captain of the boat on which such person is employed or for which he is

gathering oysters, as well as cancel the license to fish and gather oysters of such persons offending, and no new license shall be issued to such captain or to such person convicted for a period not to exceed two years.

[1] See note to Article 954, ante.

Art. 970. Sale of oysters taken for planting.—No person gathering oysters for planting or depositing for preparations for market, on locations obtained from the State or on private property, shall sell, market or in any way dispose of oysters so gathered at the time of gathering, for any other purpose than planting or preparing for market, provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be fined not less than fifty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 206.]

Art. 971. [918] Cargo of Young Oysters.—Any person offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent young oysters shall be fined not less than ten nor more than two hundred dollars. Any oyster that measures less than three and one-half inches from hinge to mouth shall be deemed a young oyster for the purpose of this chapter. The Commissioner [1] is authorized to permit the taking of oysters of less size than three and one-half inches from any reef he may designate but it shall be unlawful to take any oysters from reefs other than those designated by such Commissioner, and any one taking such oysters smaller in measurement than three and one-half inches from hinge to mouth from other than such reefs as designated by such Commissioner shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

[1] See note to Article 954, ante.

Art. 972. Using insanitary container.—Any receptacle for oysters which has not been thoroughly cleaned before oysters are placed in it, is hereby declared to be insanitary. Whoever sells oysters from such receptacle, or ships oysters in such receptacle shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 209.]

Art. 973. Floating or bloating oysters.—No person, firm or corporation shall ship into or in this State, sell or have in his possession for the purpose of sale, any oyster or shell fish in which any formaldehyde or other preservative has been placed, or any oysters or other shell fish which have been subjected to "floating," "drinking" or "bloating" in water containing less salt than in which they are grown, or oysters or other shell fish to which water has been added either directly or indirectly or in the form of melted ice. Unpolluted salt cold or ice water may be used in washing shucked or shelled oysters or other shell fish, if the washing does not continue any longer than the minimum time necessary for chilling, and whoever engages in "floating," "drinking" or "bloating" oysters in this State, or who ships into or in this State such oysters, or who has in his possession, sells or offers to sell any such oysters, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Art. 974. "Net" defined.—Whenever a net mentioned in this chapter as a trammel, strike, gill, hoop, pound, purse or other kind of a net, the standard net of such variety or kind or the usual or ordinary kind of such net as manufactured and sold as in or to the trade is meant. [Id.; Acts 1923, p. 299.]

Art. 975. License for mussel or clam.—Whoever takes from the public waters of this State for sale, any mussels, clams or naiad or shells thereof without first obtaining a license from the Commissioner,[1] shall be fined not less than ten nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 214.]

[1] Office of Game, Fish and Oyster Commissioner abolished and powers and duties transferred to the Game, Fish and Oyster Commission, see Article 978f, post.

Art. 976. Marl, sand and shell.—Whoever shall, for himself, or for or on behalf of or under the direction of another person, association of persons, corporate or otherwise, take or carry away any marl, sand or shells or mudshell or gravel placed under the management, control and protection of the Commissioner,[1] or shall disturb any of said marl, sand, shells or mudshell or gravel or oyster beds or fishing waters or shall operate in or upon any of said places for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, without having first obtained a written permit from said Commissioner for the territory in which such operation is carried on, shall be fined not less than ten nor more than two hundred dollars. Each day's operation shall be a separate offense. [Acts 2nd C. S. 1919, p. 218.]

[1] See note to Article 975, ante.

Art. 976a. Removal of sand, marl or gravel between seawall and water edge, penalty.—Sec. 1. Whoever shall take, remove or carry away sand, marl, shell, gravel, or any material of any nature or kind whatsoever from any land located between any seawall and the water's edge within this State for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, or shall take, remove or carry away sand, marl, shell, gravel, or any material of any nature or kind whatsoever from any beach or shore line within this State within three hundred (300) feet of the mean low tide line and within one-half (½) mile of the end of any seawall for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority shall be guilty of a misdemeanor and fined not less than Five ($5.00) Dollars nor more than Two Hundred ($200.00) Dollars.

Sec. 2. If any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional it shall not affect in any way the constitutionality of the remaining provisions hereof. [Acts 1935, 44th Leg., p. 230, ch. 93.]

Art. 977. Charts as evidence.—All United States Coastal Survey Charts covering the coast of Texas are admissible in any prosecution under this chapter.

Art. 978. [871] Witnesses must testify.—Any court, office or tribunal having jurisdiction of the offenses set forth in this chapter or any district or county attorney may subpœna persons and compel their attendance as witnesses to testify as to violations of any provision of this chapter. Anyone so summoned and examined shall not be liable to prosecution for any such violation about which he may testify; and a conviction of said offense may be had upon the unsupported evidence of an accomplice or participant. [Acts 2nd C. S. 1919, p. 207.]

Art. 978a. Trespass on hatchery or reservation.—Any person entering and trespassing on the grounds of any State fish hatchery or on the grounds set apart by the State for the propagation and keeping of birds and animals, without the permission of the Commissioner [1] or deputy in charge of such reservation, shall be fined not less than ten nor more than twenty-five dollars. [Acts 2nd C. S. 1919, p. 208.]

[1] See note to Article 975, ante.

Art. 978b. Protecting fish and game in hatchery.—Whoever shall take, injure or kill any fish kept by the State in its hatcheries, or any bird or animal kept by the State on its reservation grounds or elsewhere for propagation or exhibition purposes, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 978c. [915] Screening canal or pipe.— Every person, firm or corporation using any means for the purpose of taking water from the fresh waters of the State, when directed to do so by the Commissioner,[1] shall place screens over the entrance of the canal, pipe, or over whatever means are used for diverting the water, or over the mouth of the intake pipe, for the purpose of preventing fish from entering said pipe or canal. The size of and regulations for placing such screen and any other obstruction shall be designated by the Commissioner. Whoever fails to comply with this article after notification by the Commissioner to do so shall be fined not less than fifty nor more than two hundred dollars. Each day is a separate offense. [Acts 1909, p. 331, Acts 1913, p. 271.]

[1] See note to Article 975, ante.

Art. 978d. Closed season for green turtle.— It shall be unlawful for any person to take or kill or have in his possession at any time before September 1, 1920,[1] any sea turtle known as the green turtle, and it shall be unlawful to destroy or take the eggs of such turtle and any person who shall take, kill or have in his possession within such five years, or shall destroy or take the eggs of such turtle, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than fifty ($50.00) nor more than one hundred ($100.00) dollars.

[1] So in enrolled bill. Should probably read "1930".

This article, as set out in Revised Penal Code 1925, carried a note in parenthesis, reading as follows: "The foregoing article is senseless but is a correct copy of the enrolled bill."

The text was taken from Acts 1925, 39th Leg., p. 438, ch. 178, § 1, art. 55, unchanged.

Art. 978e. Closed season on bass and crappie. —It shall be unlawful for any person, firm or corporation, or their agents, to buy or sell, or offer for sale, or offer to buy, or have in his or their possession for sale, or to carry, transport or ship for the purpose of sale, barter or exchange, any fresh water crappie or bass within the State of Texas.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars, and each sale or shipment or act in violation hereof shall constitute a separate offense.

Art. 978f. Game, Fish, and Oyster Commission; powers and duties.

Office of Game, Fish and Oyster Commissioner abolished

Section 1. The office of Game, Fish and Oyster Commissioner of the State of Texas is hereby abolished. There is hereby created the Game, Fish and Oyster Commission which shall have the authority, powers, duties and functions heretofore vested in the Game, Fish and Oyster Commissioner, except where in conflict with this Act.

Commission appointed

Sec. 2. Said Game, Fish and Oyster Commission shall consist of six members, one of whom shall be chairman. The Chairman and other members of the Commission shall be appointed by the Governor from different sections of the State, which appointment shall be with the advice and consent of the Senate, if in session, and if not in session, the Governor shall appoint such chairman and members and issue a commission to them as provided by law, and their appointment shall be submitted to the next Session of the Senate for their advice and consent in the manner that appointments to fill vacancies under the Constitution are submitted to the Senate. The chairman and one member of said Game, Fish and Oyster Commission shall be appointed for a term ending September 1, 1935. Two members shall be appointed for a term ending September 1, 1933, and two members shall be appointed for a term ending September 1, 1931, or until their successors are appointed and qualified. Thereafter, the Governor shall appoint such chairman and members for terms of six years. The chairman and each member of said Commission shall execute a bond payable to the State of Texas, in the sum of Five Thousand Dollars to be approved by the Governor and conditioned upon the faithful performance of his duties under the law. The premium on such bonds shall be paid by the State of Texas out of funds available to said Game, Fish and Oyster Commission under the law and appropriations made by the Legislature.

Meetings

Sec. 3. Said Game, Fish and Oyster Commission shall hold regularly quarterly meetings in January, April, July and October of each year on dates to be specified by the Commission and may hold such special meetings at such times and places as said Commission may deem necessary and proper. It shall require two members or the chairman and one member of said Commission to constitute a quorum.

Rules and regulations

Sec. 4. Said Game, Fish and Oyster Commission is hereby authorized to make such rules and regulations for the conduct of its work and the work of the Game, Fish and Oyster Commission as may be deemed necessary, not inconsistent with the Constitution and laws of this State. Said Game, Fish and Oyster Commission shall keep a record of all proceedings and official acts.

Compensation

Sec. 5. The chairman and members of said Commission shall receive as compensation for their services their actual expenses in the performance of their duties. The expense of the chairman and members shall be itemized and sworn to by said chairman or member receiving the same and shall be paid out on warrants of the Comptroller drawn against any fund available for the use of said Game, Fish and Oyster Commission.

Executive secretary and assistant

Sec. 6. Said Game, Fish and Oyster Commission shall have power and authority to appoint an executive secretary who shall act as the chief executive officer under the direction of said Game, Fish and Oyster Commission. The Commission may perform its duties through said executive secretary and may delegate to him such executive duties as said Game, Fish and Oyster Commission shall deem proper. They shall also have power and authority to appoint an assistant executive secretary who, in the absence of the executive secretary, shall perform all the duties of the executive secretary and shall perform such other duties as may be prescribed by the Game, Fish and Oyster Commission or under its direction. Said executive secretary shall have authority to appoint such heads of divisions and such 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 said 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 authority, powers, duties and functions heretofore vested in Special Deputy Game, Fish and Oyster Commissioners and other employees of the Game, Fish and Oyster Commissioner. Said executive secretary and assistant executive secretary shall serve at the will of said Game, Fish and Oyster Commission. The division heads, Game and Fish Wardens and other employees shall serve at the will of the executive secretary.

Compensation of secretary, assistant and division heads

Sec. 7. The executive secretary and the assistant executive secretary shall each receive such compensation as may be fixed by the Legislature in each biennial appropriation bill, to be paid to them in twelve equal monthly installments, out of any funds available to, or appropriated for the use of the Game, Fish and Oyster Commission, together with all the necessary expenses in connection with their official duties. The compensation of all division heads, Game and Fish Wardens and other employees of the Game, Fish and Oyster Commission, 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 to such division heads, Game Warden and other employees.

Official bonds

Sec. 8. The executive secretary and assistant executive secretary shall each enter into a good and sufficient bond in the sum of Ten Thousand Dollars 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 executive secretary and assistant executive secretary shall take the constitutional oath of office. Every division head, Game and Fish Warden and such other of the employees as the Commission may designate shall execute a bond in the sum of One Thousand Dollars to be approved by the executive secretary of the Game, Fish and Oyster Commission, and payable to the State of Texas and conditioned upon the faithful performance of the duties of his office. The Game, Fish and 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, conditioned upon the faithful performance of his duties under the law. The chairman nor the members of the Commission, the executive secretary nor assistant executive secretary 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. 9. There is hereby appropriated out of the State Treasury all moneys collected or to be collected by the Game, Fish and Oyster Commissioner or said 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 1929, 41st Leg., p. 265, ch. 118.]

Section 11 of this Act repeals all conflicting laws and parts of laws, and provides that, if any section or provision is held unconstitutional, such decision shall not affect the remainder.

Art. 978f—1. Statistics as to marine products taken; penalty.—Sec. 1. The Game, Fish and Oyster Commission is hereby directed to gather statistical information on the harvest or catch of fish, shrimp, oysters and other edible forms of marine life of the Texas coast. The information shall set forth quantity, or the number of pounds of fish, shrimp, oysters or other marine products taken; from what waters, the kind of gear used, and the names of the various species of fishes taken. The Game, Fish and Oyster Commission shall prepare forms for reports which shall be furnished to handlers of marine products who shall make monthly reports to the Game, Fish and Oyster Commission at Austin, Texas, on said forms, not later than the 10th day of each month. Such handlers of marine products required to make this report are hereby designated as those dealers who buy or procure marine products from fishermen direct.

Sec. 2. Any person who buys or procures any marine products from any fisherman, and who fails or refuses to make any report required by this Act, or who wilfully makes an incorrect report, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00). [Acts 1935, 44th Leg., p. 647, ch. 261.]

Art. 978f—2. Cooperative agreements with United States to protect wild life on National Forest lands in San Augustine and Sabine counties.—Section 1. The Game, Fish and Oyster Commission of Texas shall have the right and authority to enter into an agreement with the United States Government, or with the proper authority thereof, for the protection and management of the wildlife resources of the National Forest lands under fence within the State of Texas situated within the Counties of San Augustine and Sabine, and known as the Sabine National Forest, and for the re-stocking of such lands with desirable species of game animals, game birds and other animals and fish.

Sec. 2. The Game, Fish and Oyster Commission of Texas shall have authority to prohibit all hunting and fishing within or upon any or all lands named in Section 1 of this Act for such period of time as may be necessary to safeguard any species of wildlife found thereon; shall have authority from time to time to prescribe open seasons for hunting and/or fishing therein, to prescribe the number, kind and size of all game and non-game animals, fish and birds that may be taken therefrom or thereon, and to prescribe the conditions under which all birds, animals and fish may be taken within said area.

Sec. 3. Any person violating any of the provisions of this Act or who shall hunt or fish upon said lands at any time other than the times specified by the Game, Fish and Oyster Commission, shall, upon conviction therefor, be fined in a sum of not less than Twenty-five ($25.00) Dollars nor more than One Hundred ($100.00) Dollars. [Acts 1943, 48th Leg., p. 344, ch. 224.]

Art. 978g. [Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 93, ch. 29, § 1.]

Article repealed was Acts 1930, 41st Leg., 5th C.S., p. 242, ch. 78.

Art. 978h. Protection of buffalo.—Sec. 1. Buffalo are hereby declared to be game animals.

Sec. 2. It shall be unlawful for any person in this State to kill any buffalo except male buffalo ten years old or older, and existing stags or steers. Any person who kills any female buffalo or any male buffalo under ten years of age shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than One Hundred ($100.00) Dollars nor more than One Thousand ($1,000.00) Dollars, or confinement in the county jail for any period not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment.

Sec. 3. It shall be unlawful for any person to sell any buffalo in this State without the written consent of the State Game, Fish & Oyster Commission of this State. The State Game, Fish & Oyster Commission is hereby granted the right, power and privilege of condemning for State use any buffalo or buffaloes in this State for the purpose of conserving and protecting the same, and to this end express authority is granted said Commission to condemn said animals in the same manner and under the same procedure now granted to counties for the condemnation of land for road purposes. The said Commission shall have power to enter into any contract it may deem advisable for the purchase, conservation and protection of buffaloes within this State, and in event the said Commission is unable to agree upon a price to be paid for

such animals with the owners thereof, then said Commission may, in its discretion, resort to condemnation proceedings as herein provided. The purchase of any buffalo within this State without the consent of the State Game, Fish & Oyster Commission shall be deemed a purchase for the benefit of the State, and said animals when so purchased will be held in trust by the purchasers for the use and benefit of the State for a period of six (6) months after such purchase, and said Commission shall have the right to take over said animals upon payment to the purchaser of the true consideration he may have paid therefor; provided, however, that the Commission shall not have the authority to purchase any stag buffalo nor male buffalo which at the time of sale is more than ten years of age and provided further that the herd shall not be purchased until a sufficient amount of land suitable for their maintenance and support, in the vicinity where the buffalo are located or range, shall have been donated to the Commission with a fee simple title. [Acts 1931, 42nd Leg., 1st C.S., p. 70, ch. 31.]

Art. 978i. Trinity River bed; violation of fishing and hunting regulations.—The Game, Fish and Oyster Commission of the State of Texas is hereby vested with full control over fishing and hunting in the Trinity River in Henderson and Navarro Counties and in such abandoned beds or channels of said river that continue the property of this State and said Game, Fish and Oyster Commission is hereby directed and charged with the duty of making necessary regulations that will conserve the game and fish within this area. Any hunting or fishing or the taking of any game or fish within the areas referred to in this Act, except in accordance with the regulations made by the Game, Fish and Oyster Commission, shall be a violation of this Act. Any person violating any such regulations or any part of such regulations shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), and after conviction shall forfeit his right to fish or to hunt with a gun in this State for a period of one (1) year following date of conviction. [Acts 1931, 42nd Leg., 2nd C.S. p. 42, ch. 23, § 3.]

Sections 1, 2, 4, 5, of this Act are published as Rev.Civ. St. Art. 4026a.

Art. 978j. Local game and fish laws.—Sec. 1. It shall be unlawful for any person to hunt, trap, ensnare, kill, or attempt to kill, by any means whatsoever, any wild deer, buck, doe, fawn, or wild turkey in the Counties of Anderson, Haskell, Henderson, Jones, Navarro, Shackelford, Throckmorton, Brown, and Coleman, in the State of Texas, for a period of five (5) years from and after the passage of this Act.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined in any sum not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00) and shall forfeit his right and license to hunt with a gun in this State for a period of one (1) year following the time of his conviction. [Acts 1933, 43rd Leg., Spec.L., p. 25, ch. 20.]

For fish and game laws applicable only to the named counties see notes under Vernon's Ann.Pen.Code, Art. 978j.

Art. 978k. Game breeder's license.

Duration; game breeder

Section 1. Any person, firm or corporation, before engaging in the business of propagating any of the game birds or game animals of this State for the purpose of sale, barter, exchange or offering for sale, barter or exchange, or before placing in captivity any game bird or game animal for such purpose, shall obtain from the Game, Fish and Oyster Commission at Austin, Texas, a game breeder's license upon payment of the sum of Two Dollars ($2.00), and which license shall be valid until August 31st, following date of issuance, and any person, firm or corporation holding such license is hereby defined as a game breeder.

Privileges under license

Sec. 2. A game breeder's license shall entitle the holder to engage in the business of game breeding in the immediate locality for which such license was issued, and such license shall entitle the holder to only those privileges which are hereby specified. To hold in captivity only for the purpose of propagation or sale and to sell, under regulations herein provided, wild deer of all species, wild antelope, wild squirrels of all varieties, wild turkey, wild prairie chickens, wild quail of all varieties, wild Chachalacas, commonly called Mexican Pheasants, wild pheasants of all varieties, any wild migratory bird or water fowl when permit has been obtained from the Department or Bureau of the United States Government authorized to issue such permit. To sell the eggs of any fowl or bird held in captivity under a game breeder's license.

State game laws and regulations applicable

Sec. 3. Except in so far as specified privileges are conferred by this Act, all game birds or game animals held under a game breeder's license shall remain under the full force of any or all laws or regulations of this State pertaining to wild game birds or wild game animals in order that these necessary police regulations for the preservation of native game species may be enforced to the benefit of this State.

Captivity defined

Sec. 4. For the purpose of this Act "captivity" is defined as an inclosure suitable for retaining, and that will retain at all times under reasonable and ordinary circumstances the bird, fowl or animal so inclosed, and so far as animals are concerned, will prevent the entry into the said inclosure of any other such animal. Any single inclosure for any game bird or game animal shall not contain more than forty (40) acres, except for deer, antelope, turkey and any wild migratory bird or water fowl for which any such inclosure shall not exceed three hundred twenty (320) acres.

Inspection of inclosures

Sec. 5. Each pen, coop or enclosure of any kind in which any game bird or game animal is held shall be subject to inspection by any Game and Fish Warden at any time and no warrant shall be required therefor.

Serial number of breeder and tags

Sec. 6. To each person, firm or corporation obtaining a game breeder's license there shall be issued by the Game, Fish and Oyster Commission, at the time of first issuance of license to such breeder, a serial number, which shall remain the number of said game breeder whenever he may hold a game breeder's license. Said game breeder shall obtain suitable metal bands bearing his serial number, and one of such bands shall be placed on a leg of each game bird or fowl which he is holding in captivity and shall remain on same. And a suitable metal tag, bearing the serial number of the game breeder holding same, shall be attached to and remain attached to an ear of each antelope or deer held or sold by a game breeder.

Conditions for sale of game birds or animals

Sec. 7. It shall be unlawful for any game breeder to sell, barter or exchange or offer for sale, barter or exchange any game bird or game animal, except when same is alive and in a healthy condition. And it shall be unlawful for any person to purchase in this State or to accept from any person any live game bird or game animal that has been held in this State, except from a licensed game breeder and when such bird or animal bears a band or tag as herein required to be placed on game birds or game animals by game breeders, except when same is delivered by a common carrier

from outside this State. No game bird or game animal shall be purchased or received by any person in this State except for the purpose of liberation for stocking purposes, or for the purpose of holding same for propagation purposes, and with the understanding that all such game and increase therefrom shall remain under the full force of all the necessary police regulations of this State pertaining to wild game, and that such game may be held in captivity for such propagation purposes in this State only after permit has been obtained from the Game, Fish and Oyster Commission. Provided that nothing contained in this Act shall prohibit the holding, taking or receiving of game birds or game animals for scientific or [1] zoological purposes, under permit issued by the Game, Fish and Oyster Commission, under the provisions of Article 913, Penal Code 1925.

[1] So in enrolled bill. Session Laws read "and".

Sale of pheasants

Sec. 8. Provided that nothing contained in this Act shall prohibit licensed game breeders from selling or offering for sale pheasants of any or all kinds for any or all purposes, and that they are given this specific privilege and purchase of said birds may be made by any person from any game breeder for any or all purposes.

Sale of deer, turkey or quail in open season

Sec. 9. It shall be unlawful for any game breeder to sell in this State, or to ship to any person in this State or for any citizen of this State to purchase from any game breeder, any deer, turkey or quail during any open season for taking such game birds or game animals or for a period of ten (10) days before and after such open season.

Carrier regulations

Sec. 10. Any common carrier is hereby authorized to accept for shipment any of the game birds or game animals named in this Act, from any licensed game breeder, but it shall be unlawful for any agent of a common carrier to accept for shipment any live game bird or game animal other than from a licensed game breeder; or for any person other than a licensed game breeder or his authorized agent to ship or transport any live game bird or animal, except when permit for such shipment or transportation has been granted by the Game, Fish and Oyster Commission or one of its agents authorized to grant such permit.

Transportation by Commission

Sec. 11. Provided that nothing contained in this Act shall prohibit the Game, Fish and Oyster Commission, or any agent of such Commission, acting upon its authority, from taking, possessing, holding, transporting or propagating any of the game birds or game animals of this State for public purposes.

Records and reports of licensees

Sec. 12. Each person, firm or corporation holding a game breeder's license in a suitably bound book shall keep a written record which shall show the number of each kind of game bird and game animal on hand at time license was issued and source from which they were obtained; the number of each kind of game birds and game animals on hand at any time after license is obtained and number of each kind and source of any birds or animals received and date of receiving; the name and address of any and all persons to whom shipments or deliveries are made and number of each kind shipped or delivered to each such person and date of shipment and/or delivery. Each such report shall be for the period of time from date of license until September 1st following such date. Copy of such record, with affidavit made before a Notary Public or other officer qualified to administer oath, that same is true and correct, shall be filed in the office of the Game, Fish and Oyster Commission at Austin, Texas, before another game breeder's license shall be issued to a person, firm or corporation who has heretofore held such a license.

Period of license

Sec. 13. Provided that any game breeder's license issued after the effective date of this measure and before September 1, 1933, shall remain in effect until August 31, 1934.

Repeals

Sec. 14. All laws or parts of laws in conflict with this Act are hereby repealed and Senate Bill 36, 3rd Called Session, 42nd Legislature, is specifically repealed.

Penalty

Sec. 15. 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 Fifty Dollars ($50.00) nor more than two Hundred Dollars ($200.00), and each bird or animal sold or purchased or held in violation of this Act shall constitute a separate offense, and any game breeder convicted, under any provision of this Act, shall automatically forfeit his license and shall not be entitled to engage in the business of game breeding for a period of one year following date of conviction. [Acts 1933, 43rd Leg., p. 212, ch. 96.]

Art. 978*l*. Sale of certain fish in San Saba and other counties.—Sec. 1. It shall be unlawful for any person, firm, or corporation or their agent, to barter or sell or offer for barter or sale, or to buy any bass, crappie, perch, catfish, or any other fish taken from the fresh waters in the Counties of San Saba, Gillespie, Kerr, Comal, Llano, Mason, Kimble, Edwards, Sutton and Real.

Sec. 2. It shall be unlawful for any person to take from the fresh waters of the above named counties any of the fish above enumerated by any means or device other than by ordinary pole and line or throw line equipped with not more than two hooks, provided, however, that it shall be lawful to fish with a dowagiac, or other artificial bait equipped with more than two hooks, and provided further that a person may use a minnow seine which is not more than twenty (20) feet in length for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait.

Sec. 3. It shall be unlawful for any person to catch, take or have in his possession any catfish less than twelve (12) inches in length; any crappie or white perch less than seven (7) inches in length and any bass less than eleven (11) inches in length.

Sec. 4. It shall be unlawful for any person in the above named counties to catch or have in his possession in any one day more than ten (10) fish of any one kind or variety, except perch, and it shall be unlawful to catch or have in his possession more than twenty (20) perch in any one day, and it shall be unlawful to catch or have in his possession more than sixty (60) perch in any one week, and it shall be unlawful to catch or have in his possession more than thirty (30) of any one variety, with the exception of perch in any one week. The taking of any such fish in excess of the number herein allowed, shall be a separate offense.

Any person found guilty of the violation of any provisions of this Act shall be fined not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00).

Sec. 5. All laws or parts of laws in conflict herewith are hereby expressly repealed. [Acts 1933, 43rd Leg., Spec. L., p. 77, ch. 61.]

Art. 978*l*—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.]

Art. 978*l*—2. Open season for and possession of game mammals, game birds and fur-bearing animals in portion of state west of Pecos River; violations.

Application

Section 1. This Act shall apply only to all that portion of the State of Texas lying west of the Pecos River.

Taking during closed season prohibited; limits

Sec. 2. It shall be unlawful for any person to take, kill, or attempt to take or kill any game bird, game mammal, or to take the pelt of any fur-bearing animal that is named in this Act at any time other than the open season that may be provided for the hunting or taking of such species or pelts of same; or to take, kill or possess any game bird or game mammal that is named in this Act in excess of the bag limit or possession limit for such species. Any open season, bag and/or possession limit that may be justified shall be provided by the Game, Fish and Oyster Commission in obedience to the provisions of this Act.

Definitions

Sec. 3. "Open season" is hereby defined as a period of time during which game birds, game mammals or the pelts of fur-bearing animals may be taken. "Bag limit" is defined as the number of game birds or game mammals that a person may kill in any day or during any open season. "Possession limit" is defined as the number of game birds or game mammals that a person may have in possession, in his own custody, in transit in his behalf, or that may be held in the custody of another person, firm or corporation in his behalf.

Wild deer

Sec. 4. Any open season shall be within the period November 1st to December 31st, with bag and possession limit of not more than one mule or black-tailed deer, not more than two (2) of any other species of deer, nor more than two (2) in the aggregate of all species of wild deer.

Black bear

Sec. 5. Any open season shall be within the period November 1st to December 31st, and no person shall be permitted to kill or possess more than one black bear during any one season.

Collared peccary

Sec. 6. Any open season shall be within the period November 1st to December 31st, and no person shall be permitted to take, kill, or possess more than two (2) collared peccary during any one open season.

Wild gray or cat and fox squirrels

Sec. 7. Any open season shall be within the period May 1st to December 31st; bag limit not to exceed ten (10) to be taken or killed by any person in one day nor to exceed twenty (20) in possession by any person at any time.

Wild turkeys

Sec. 8. Any open season shall be within the period November 1st to December 31st, and no person shall be permitted to kill or possess more than three (3) wild turkeys during any one open season.

Wild quail of all species

Sec. 9. Any open season shall be provided for not to exceed sixty (60) days for any one species of quail during the period November 1st to January 31st; bag limit not to exceed twelve (12) quail killed in one day, nor shall any person be permitted to possess more than twenty-four (24) quail at any one time.

Wild mourning doves

Sec. 10. Any open season shall be within the period September 1st to January 15th. A bag limit may be provided of not to exceed fifteen (15) mourning doves to be killed in any one day, no more then [1] thirty (30) to be possessed by any person at one time.

[1] So in enrolled bill. Probably should read "than".

White-winged doves

Sec. 11. Any open season shall be within the period September 15th to October 15th, and no person shall be permitted to kill more than fifteen (15) white-winged doves in any one day or to have in his possession more than thirty (30) white-winged doves.

Chachalaca

Sec. 12. Any open season shall not be longer than ten (10) days within the period December 1st to December 31st, and no person shall be permitted to kill more than five (5) chachalaca in any one day or to possess more than one day's kill at any time.

Rails and gallinules

Sec. 13. Any open season shall be within the period September 1st to October 31st, and no person shall be permitted to kill more than fifteen (15) rails or more than fifteen (15) gallinules or an aggregate of more than fifteen (15) of both rails and gallinules in any one day or to possess at any time more than two days' kill of such birds.

Wild plover

Sec. 14. Any open season shall be within the period September 1st to October 31st, and no person shall be permitted to kill more than twelve (12) plover in any one day or to have more than one day's kill in his possession at any time.

Prairie chickens

Sec. 15. Any open season shall be not longer than ten (10) successive days within the period September 1st to October 31st. No person shall be permitted to kill more than ten (10) prairie chickens during any open season or to have in his possession at any time more than ten (10) prairie chickens.

Prong-horned antelope

Sec. 16. Any open season for this species shall be for a period of not more than ten (10) successive days within the month of October of any year. No person during any antelope open season shall kill or attempt to kill more than one antelope, or shall have in his possession at any time more than one antelope that was killed in this State.

Wild elk

Sec. 17. Any open season for this species shall be for a period of not more than ten (10) successive days within the month of October of any year. No person shall be permitted to kill more than one elk during any open season or to have in his possession at any time more than one elk that was killed in this State.

Fur-bearing animals—beaver, otter, fox, opossum, raccoon, mink, polecat or skunk, badger, muskrat, civet cat or ringtail

Sec. 18. Any open season to permit trapping or the taking of pelts and sale of same of any of the fur-bearing animals named in this Section of this Act shall be within the period December 1st to March 1st.

Permits to hunt antelope or wild elk

Sec. 19. It shall be unlawful for any person to hunt, or attempt to hunt or take, any prong-horned antelope or wild elk until he has first obtained a currently valid hunting permit therefor, and for which he has paid a sum of Five Dollars ($5). When any open season for killing antelope or elk is justified according to the provisions of this Act, the Game, Fish and Oyster Commission shall determine the number of elk or antelope that may be killed without detriment to the future supply, and shall issue permits only to this extent. The permits shall be available to applicants in such a way as to give all applicants an impartial opportunity to obtain such a permit to the extent of the total number issued. No person shall receive more than one permit. Each permit issued hereunder shall apply only to one county of this State, the name of which shall be written on the face of the permit by the issuing officer. The Game, Fish and Oyster Commission shall print the rules and regulations governing the hunting of antelope and wild elk on the face of all permits issued for the killing of these species. All money derived from the sale of antelope or elk hunting permits shall be deposited in the State Treasury to the credit of the Special Game Fund and shall be used for the purposes provided by law.

Repeal

Sec. 20. All laws or parts of laws of this State, General or Special, in so far as they conflict with this Act or in so far as they provide an open season, bag limit, or possession limit governing the taking, killing or possession of any of the game species named in this Act, or prohibit the killing of same or trapping of fur-bearing animals or taking and selling the pelts of same or by the imposition of a closed season and apply to the portion of the State named herein, be and the same are hereby repealed.

Fixing of open seasons, bag limits and possession limits; regulations

Sec. 21. The Game, Fish and Oyster Commission of the State of Texas is hereby charged with the duty of making a continuous study of the supply of each of the species named in this Act and the factors limiting their increase. The Commission shall determine when any of such species, in the portion of this State named in this Act, is being reduced below immediate recuperative potentials by hunting, trapping, drought, disease, predation, agricultural pressure or other deleterious causes. Whenever the supply of any such species is sufficiently secure in any portion of the area named herein that a seasonal harvest will not prevent the re-establishment of normal numbers of the species, the Game, Fish and Oyster Commission, within the maximum limits prescribed in this Act, shall fix an appropriate open season, bag limit and possession limit to permit the hunting, trapping or harvest of any species herein named in said area or any portion of same to which this Act applies. When only one sex of a game species should be taken, it shall be so provided. It shall provide the hours of the day during which hunting of game species shall be permitted, and age or maturity limitations on the taking of such species. All regulations issued hereunder shall be such as will grant the most reasonable and equitable privileges to the hunters and trappers of this State and at the same time safeguard the game and fur-bearing animal supply of this State. Regulations issued hereunder shall be continued only so long as the species affected by such a regulation is not being adversely affected thereby. When any open season, bag limit or other regulation is provided, the Game, Fish and Oyster Commission, as directed herein, shall immediately file a copy of same in the office of the Secretary of State and mail a copy to each County Attorney, County Clerk and Game and Fish Warden of this State, west of the Pecos River. Such regulation shall be published in the next succeeding edition of the Game and Fish Laws, or digest of same, that is published by the Game, Fish and Oyster Commission. Any open season or bag limit provided in accordance with the provisions of this Act, or any other regulations issued hereunder, shall be prima facie valid and shall continue in full force and effect until it is repealed or amended or until it is declared invalid by a Court of final jurisdiction.

Violations

Sec. 22. Any person who hunts, or attempts to hunt, kills or attempts to kill any game bird or game mammal or takes or attempts to take the pelt of any fur-bearing animals named in this Act at any time other than during the open season that may be provided for killing or taking of same, or any person who takes, kills or has in his possession any game bird or game mammal in excess of the bag limit or possession limit provided for same under the terms of this Act, or any person hunting any prong-horned antelope or wild elk without first obtaining the permit required therefor, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than Twenty--five Dollars ($25), nor more than Two Hundred Dollars ($200), and each bird, animal or pelt taken or possessed in violation of any provision of this Act shall constitute a separate offense.

Surrender of license; forfeiture of hunting rights

Sec. 23. Any person who is convicted of violating any provision of this Act relating to game birds or game mammals, upon final conviction, shall surrender to the Court in which he is convicted his hunting license and in addition thereto forfeit his right to hunt with a gun in this State for a period of one year following the date of his final conviction. Any person who hunts, or attempts to hunt, with a gun during the period for which he has forfeited his hunting rights because of conviction under a provision of this Act upon conviction for such offense shall be fined in a sum not less than One Hundred Dollars ($100), nor more than Two Hundred Dollars ($200).

Partial invalidity

Sec. 24. If any portion of this Act should be held invalid or inoperative such determination shall not affect the validity of any remaining portion of this Act. [Acts 1943, 48th Leg., p. 325, ch. 209.]

Art. 978l—3. Taking of game and fish in portion of state inundated by dam on Red River near Denison, and surrounding federal property; regulations; penalty.—Section 1. This Act shall apply only to that portion of the State of Texas inundated by the waters of the Red River and its tributaries that are impounded by a dam across the channel of said River near Denison, Texas, and it shall apply also to any other portion of that area of land acquired or that may hereafter be acquired by the United States Government for the operation of a reservoir on the Red River beginning near Denison, Texas.

Sec. 2. In that portion of the State of Texas referred to in Section 1 of this Act, it shall be unlawful to take or attempt to take any fish or game or to use any means, method or device in taking or attempting to take any fish or game except during such times and by such means, methods or devices and in such numbers as may be permitted in regulations issued under the directions and by the authority given in this Act.

Sec. 3. All laws or parts of laws in this State, in so far as they may conflict with this Act, or in so far as they regulate or restrict the taking of any game or fish in that portion of this State referred to in Section 1 of this Act, be and the same are hereby repealed.

Sec. 4. The Game, Fish and Oyster Commission of the State of Texas shall make a continuing study of the game and fish in that portion of the State of Texas described in Section 1 of this Act and the factors governing the abundance of any species of game or fish in said area. Whenever it is found that the supply of any species of game or fish is sufficient in said area to permit an annual harvest thereof, the Game, Fish and Oyster Commission shall provide suitable regulations granting an open season for taking such species and said regulations shall specify the means, methods or devices that may be used in taking same and the daily bag or creel limit and the possession limit which shall govern the numbers that may be taken in any one day or that may be possessed at any one time. Any regulation issued hereunder shall be such as will give the most equitable and most liberal privileges that may be permitted by the supply of the species of game or fish affected and which at the same time is in consonance with sound conservation practices.

Sec. 5. Before any regulations are issued under the authority given in this Act a public hearing shall be held in some city or town within twenty-five (25) miles of the area referred to in Section 1 of this Act. Notice shall be given of such public hearing ten (10) days in advance of said hearing. At such hearings any interested person shall be given an opportunity to inform the Game, Fish and Oyster Commission or its representatives of facts pertaining to the game or fish supply in the area referred to in Section 1 of this Act and of recommended regulations that may be made under the authority given in this Act in the public interest.

Sec. 6. Any regulation issued hereunder shall be effective on the date and for the period specified therein, but before such regulation shall become effective a copy of same shall be filed in the office of the Secretary of State and in the office of the County Clerk of each County in which a portion of the area named in Section 1 of this Act is situated and after the substance of said regulation is published in a newspaper in each County in which a portion of the area referred to in Section 1 of this Act is situated in the State of Texas.

Sec. 7. Any person who takes or attempts to take or possess any game or fish, or any person who uses any method or device for taking or attempting to take any game or fish from the area described in Section 1 of this Act except when he does so under the authority granted in a regulation issued by the Game, Fish and Oyster Commission and then in effect, shall be deemed guilty of a misdemeanor and upon conviction thereof shall pay a fine in a sum not less than Ten Dollars ($10), nor more than One Hundred Dollars ($100).

Sec. 8. It is specifically provided that this Act shall remain in full force and effect until a proposed compact between the State of Texas and the State of Oklahoma to govern the recreational use of the area referred to in Section 1 of this Act is finally completed and put into operation. After said compact is put into operation, this Act shall be of no further force or effect. [Acts 1943, 48th Leg., p. 333, ch. 213.]

Article not repealed by Acts 1945, 49th Leg., p. 13, c. 9, § 5, see Art. 927a.

Art. 978l—4. Lake Texoma formed by Denison Dam, and surrounding federal property; taking of game and fish; licenses; penalty; reciprocal agreement with Oklahoma.—Section 1. Chapter 213, House Bill No. 654, Regular Session, Forty-eighth Legislature,[1] directs that the Game, Fish and Oyster Commission of the State of Texas shall promulgate suitable and equitable regulations to permit the taking of game and fish in that portion of the State of Texas in Grayson and Cooke Counties that is "inundated by the waters of the Red River and its tributaries that are impounded by a dam across the channel of said river near Denison, Texas," and that this shall also apply "to any other portion of that area of land acquired or that may hereafter be acquired by the United States government for the operation of their reservoir on the Red River beginning near Denison, Texas." It is hereby provided that the Game, Fish and Oyster Commission shall continue to exercise the authority prescribed under the directions given in said House Bill No. 654, Regular Session, Forty-eighth Legislature. The reservoir that is impounded by the dam across the Red River near Denison, Texas, is now known as Lake Texoma,[1] a portion of which is situated within the boundaries of the State of Oklahoma. The Game, Fish and Oyster Commission is hereby authorized to make with the Game and Fish Department of the State of Oklahoma such joint investigations as are necessary to determine facts on which to base sound management of the game and fish resources of Lake Texoma. In so far as is consistent with the laws of this State and the United States, it is desirable, in exercising the authority that is given in House Bill No. 654, Regular Session, Forty-eighth Legislature, that the Game, Fish and Oyster Commission of the State of Texas shall use its best efforts to arrive at a reciprocal understanding with the authorized officials of the State of Oklahoma to the end that uniform regulations for the taking of game and fish may apply to all of Lake Texoma.

Sec. 2. It shall be unlawful for any person to fish or to attempt to take or catch fish, or to hunt with a gun on or over Lake Texoma or its connecting lands that are owned by the United States government, without having in possession on his person the currently valid license that is required of him by any provision of this Act, and entitling him to the privileges given under such license.

Sec. 3. A resident hunting license, as now provided for by law, shall be required of any resident citizen of this State who hunts on or over Lake Texoma or its federally owned area. Other license requirements and the privileges given under same shall be as follows: Lake Texoma Resident Fishing License, fee One Dollar and Ten Cents ($1.10), entitling any resident citizen of this State to fish in Lake Texoma; Lake Texoma Special Fishing License, fee One Dollars and Ten Cents ($1.10), which shall entitle any resident citizen of Oklahoma who is licensed to fish under the laws of that State to fish in the Texas portion of Lake Texoma; Lake Texoma Nonresident Fishing License, at a fee of Two Dollars and Fifty Cents ($2.50), which shall be required of any resident of another State, unless he holds a Lake Texoma Special Fishing License, and which shall entitle the holder to fish in Lake Texoma only; Lake Texoma Nonresident Hunting License, fee Two Dollars and Fifty Cents $(2.50), which shall entitle the holder to hunt migratory water-fowl only on Lake Texoma and its federally owned lands; Special Lake Texoma Nonresident Hunting License, fee Two Dollars ($2), which shall entitle any resident citizen of Oklahoma who is licensed to hunt in that State to hunt only migratory waterfowl on Lake Texoma and its federally owned area in this State.

Sec. 4. Any person who holds a Nonresident Hunting License, issued by this State, shall be entitled to hunt on Lake Texoma without any additional hunting license issued by this State. Any person who holds a Nonresident Fishing License issued by this State shall be entitled to fish in the Texas portion of Lake Texoma without any additional license. No hunting or fishing license shall be required of any resident of this State who is under seventeen (17) years of age.

Sec. 5. Any person who hunts or attempts to hunt with a gun, or who fishes or attempts to take or catch fish in or over Lake Texoma and its federally owned lands in Cooke or Grayson Counties, without first procuring and having in possession on his person

the license privileging him to so hunt or fish within said area, or any person who fails upon demand by any officer of this State to show the currently valid license that is required of him by this Act, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than Ten Dollars ($10) nor more than Fifty Dollars ($50).

Sec. 6. After a fee of ten cents (10¢) is deducted by the agent for each license sold, all funds derived from the sale of licenses that are created by this Act shall be remitted by the tenth day of each month following the sale of such licenses to the Game, Fish and Oyster Commission at its office in Austin, Texas, and shall be deposited in the State Treasury to the credit of the Special Fish Propagation and Protection Fund, and this portion of said fund shall be used for the purposes of law enforcement, purchasing necessary supplies and equipment and maintaining and operating same, making investigations, propagating, distributing, and improving environmental conditions for game and fish, but only for the benefit of game and fish in that section of this State to which this Act applies. In addition to the foregoing purposes, not more than ten percent (10%) of the moneys derived from the sale of licenses created by this Act shall be used for the purpose of administering the provisions of this Act. Each and every license provided for by a provision of this Act shall be valid until August 31, following the date of its issuance; provided, however, that any license that is issued on or before August 31, 1945, shall be valid until August 31, 1946. All licenses created by this Act shall be printed under the directions of the Game, Fish and Oyster Commission and shall be made available to the public by this Commission after the usual manner of offering such licenses for sale.

Sec. 7. All laws or parts of laws, special or general, in so far as they may conflict with any portion of this Act, shall be and the same are hereby repealed.

Sec. 8. If any portion of this Act should be held invalid or inoperative, such declaration shall not affect other portions of this Act. [Acts 1945, 49th Leg., p. 35, c. 25.]

1 Pen.Code, art. 978l—3.

Art. 978m. [Repealed by Acts 1945, 49th Leg., p. 289, ch. 209, § 1.]

The article repealed was Acts 1937, 45th Leg., p. 1321, ch. 487.

Art. 978n. Game management unit for benefit of Texas Bighorn Mountain Sheep.

Fenced game management area; policy; purpose

Section 1. The Texas Bighorn Mountain Sheep (Ovis canadensis texiana) is making its last stand in the Sierra Diablo Mountains of Culberson and Hudspeth Counties. Unless the State makes every reasonable endeavor to preserve this majestic form of wildlife by affording it freedom from the encroachment of domestic livestock and predators, they will have perished. The loss of mountain sheep as part of the native fauna of this State would rob future generations of their rightful heritage to the symbols of the natural wildness of this State. In order to protect this interesting animal it is necessary that a fenced game management area be set aside. All lands to be included with such area shall be in Culberson and Hudspeth Counties. It is hereby declared the policy of the State of Texas to do everything within the bounds of sound economy to perpetuate the Texas species of the Rocky Mountain Bighorn Sheep. The purpose of this bill is to give the Game, Fish and Oyster Commission the authority to purchase not to exceed twelve (12) sections of privately owned land and to purchase not to exceed eight (8) sections of public school lands in Culberson and Hudspeth Counties.

Gifts

Sec. 2. The Game, Fish and Oyster Commission of the State of Texas is hereby authorized to accept gifts of land in Culberson or Hudspeth Counties or money to be deposited in the Special Game Fund and to be used for the purpose of a game management unit in Culberson and Hudspeth Counties for the special benefit of the Texas Bighorn Mountain Sheep.

Purchase or school lands

Sec. 3. The Game, Fish and Oyster Commission of the State of Texas is hereby authorized to purchase, and the school land board of the State of Texas is authorized to sell, with the reservation of all minerals to the school fund, to be managed by said school land board, at a price not to exceed One Dollar ($1) per acre, the surface rights in and to not more than eight (8) sections of public school lands located in Culberson and Hudspeth Counties, in the following blocks:

Blocks 65 and 66, T. & P. Ry. Co. land;

Blocks 42½, 43, 54½, Public School Lands;

said lands to be paid for by the Game, Fish and Oyster Commission out of the Special Game Fund.

Acquisition of other lands

Sec. 4. The Game, Fish and Oyster Commission shall have the right to acquire by purchase other lands in Culberson and Hudspeth Counties, Texas, that may be deemed necessary for the operation of a game management unit primarily for the protection of Bighorn Mountain Sheep. 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 the Special Game Fund.

Power to appropriate land

Sec. 5. The State of Texas, through said Game, Fish and Oyster Commission, shall have the right, power, and authority to enter upon, condemn, and appropriate not more than twelve (12) sections of land in Culberson and Hudspeth Counties of any person or corporation for the above mentioned purposes.

Condemnation proceedings; payment of damages

Sec. 6. The manner and method of such condemnation, easement, and payment of damages therefor shall be the same as is now provided by law in the case of railroads. 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, Texas. 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 on the Comptroller against the Special Game Fund in the State Treasury.

Partial invalidity

Sec. 7. If any section, sentence, clause, or part of this Act shall, for any reason, be held to be invalid by any Court of competent jurisdiction, 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.

Expenditures

Sec. 8. All expenditures provided for under this Act shall be made from the Special Game Fund of the Game, Fish and Oyster Commission, which expenditure shall not exceed Twenty Thousand Dollars

($20,000) in any one year, and three-fourths (¾) of which shall be reimbursed out of any Federal Aid in Wildlife Restoration funds available to this State. Said funds are hereby appropriated out of the Special Game Fund for the purposes heretofore stated. [Acts 1945, 49th Leg., p. 310, ch. 225.]

Section 9 of the Act of 1945 repealed all conflicting laws.

CHAPTER 6A.—MISCELLANEOUS OFFENSES

Art.

978o. Use of public property for private profit.

Art. 978o. Use of public property for private profit.—Section 1. If any officer of this State or of any county or of any municipality shall knowingly use or permit to be used for private profit to himself other than to the State, county, or municipality, any property, supplies, equipment, or other thing of value belonging to the State or to any county or municipality, he shall be punished by fine of not more than One Thousand Dollars ($1,000) or by imprisonment in the County Jail for not more than two (2) years or by both such fine and imprisonment.

Sec. 2. If any officer of any county or of any municipality shall knowingly use or knowingly permit to be used for private profit to himself the labor or service of any person whose labor or service is paid for by such county, he shall be punished by fine of not more than One Thousand Dollars ($1,000) or by imprisonment in the County Jail for not more than two (2) years or by both such fine and imprisonment.

Sec. 3. If any person appointed or employed by any officer of any county or by the Commissioners Court of any county, or by any officer or any person appointed or employed by any municipality, or any person engaged in performing any business of any county or by any municipality however employed, shall knowingly use or knowingly permit to be used for private profit to himself any property, supplies, equipment, or other thing of value belonging to such county or to such municipality, he shall be punished by a fine of not more than One Thousand Dollars ($1,000) or by imprisonment in the County Jail for not more than two (2) years or by both such fine and imprisonment.

Sec. 4. If any person appointed or employed by any officer of any county or by any officer of any municipality or any person engaged in performing any business of any county or of any municipality however employed, shall knowingly use or knowingly permit to be used for private profit to himself the labor or service of any person whose labor or service is paid for by such county or by such municipality, he shall be punished by a fine of not more than One Thousand Dollars ($1,000) or by imprisonment in the County Jail for not more than two (2) years or by both such fine and imprisonment. [Acts 1945, 49th Leg., p. 653, ch. 363.]

TITLE 14—TRADE AND COMMERCE

CHAPTER 1.—OFFENSES AFFECTING WRITTEN INSTRUMENTS

Art.

Article 979. [924] [530] [431] "Forgery."—He is guilty of forgery who without lawful authority, and with intent to injure or defraud, shall make a false instrument in writing purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. [O. C. 431.]

Art. 980. Forgery of will.—Any person who executes what purports to be the last will and testament of another, without the consent of such other person, is also guilty of forgery. Prosecution under this article may be begun at any time after such forgery is committed and within five years after the death of the purported testator, but not thereafter. [Acts 1919, p. 119.]

Art. 981. Forgery of obligation of foreign government.—He is guilty of forgery who without lawful authority and with intent to injure or defraud shall falsely make, alter, forge or counterfeit any bond, certificate, obligation, or instrument in writing having a value or purporting to be of value issued by or purporting to be issued by or under the authority or direction of any foreign government or de facto foreign government, or any officer or agent of any foreign government or de facto foreign government, or any person or persons claiming to act by or under the authority of any foreign government or de facto foreign government or claiming by right of any office, military or civil, to have a right in any foreign country to issue money, bills of exchange, notes, or any papers circulating as money or mediums of exchange in any foreign country or portion thereof, or purporting to be redeemable in money or other thing of value, and any person violating any of the provisions of this article shall be punished as provided in article 995. [Act Sept. 16, 1914.]

Art. 982. Passing obligation of foreign government.—If any person shall knowingly pass as true or attempt to pass as true any such forged instrument in writing as is mentioned and defined in article 981 he shall be punished as provided by article 996. [Act Sept. 16, 1914.]

Art. 983. Possessing of obligation of foreign government.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense under the provisions of article 981 hereof, with intent to use or pass the same as true, he shall be punished as is provided in article 998. [Act Sept. 16, 1914.]

Art. 984. [925] [531] [432] Alteration also forgery.—He is also guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall alter an instrument in writing then already in existence, by whomsoever made, in such manner that the alteration would (if it had been legally made) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. [O. C. 432.]

Art. 985. [926] [532] [433] Intent necessary.—The false making or alteration, to constitute forgery, must be done with intent to injure or defraud, and the injury must be such as affects one pecuniarily, or in relation to his property. [O. C. 442.]

Art. 986. [927] [533] [434] "Instrument in writing."—The words "Instrument in writing," as used in this chapter, include every writing purporting to make known or declare the will or intention of the party whose act it purports to be, whether the same be of record or under seal or private signature, or whatever other form it may have. It must be upon paper or parchment, or some substance, made to resemble either of them. The words may be written, printed, stamped or made in any other way, or by any other device. And the words "in writing," "write," "written," include all these modes of making. An instrument, partly printed or stamped, and partly written, is an instrument in writing. In order to come within the definition of forgery, the signature, when made otherwise than by writing, must be made to resemble manuscript. [O. C. 434.]

Art. 987. [928] [534] [435] "Alter."—The word "alter," in the definition of forgery, means to erase or obliterate any word, letter or figure, to extract the writing altogether, or to substitute other words, letters or figures for those erased, obliterated or extracted, to add any other word, letter or figure to the original instrument, or to make any other change whatever which shall have the effect to create, increase, diminish, discharge or defeat a pecuniary obligation, or to transfer, or in any other way affect any property whatever. [O. C. 438.]

Art. 988. [929] [535] [436] "Another."—The instrument must purport to be the act of "another," and within the meaning of this word, as used in defining forgery, are included this State, the United States, or either of the States or Territories of the Union; all the several branches of the government or either of them; all public or private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery. [O. C. 439.]

Art. 989. [930] [536] [437] "Pecuniary obligation."—"Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought. [O. C. 440.]

Art. 990. [931] [537] [438] "Transferred or in any manner have affected."—By an instrument which would "have transferred or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of or change the character of property of every kind, and which can have such effect when genuine. [O. C. 441.]

Art. 991. [932] [538] [439] All participants guilty.—One is guilty of making or altering, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part of a forged instrument. All persons engaged in the illegal act are deemed guilty of forgery. [O. C. 435.]

Art. 992. [933] [539] [440] Filling up over signature.—It is a forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper so as to make the signature appear as an endorsement. [O. C. 436.]

Art. 993. [934] [540] [441] Person not guilty, when.—When the person making or altering an instrument in writing acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient and void. [O. C. 437.]

Art. 994. [935] Altering teacher's certificate.—Whoever shall wilfully raise, change, or alter any teacher's certificate or diploma, or other instrument having the force of a teacher's certificate, shall be deemed guilty of forgery. [Acts 1893, p. 205.]

Art. 995. [936] [541] [442] Penalty for forgery.—Any person guilty of forgery shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 433.]

Art. 996. [937] [542] [443] Passing forged instrument.—If any person shall knowingly pass as true, or attempt to pass as true, any such forged instrument in writing as is mentioned and defined in the preceding articles of this chapter, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 443.]

Art. 997. [938] [534] [444] Preparing implements for forgery.—Whoever shall prepare in this State any implements or materials, or engrave any plate for the purpose of being used in forging the notes of any bank, whether within this State or out of it, and whether the same be incorporated or not, or who shall have in his possession in this State any such implements, materials or engraved plate, with intent to be used for the purpose above mentioned, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 444.]

Art. 998. [939] [544] [445] Possession with intent to pass.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense, with intent to use or pass the same as true, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 445, Acts 1858, p. 169.]

Art. 999. [940] [545] [446] Evidence in case of bank bills.—Upon a trial for forgery of any bank bill, or for passing or attempting to pass any such bill as true, or for knowingly having in possession any such forged bank bill, evidence that bills or notes purporting to be issued by any bank are commonly received as currency, or proof of the existence of such bank by parol testimony, shall be deemed sufficient to show its legal establishment and existence. [O. C. 446.]

Art. 1000. [941] [546] [447] Falsely reading instrument.—Whoever with intent to defraud shall, either by falsely reading, or falsely interpreting, any pecuniary obligation or instrument in writing, which would in any manner affect property, or by misrepresenting its contents, induce any one to sign such instrument as his act, or give assent to it in such manner as would make it his act, if not done under mistake, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 447.]

Art. 1001. [942] [547] [448] Substituting one instrument for another.—Whoever with intent to defraud shall substitute one instrument in writing for another, and by this means induce any person to sign an instrument materially different from that which he intended to sign, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 448.]

Art. 1002. [943] Altering or injuring public records.—If any person, without authority of law, shall wilfully and maliciously change, alter, mutilate, destroy, deface or injure any book, paper, record or any other document, required or permitted by law to be kept by any officer within this State, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary not less than one nor more than five years. [Acts 1899, p. 301.]

Art. 1003. [944] [548] [449] Falsely personating another.—If one shall falsely personate another, whether bearing the same name or not, and, in such assumed character, shall give authority to any person to sign such assumed name to any instrument in writing which, if genuine, would create, increase, diminish or discharge any pecuniary obligation, or would transfer, or in any way affect any property, he shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 449.]

Art. 1004. [945] [549] [450] False personation in acknowledgments.—If any person shall falsely personate another whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of an instrument of writing purporting to convey, or in any manner affect, an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgment thereof being such as would entitle the instrument to be registered, he shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 450.]

Art. 1005. [946] [549a] [450a] Procedure.—A conviction for any offense mentioned in articles 979, 996 and 998 shall be a bar to any other prosecution under said articles based upon the same transaction or same forged instrument of writing. One or more of said several offenses may be charged in separate counts in the same indictment, and prosecuted together to final judgment without election by the State as to which it relies upon for a conviction. A judgment of conviction shall specify which offense or under which count the defendant is found guilty, and shall assess but one penalty not exceeding the greatest punishment fixed by law to the highest grade of offense of which defendant is convicted. It is unlawful for any county or district attorney, or any person acting as such, to wilfully or knowingly demand or receive fees for more than one prosecution that could have been combined or prosecuted in one indictment, subject to the penalties prescribed by law for the punishment of extortion of illegal fees. [Acts 1895, p. 106.]

CHAPTER 2.—FORGERY OF LAND TITLES, ETC.

Article 1006. [947] [550] [451] "Forgery of patents," etc.—Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited, or in any way aids, assists, advises, or encourages the false making, altering, forging, or counterfeiting of any certificate, field notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, or title paper, or acknowledgment, or proof of record, or certificate of record belonging to or pertaining to any instrument or paper, or any seal, official or private stamp, scroll, mark, date, signature, or any paper, or any evidence of any right, title, or claim of any character, or any instrument in writing, document, paper or memorandum, or file of any character whatsoever, in relation to or affecting lands, or any interest in lands in this State, with the intent to make money or other valuable thing thereby, or with intent to set up a claim or title, or aid or assist any one else in setting up a claim or title to lands or any interest in lands, or to prosecute or defend a suit, or aid or assist anyone else in prosecuting or defending a suit with respect to lands, or to cast a cloud upon the title, or in any way injure, obtain the advantage of, or prejudice the rights or interest of, the true owner of lands, or with any fraudulent intent whatever, shall be deemed guilty of forgery and be punished by imprisonment in the State penitentiary at hard labor not less than five nor more than twenty years. [Acts 1876, p. 59.]

Art. 1007. [948] [551] [452] False certificate by officers.—If any person authorized by law to take the proof of acknowledgment of any instrument, document or paper whatsoever, affecting or relating to the title of lands in this State, wilfully and falsely certify that such proof or acknowledgment was duly made, or if any person fraudulently affixes a fictitious or pretended signature purporting to be that of an officer or any other person, though such person never was an officer or never existed, he shall be deemed guilty of forgery and punished as provided in article 1006 of this chapter. [Id.]

Art. 1008. [949] [552] [453] Knowingly uttering forged instruments.—Every person who knowingly utters, publishes, passes, or uses, or who in any way aids, assists in or advises the uttering, publishing, passing or using as true and genuine any false, forged, altered, or counterfeited certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, title papers, acknowledgment or proof for record or certificate of record belonging to or pertaining to any instrument or paper, or any evidence of any right, title or claim of any character whatsoever, or any instrument in writing, document, paper, memorandum or file, or any official or private seal, or any scroll, mark, date, or signature in any way relating to, or having any connection with land, or any interest in land in this State, with the intent mentioned in article 1006 of this chapter, or with any other fraudulent intent whatsoever, shall be deemed guilty and be punished in like manner as is provided in article 1006 of this chapter. And the filing or causing or directing to be filed, or causing or directing to be recorded, in the General Land Office of the State, or in any office of record or in any court in this State, or the sending through the mails or by express, or in any other way, for the purpose of filing of record of any such false, altered, forged or counterfeited matter, documents, conveyances, papers, or things, knowing the same to be false, altered, forged or counterfeited, shall be an uttering, publishing and using within the meaning of this article. [Id.]

Art. 1009. [950] [553] [454] Non-residents may commit.—Persons out of the State may commit and be liable to indictment and conviction for committing any offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this State—the object of this

chapter being to reach and punish all offending against its provisions, whether within or without the State.

Art. 1010. [951] [554] [455] Proof and allegations.—Upon indictment under this chapter, to warrant a conviction, it shall only be necessary to prove that the person charged took any one step, or did any one act or thing in the commission of the offense, if from such step, act or thing any of the intentions hereinbefore mentioned, or any other fraudulent intention, may be reasonably inferred; nor shall it be any defense to a prosecution under this chapter that the matter, act, deed, instrument or thing was in law, either as to substance or form, void, or that the same was not in fact used for the purpose for which it was made or designed; and it shall only be necessary in an indictment under this chapter to state with reasonable certainty the act constituting the offense, and charge, in connection therewith, in general terms, the intention to defraud, without naming the person or persons it was intended to defraud. On trial of such indictment, it shall be sufficient and shall not be deemed a variance if there appears to be an intent to defraud the United States, or any State, Territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership, or member thereof, or any particular person. [Acts 1876, p. 59.]

Art. 1011. [953] [556] [457] Rules in forgery applicable.—The rules prescribed in the preceding chapter relative to the offense of forgery, so far as the same are applicable, shall apply to the various offenses enumerated in this chapter. [Id.]

Art. 1011a. [Transferred to Art. 1137j.]

CHAPTER 3.—COUNTERFEITING AND DIMINISHING VALUE OF COIN

Art.
1012. "Counterfeiting."
1013. Passing counterfeit coin.
1014. Making dies, etc.
1015. Passing coin of diminished value.
1016. "Gold and silver coin."
1017. What constitutes passing.

Article 1012. [954—5—6—7] "Counterfeiting."—He is guilty of counterfeiting who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed than is contained in such true coin, with intent that the same should be passed in this State or elsewhere; or who, with like intent, alters any coin of lower value so as to make it resemble coin of higher value. The resemblance between the true and the false coin need not be perfect to constitute the offense of counterfeiting. Whoever shall counterfeit any gold or silver coin shall be confined in the penitentiary not less than five nor more than ten years.

Art. 1013. [958] [561] [463] Passing counterfeit coin.—Whoever with intent to defraud shall pass or offer to pass as true, or bring into this State, or have in his possession with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 455.]

Art. 1014. [959] [562] [464] Making dies, etc.—If any person with the intention of committing the offense of counterfeiting, or of aiding therein, shall make or repair, or shall have in his possession any die, mould or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1015. [960] [563] [465] Passing coin of diminished value.—If any person shall with intent to profit thereby diminish the weight of any gold or silver coin and afterwards pass it for the value it would have had before it was so diminished, or send it to any place, whether in the State or out of it, with the intent that the same may be passed, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 457; Acts 1858, p. 169.]

Art. 1016. [961] [564] [466] "Gold and silver coin."—By the gold or silver coin mentioned in this chapter is meant any piece of gold or silver of which one of these metals is the principal component part, and which passes as money in the United States, either by law or usage, whether the same be of the United States or of any foreign country. [O. C. 458.]

Art. 1017. [962] [565] [467] What constitutes passing.—It is sufficient to constitute the offense of passing or attempting to pass under the provisions of this chapter if the counterfeit coin be delivered or offered to another with the intention of defrauding or enabling such other person to defraud although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine.

CHAPTER 4.—WAREHOUSES AND COTTON

Art.
1018. Issuing receipt without basis.
1019. Receipt containing false statement.
1020. Duplicating receipts.
1021. Exception.
1022. Failure to disclose ownership.
1023. Unlawful delivery by warehouseman.
1024. Exception.
1025. Unlawfully depositing goods.
1026. Forging warehouse receipt.
1027. Unlicensed cotton classer.
1027a. Public cotton classers; penalties.
1028. Substituting sample.
1029. Fraudulent certificate.
1030. Wilfully plating cotton.
1031. Ginner to comply with law.
1032. Unlicensed ginner.
1033. Ginner's record.
1034. Pink bollworm laws.

Article 1018. Issuing receipt without basis.—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a receipt, knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under the actual control of such warehouseman at the time of issuing such receipt, shall be confined in the penitentiary not exceeding five years, or be fined not exceeding five thousand dollars, or both. [Acts 1919, p. 225, Acts 1st C. S. 1917, p. 82.]

Art. 1019. Receipt containing false statement.—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Acts 1919, p. 225.]

Art. 1020. Duplicating receipts.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Du-

plicate," shall be confined in the penitentiary not exceeding five years, or be fined not exceeding five thousand dollars, or both. [Id.]

Art. 1021. Exception.—The preceding article shall not apply where such goods were delivered upon an order of court upon proof of loss or destruction of a negotiable receipt therefor. [Id.]

Art. 1022. Failure to disclose ownership.—Where there are deposited with or held by a warehouseman, goods of which he is owner, either solely, jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars. [Id.]

Art. 1023. Unlawful delivery by warehouseman.—A warehouseman, or any officer, agent or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Id.]

Art. 1024. Exception.—The preceding article shall not apply where such goods were delivered upon an order of court upon proof of loss or destruction of a negotiable receipt therefor; nor where such goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature. [Id.]

Art. 1025. Unlawfully depositing goods.—Whoever deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Id.]

Art. 1026. Forging warehouse receipt.—Whoever shall forge any warehouse receipt or knowingly negotiate any forged warehouse receipt purporting to be issued under and by authority of the law passed at the First Called Session of the Thirty-fifth Legislature, being Chapter forty-one of the General Laws of such Session and known as the "Permanent Warehouse Law," shall be fined not less than one hundred nor more than one thousand dollars, or be confined in the penitentiary for not less than two nor more than five years, or both. [Acts 1st C. S. 1917, p. 65.]

Art. 1027. Unlicensed cotton classer.—Whoever shall engage in business as a public cotton classer, classing cotton for the public generally, without holding a license as a public cotton classer, as provided by law, shall be fined not exceeding one hundred dollars. [Id.]

Art. 1027a. Public cotton classers; penalties.—Sec. 9. Hereafter no person shall be permitted to engage in the business as Public Cotton Classer, classing and stapling cotton for the public, or issuing receipts and tickets therefor, with the grade thereon, for the use of the public, as herein above provided, without complying with the provisions of this Act. Anyone violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine in any sum not less than Twenty-Five ($25.00) Dollars, and not more than Two Hundred ($200.00) Dollars.

Sec. 10. If any person shall issue or cause to be issued, any certificate of sample, weight, grade or staple of any cotton, for commercial purposes, with intent to deceive or defraud, such person shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than Twenty-Five ($25.00) Dollars, nor more than Two Hundred ($200.00) Dollars, and each instrument so issued shall constitute a separate offense. [Acts 1931, 42nd Leg., p. 101, ch. 68; Acts 1931, 42nd Leg., 2nd C.S., p. 24, ch. 13.]

Sections 1-8, and 11 of Acts 1931, 42nd Leg., p. 101, ch. 68 are published as Rev.Civ.St. Art. 5679a.

Art. 1028. Substituting sample.—Whoever with intent to defraud shall substitute any sample of cotton or other farm product for a sample taken under authority of law shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1st C.S., 1917, p. 65.]

Art. 1029. Fraudulent certificate.—Whoever shall issue, or cause to be issued, any certificate of sample, weight, grade, or class, of any cotton or other farm products, for commercial purposes, with intent to deceive or defraud, shall be fined not less than twenty-five nor more than two hundred dollars. Each instrument so issued shall be a separate offense. [Id.]

Art. 1030. Wilfully plating cotton.—Each ginner, and any officer, servant or employé of a corporation, person or gin company, conducting a gin business, who shall wilfully plate a bale of cotton, which is to say, who shall wilfully and knowingly place on the outside of said bale a better grade and quality of cotton than on the inside of said bale, for the purpose of deceiving, shall be confined in the penitentiary not exceeding two years, or be fined not exceeding five thousand dollars, or both. [Acts 2nd C. S. 1914, p. 32.]

Art. 1031. Ginner to comply with law.—Whoever operates a cotton gin, either for himself or for another for commercial purposes, without complying with the laws of this State governing such ginners, shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1st C. S. 1917, p. 65.]

Art. 1032. Unlicensed ginner.—Whoever shall operate any gin, ginning cotton for commercial purposes, without first obtaining a license as a licensed ginner from the Commissioner of Agriculture, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1033. [986-7-9] Ginner's record.—Every person, firm, corporation or association of persons owning, controlling or operating a public cotton gin shall keep or cause to be kept in a book a public record of all cotton brought to them for ginning and packing, showing correctly the amount of cotton received, date of its receipt, by whom brought to the gin, and the name or names of the party or parties claiming to own the same, and after ginning and packing said cotton shall place or cause to be placed on each bale of cotton the initials of the party or parties claiming to own said cotton, under which the ginner shall place some private ginner's mark and record, all of which shall be recorded in said book. Any ginner who fails, neglects or refuses to comply with any provision of this article shall be fined not exceeding twenty-five dollars. [Acts 1901, p. 263.]

Art. 1034. Pink bollworm laws.—Whoever shall transport any cotton or cotton products by any means from any territory in this State which has been quarantined and placed under restrictions by proclamation of the Governor of the State, in accordance with the authority conferred by the laws of this State relating to the pink bollworm; or whoever shall violate any proclamation or any rule, regulation or other restriction authorized by said laws or bring into the State any material contaminated with said worm or its eggs; or whoever shall plant, cultivate, grow, allow to grow, gather, transport or market cotton in or from any territory in

this State, that has been quarantined and declared a non-cotton zone and placed under restrictions by any of the proclamations authorized by said laws; or whoever shall fail to comply with any of the said rules and regulations so promulgated for the control and direction of cotton growing and marketing in any restricted or regulated zone; or shall violate any proclamation, regulation or restriction authorized by said laws, or any ginner who shall fail or refuse to disinfect cotton seed as provided for in said laws; or whoever shall wilfully refuse or knowingly neglect to comply with any such proclamation, restriction or regulation promulgated and maintained for the protection of the cotton industry, shall be fined not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500), or shall be imprisoned in jail for not less than ten (10) days nor more than thirty (30) days, or may be punished by both such fine and imprisonment. Each transaction of each product so shipped or transported, and each act in violation of the restrictions herein authorized governing the planting, growing, marketing and cleaning the fields, shall constitute a separate offense. The District Court of the county in which any criminal case is filed under the provisions of this article may, upon the application of either the State or of the defendant and a showing that the applicant cannot obtain a fair trial in that county, order a change of venue to an adjoining county or district. [Acts 1921, 1st C.S., p. 128; Acts 1945, 49th Leg., p. 250, ch. 184, § 1.]

Section 2 of the amendatory act of 1945 read as follows: "If any word, phrase, clause, sentence, paragraph, section or part of this Act shall be held by any Court of competent jurisdiction to be invalid as unconstitutional, or for other reasons, it shall not affect any other phrase, clause, sentence, paragraph, section or part of this Act."

CHAPTER 5.—WEIGHTS AND MEASURES

Article 1035. Duty of local sealer.—Each local or deputy sealer of weights and measures appointed by any city or town council or commission, shall be under the supervision of the Commissioner of Agriculture and shall be required to report to him regularly and carry out all his instructions, and on failure or refusal to do so shall be fined not less than ten nor more than two hundred dollars. [Acts 1919, p. 240.]

Art. 1036. Removing tag of sealer.—Whoever removes or obliterates any tag or device placed by any authorized sealer, deputy sealer or inspector upon any weight or measure, or weighing or measuring instrument, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1037. False weights and measures; definitions.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, shall offer or expose for sale, sell, use in the buying or selling of any commodity or thing, or for hire or award, or in the computation of any charge for services rendered on the basis of weight or measure, or in the determination of weight or measure when a charge is made for such determination, or retain in his possession, a false weight or measure or weighing or measuring device, or any weight or measure or weighing or measuring device which has not been sealed by the Commissioner, or his deputy, or inspectors, or by a sealer or deputy sealer of weights and measures within one year, or shall dispose of any condemned weight, measure, or weighing or measuring device contrary to law; or who shall sell or offer or expose for sale less than the quantity he represents of any commodity, thing, or service, or shall take or attempt to take more than the quantity he represents, when, as the buyer, he furnishes the weight, measure, or weighing or measuring device by means of which the amount of any commodity, thing, or service is determined; or who shall keep for the purpose of sale, offer or expose for sale, or sell any commodity in a manner contrary to law; or who shall sell or offer for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to or calculated to falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than Twenty Dollars ($20) nor more than One Hundred Dollars ($100), upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction he shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200).

Section A. The word "person" as used in this Chapter shall be construed to include any individual and all officers, directors, managers, employees, and other agents of all corporations, companies, partnerships, societies and associations, and such is the legislative intent.

The words "weights, measures or (and) weighing or (and) measuring devices" as used in this Chapter, shall be construed to include all weights, scales, beams, measures of every kind, instruments and mechanical devices for weighing or measuring, and any appliances and accessories connected with any or all such instruments.

The words "sell" or "sale" as used in this Chapter, shall be construed to include barter and exchange.

The term "false weight or measure, or (and) weighing or measuring device" as used in this Chapter, shall be construed to mean any weight or measure or weighing or measuring device which does not conform as closely as practicable to the official standards, which is not accurate, which is of such construction that it is not reasonably permanent in its adjustment or will not correctly repeat its indications, which facilitates the perpetration of fraud, or which does not conform to the requirements of the Statutes of this State and to the specifications and tolerances promulgated by the Commissioner under au-

thority of Article 5714, Chapter 7, Title 93, of the Revised Civil Statutes of Texas of 1925, as amended.

Section B. It shall be unlawful to sell, except for immediate consumption on the premises, liquid commodities in any other manner than by liquid measure, or commodities not liquid in any other manner than by measure of length, by weight, or by numerical count. Provided, however, that liquid commodities may be sold by weight if there exists a general consumer usage to express the quantity of such commodities by weight and such expression gives accurate information as to the quantity thereof; and that nothing in this Section shall be construed to prevent the sale of fruits, vegetables, and other dry commodities in the standard barrel or by other methods provided for by State or Federal Law; or of berries and small fruits in boxes as provided for in the provisions of other Articles of the Statutes; or of vegetables or fruits usually sold by the head or bunch in this manner. Provided further, that nothing in this Section shall be construed to apply to commodities put up in original packages.

For the purposes of this Section the term "original package" shall be construed to include a commodity in a package, carton, case, can, barrel, bottle, box, phial, or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, which may be labeled, branded, or stenciled, or otherwise marked, or which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The words "original package" shall be construed to include both the wholesale and the retail package.

For the purposes of this Section the term "commodities not liquid" shall be construed to include goods, wares, and merchandise which are not in liquid form and which have heretofore been sold by measure of length, by weight, by measure of capacity, or by numerical count, or which are susceptible of sale in any of these ways.

Section C. (1) It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any commodity in package form unless (a) the net quantity of contents, in terms of weight, measure, or numerical count, and (b) the name and place of business of the manufacturer, packer, or distributor shall be plainly and conspicuously marked on the outside of the package. Provided, however, that under Clause (a) of this Section reasonable variations or tolerances shall be permitted, and exemptions as to small packages shall be made; and that under Clause (b) of this Section exemptions as to packages sold on the premises where packed shall be made. And provided further, that this Section shall not be construed to apply to those commodities in package form, the manner of sale of which is specifically regulated by the provisions of other Articles of the Statutes, or to bales of cotton; and that reasonable rules and regulations for the efficient enforcement of this Act, not inconsistent herewith, and including the reasonable variations or tolerances and the exemptions prescribed herein, shall be made by the Commissioner.

(2) It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any commodity in package form if its container is so made, formed, or filled, or if it is so wrapped, as to mislead the purchaser as to the quantity of the contents; or if the contents of its container fall below the standard of fill prescribed by regulations promulgated as provided in this Section. For the effectuation of the purposes of this Section the Commissioner is hereby authorized to promulgate regulations fixing and establishing for any commodity in package form a standard of fill of container, which in his best judgment is reasonable with respect to the physical characteristics of the commodity, the size, shape, and physical characteristics of the container, prevailing methods of handling and transportation of packages, and generally accepted good commercial practice in filling methods; provided, however, that reasonable variations or tolerances shall be permitted, and that these reasonable variations or tolerances shall be established by regulations made by the Commissioner.

(3) The words "in package form" as used in this Chapter, shall be construed to include a commodity in package, carton, case, can, box, bag, barrel, bottle, phial, or on a spool or similar holder, or in a container or band, or in a roll, ball, coil, skein, or other receptacle, or in coverings or wrappings of any kind, put up by the manufacturer, or when put up prior to the order of the commodity, by the vendor, which may be suitable for labeling, branding, or stenciling, or marking otherwise, making one complete package of the commodity. The words "in package form" shall be construed to include both the wholesale and the retail package. Provided, however, that a box or carton used for shipping purposes containing a number of packages which are individually marked, as hereinbefore provided, will not be required to bear the weight or measure of the contents thereof, nor the name and place of business of the manufacturer, packer or distributor. And provided further, that the words "in package form" shall not be construed to include paper stationery in tablet form.

Section D. It shall be unlawful for any person to keep for the purpose of sale, offer or expose for sale, or sell, any milk or cream in bottles or other containers of any capacity other than those provided for measures of capacity for liquid in Article 5732, Chapter 7, Title 93, of the Revised Civil Statutes of Texas of 1925, to wit, the gallon, a multiple of the gallon, one-half gallon, quart, pint, one-half pint, and gill.

Section E. It shall be unlawful for any person to keep for the purpose of sale, offer or expose for sale, or sell, except for immediate consumption on the premises, any cheese, meat, or meat food products otherwise than by standard net weight. Provided, however, that any cheese, meat, or meat food products, in package form, shall comply with the requirements of Section C of this Article. For the purposes of this Section the following shall be deemed to be meat and meat food products: All fresh, cured, or salt meats, fish, poultry, sausage, chile, head cheese, souse meat, loaf meat, boneless meat, shredded meat, Hamburger meat, or any other manufactured, prepared, or processed meat or meat food products. This Section shall be construed to require that all poultry sold by live weight shall be weighed alive at the time of sale, and that any poultry dressed or killed prior to time of sale, whether cooked or uncooked, shall be sold by net weight at time of sale and not by live weight or by the piece.

The word "poultry" as used in this Section shall be construed to include turkeys, chickens, ducks, geese, guineas, squabs, and all other domesticated fowls.

Section F. Whenever any commodity is sold on a basis of weight, it shall be unlawful to employ any other weight in such sale than the net weight of the commodity, and all contracts concerning goods sold on a basis of weight shall be understood and construed accordingly. Whenever the weight of a commodity is mentioned in this Chapter, it shall be understood and construed to mean the net weight of the commodity. Provided, however, that this Section shall not be construed to apply to bales of cotton.

Section G. It shall be unlawful for any person to misrepresent the price of a commodity, thing, or service sold or offered or exposed for sale, or to represent the price or the quantity of any commodity,

thing, or service sold or offered or exposed for sale in any manner calculated or tending to mislead or deceive an actual or prospective customer. Whenever any price sign, tag, card, poster, or other advertisement displaying the price of any commodity or thing, includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility with those of the whole number.

Section H. There shall be no violation under this Act for any discrepancy between actual weight or volume at the time of sale to the consumer and the weight marked on the container or between the fill of container and the capacity of the container if such discrepancy is due to unavoidable leakage, shrinkage, evaporation, waste or to causes beyond the control of the seller acting in good faith.

Section I. Any person who shall violate any provisions of this Act, or any of the reasonable rules and regulations promulgated hereunder, for which a specific penalty has not been provided, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than Twenty Dollars ($20) nor more than One Hundred Dollars ($100) upon a first conviction in any court of competent jurisdiction; and upon a second or subsequent conviction in any court of competent jurisdiction shall be punished by a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200). [Acts 1919, p. 240; Acts 1929, 41st Leg., p. 676, ch. 303, § 1; Acts 1941, 47th Leg., p. 1374, ch. 624, § 1.]

Section 2 of the amendatory Act of 1941 read as follows: "If any Article, section, provision, subdivision, or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect."

Section 3 purported to repeal Acts 1923, 38th Leg., 3rd C.S., ch. 53, p. 121, and all conflicting laws and parts of laws. Reference to "3rd C.S." should probably be "2nd C.S." as there was no chapter 53 in the Second Called Session.

Art. 1037a. [See Article 1037 as amended.]

The provisions of Article 1037a, Acts 1929, 41st Leg., p. 676, ch. 303, § 1, as amended by Acts 1941, 47th Leg., p. 1374, ch. 624, are set out as part of Article 1037.

Art. 1038. Hindering sealers.—Whoever hinders or obstructs in any way the Commissioner of Agriculture, or his deputy, inspector or sealer or any local sealer, in the performance of their duties, shall be fined not less than ten nor more than two hundred dollars. [Acts 1919, p. 240.]

Art. 1039. Refusing to permit test of weight.—Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring instrument of any kind, or appliances and accessories connected with any of such instruments or measures which are in his possession or under his control to the Commissioner, his deputy, inspector or to any local inspector or sealer, for the purpose of allowing the same to be inspected and examined as provided for by law, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1040. Refusing to permit test of article.—Any person, who, by himself, or his employé or agent, or as the proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the Commissioner or to his deputy or to a sealer or his deputy or to an inspector or local sealer, for the purpose of allowing same to be tested and proved as to quantity contained therein, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1041. Unlawfully sealing.—Any sealer, deputy sealer, inspector or local sealer appointed under the provisions of law, or discharging the duties of a sealer of weights and measures in this State, who shall seal any weight, measure, balance or apparatus before testing and making the same conform with the standards of the State or who shall condemn any weight, measure, balance or apparatus without first testing the same, shall be fined not less than twenty-five nor more than two hundred dollars, and shall be immediately suspended from office. [Id.]

Art. 1042. Failure to regard unit of measure.—Whoever in buying any commodity or article of property, merchandise or produce, the standard weight of which per bushel or barrel, or divisible merchantable quantities of a bushel or barrel, or by the cord or ton or cubic yard, has been fixed by the laws of this State, shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible merchantable quantity of bushel, barrel, cubic yard or lineal yard, or in selling any of the same, shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard, or divisible merchantable quantity of bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be fined not less than twenty nor more than two hundred dollars. [Acts 1919, p. 235.]

Art. 1042a. [Repealed by Acts 1943, 48th Leg., p. 694, ch. 385, § 6.]

The article repealed was Acts 1935, 44th Leg., p. 554, ch. 237.

Art. 1042b. Sale of wheat and other flours or corn meal in other than standard packages forbidden.—Section 1. The standard measures of wheat flour, whole wheat flour, graham flour, other cereal flour, and corn meal, except such cereals sold as grits, shall be packages containing net avoirdupois weights of two, five, ten, twenty-five, fifty, one hundred, one hundred fifty, and two hundred pounds.

Sec. 2. It shall be unlawful for any person, firm, association, or corporation to pack for sale, sell or offer for sale in the State of Texas any wheat flour, whole wheat flour, graham flour, other cereal flour, or corn meal except in packages (including barrels, sacks, bags, cartons and other containers) of the above standard net weights.

Sec. 3. Each package of wheat flour, whole wheat flour, graham flour, other cereal flour and corn meal shall have the net weight, name of manufacturer (meaning the person, firm, association, or corporation which processes the wheat or other cereal into flour, or which processes the corn into meal) and the name of the place where milled, printed or plainly marked on it in letters and figures clearly readable; and that it shall be unlawful for any wheat flour, whole wheat flour, graham flour, other cereal flour or corn meal, to be packed for sale, offered for sale or sold within the State of Texas unless it shall be so labeled. Provided, however, that reasonable rules and regulations for the efficient enforcement of this Act, not inconsistent herewith, and including reasonable variations or tolerances, shall be made by the Commissioner of Agriculture.

Sec. 4. The provisions of this Act shall not apply to the retailing of wheat flour, whole wheat flour, graham flour, other cereal flour or corn meal direct to the consumer from bulk stock, nor to sales of flour to bakeries for exclusive use in such bakeries, nor to the exchange of flour or meal for wheat or corn by grist mills and other mills grinding for toll for producers; and that nothing herein contained shall be held to apply to any product such as prepared pancake flour, cake flour or other specialty, packed and distributed in identified original package, the net contents of which are five pounds or less.

Sec. 5. Any violation of this Act shall be a misdemeanor, and upon conviction the offender shall be fined not less than Twenty-five ($25.00) Dollars nor more than One Hundred ($100.00) Dollars for each offense. [Acts 1943, 48th Leg., p. 694, ch. 385.]

Section 6 of the Act of 1943 repealed House Bill No. 601, Chapter 237, Acts of the Regular Session of the 44th Legislature, and all other laws and parts of laws in conflict herewith and provided that all persons, firms, associations or corporations having on hand at the time the

Act went into effect packages of the sizes prescribed by House Bill No. 601, Chapter 237, Acts of the Regular Session of the 44th Legislature, should report to the Commissioner of Agriculture the number of packages on hand, and authorized the sale of wheat flour, other cereal flour and corn meal in such packages on hand.

Art. 1043. Parties may contract.—The preceding article does not apply where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such article. [Acts 1919, p. 235.]

Art. 1044. [730] Receptacle containing mill product.—Any one engaged in the manufacture of mill products of any character who shall use any bag, box, barrel or any other receptacle into which to put such product other than the one bearing the name of such mill manufacturing the same, shall be fined not less than one hundred nor more than one thousand dollars or be confined in jail for thirty days, or both. [Acts 1907, p. 244.]

Art. 1045. Containers for fruit or vegetables.—Whoever shall make, sell, or offer to sell containers for the shipment of fruit or vegetables, which containers are of different size or dimensions from the standards of such containers established by the laws of this State, shall be fined not to exceed one thousand dollars. [Acts 1917, p. 402.]

Art. 1046. Inspection of fruits and vegetables.—Any grower, shipper's agent, packer, or any agent, receiver or representative of any common carrier or transportation company, who shall violate any provision of the laws of this State relating to standards of grades and pack of fruit and vegetables, or who shall refuse to submit any such fruit or vegetables packed or ready for shipment to inspection by any inspector appointed, as authorized by law, by the Commissioner of Agriculture and empowered by such Commissioner to make such inspection, shall be fined not to exceed one hundred dollars. [Acts 4th C. S. 1918, p. 150.]

Art. 1047. "Public weigher."—All persons engaged in the business of public weighing for hire, or any person who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce, or article is based, shall be known as a public weigher, and shall comply with the provisions of the law regulating public weighers, provided the provisions of this article shall not apply to any owner, manager, agent or employé of any compress or any public or private warehouse in their operations as a warehouseman. This law shall not apply in any manner to any Texas port. [Acts 1921, p. 168.]

Art. 1048. Weight certificate.—The Commissioner of Agriculture shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State Certificate of Weights and Measures; such certificate shall state thereon the kind of produce; the number of the same, the date of the receipt of the produce, the owner, agent or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade mark or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. [Acts 1919, p. 124.]

Art. 1049. Record of weights.—All public weighers, within this State, shall keep and preserve a correct and accurate record of all weights made by them, which record shall be open for the inspection of the Commissioner of Agriculture, his deputies or inspectors, and the public at any and all times. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by said Commissioner. [Id.]

Art. 1050. Issuing false certificate.—All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. Any public weigher, or deputy public weigher, who shall issue any certificate of weights and measures or weight sheet giving false weights or measures of any article, or commodity weighed or measured by him, or his representative or deputy, to any person, firm or corporation, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and may be imprisoned in jail for not less than thirty days nor more than six months, and in addition thereto, he shall be suspended from office and not permitted to continue the business of public weighing any longer. [Id.]

Art. 1051. Requesting false certificate.—Whoever shall request a public weigher, deputy public weigher or any person employed by him, or pay to him any money, or give him anything to weigh any produce, commodity or article, falsely or incorrectly, or who shall request a false or incorrect certificate of weights or measures, or weight sheet, shall be fined not less than twenty-five nor more than two hundred dollars, and in addition thereto may be imprisoned in jail for not less than thirty days nor more than six months. [Id.]

Art. 1052. Weigher to comply with law.—Any person, or agent or representative of any corporation, who shall engage in the business of weighing for the public, or who shall grant or issue a certificate or weight sheet, upon which a purchase or sale is made without complying with the terms of the statutes regulating public weighers, shall be fined not less than twenty-five nor more than two hundred dollars. Each certificate so granted, or weight sheet issued by him is a separate offense. [Id.]

Art. 1053. Shipping at false weight.—Whoever ships to any one in this State any thing in which the weight is necessary to be given at any weight other than the true weight properly certified to shall be fined not less than one hundred nor more than five hundred dollars and may be imprisoned in jail for not more than twelve months, or both so fined and imprisoned. [Id.]

Art. 1054. Deposit for installing service.—Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing any such service, shall pay six per cent interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid on the first day of January of each year, or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be confined in jail not less than six months nor more than one year, or both. [Acts 2nd C. S. 1923, p. 101.]

Art. 1055. Water, gas and electric meters.—All water meters, gas meters and electric meters are subject at all times to inspection of the Commissioner of Agriculture and said Commissioner either on his own motion or complaint of any user of any of the

above named meters, shall have same inspected as to its correctness, and if found incorrect to discontinue its use until corrected, so that it will register correctly and whoever refuses to discontinue such meter when so notified by said Commissioner that it is incorrect or when so ordered to discontinue such meter should fail or refuse to comply with such order of said Commissioner shall be fined not less than twenty-five nor more than one hundred dollars and each day he shall fail or refuse to comply with such order to discontinue same shall be a separate offense. [Acts 1923, p. 225.]

Art. 1056. [993] Diverting from meters.—Whoever, intentionally, by any means or device, prevents electric current, water or gas from passing through any meter belonging to a person, corporation or company engaged in the manufacture or sale of electricity, water, or gas, for lighting, power or other purposes, furnished such person to register the current of electricity, water or gas, passing through meters, or intentionally prevents a meter from duly registering the quantity of electricity, water or gas supplied, or in any way, interferes with its proper action or just registration, or without the consent of such person, corporation or company, intentionally diverts any electric current from any wire, or water or gas from any pipe or pipes of such person, corporation or company, or otherwise intentionally uses, or causes to be used, without the consent of such person, corporation or company any electricity or gas manufactured, or water produced or distributed, by such person, corporation or company, or any person who retains possession of, or refuses to deliver, any meter, lamp, or other appliances which may be, or may have been loaned them by any person, corporation or company for the purpose of furnishing electricity, water, or gas, through the same, with the intent to defraud such person, corporation or company, shall for every such offense be fined not less than twenty-five nor more than one hundred dollars. The presence at any time, on or about any such meter, wire or pipe of any device or pipes or wires resulting in the diversion of electric current, water or gas, as above defined or resulting in the prevention of the proper action or just registration of the meter or meters, as above set forth, shall constitute prima facie evidence of knowledge on the part of the person having custody and control of the room or place where such device or pipe or wire is of the existence thereof and the effect thereof and shall further constitute prima facie evidence of intention on the part of such person to defraud and shall bring such person prima facie within the scope, meaning and penalties of this article. [Acts 1905, p. 205; Acts 3rd C. S. 1917, p. 107; Acts 1923, p. 224.]

Art. 1057. Misreading meter.—Any person engaged in the manufacture or sale of electricity, water, or gas for lighting, power or other purposes, or any officer or employé of any person, corporation or company so engaged who shall knowingly misread any meter or overcharge any customer for such light, water or gas furnished, or shall cause or knowingly permit any light, water or gas meter to register or show greater than the true amount of light, electricity, water or gas sold or furnished any customer shall, for every such offense, be fined not less than twenty-five nor more than one hundred dollars. [Acts 1923, p. 225.]

Art. 1057a. Refusal to allow authorities to examine meter.—Any person or furnisher of electrical power and current or gas who fails or refuses to allow the agents of city commissioners or city council of any cities, towns or villages of the class hereinbefore mentioned to examine the meters and measuring devices hereinbefore referred to, shall be guilty of a misdemeanor, and be punished by a fine not to exceed two hundred ($200.00) dollars, each and every day of such refusal to constitute a separate offense. [Acts 1927, 40th Leg., p. 71, ch. 47, § 5.]

Sections 1–4 of Acts 1927, 40th Leg., p. 71, ch. 47, are contained in Rev.Civ.St., art. 1124a.

Art. 1057b. License to operate milk or cream testing apparatus; penalty.—That it shall be unlawful for any person to operate a milk or cream testing apparatus to determine the percentage of butter fat in milk or cream for the purpose of purchasing same, either for himself or another, without first securing a license from the State Commissioner of Agriculture, who shall issue such license, upon a form prepared by him, upon payment of a fee of One ($1.00) Dollar for a period of twelve (12) months and said Commissioner or his agents are hereby authorized to make such investigation as he may deem necessary to determine whether the applicant is a reliable person and competent and qualified to operate and use such apparatus and make an accurate test with same. If the applicant is not found to be reliable, competent and qualified the Commissioner of Agriculture may refuse to license him, and said Commissioner is hereby authorized and empowered to revoke the license of any person licensed to make the Babcock test of milk or cream under the laws of the State of Texas, who shall fail to fully comply with the provisions of said laws, or with any of the rules and regulations of the Department of Agriculture relating to said Babcock test. Said money for licenses shall be turned in by Commissioner of Agriculture to the General Revenue Fund of the State. The testing of each lot of milk or cream by any unlicensed person shall constitute a separate offense under this Act; provided that any licensed person or his employer may for a valid reason, which must in every instance be reported to the Commissioner of Agriculture, appoint a substitute for a period of not to exceed fifteen (15) days, and provided further that such appointment may for a valid reason satisfactory to said Commissioner and subject to his approval be extended for an additional ten (10) days. Any person violating the requirements of this Article shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (b), Article 5736c.[1] [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1.]

[1] Article 1057c, post.
This article was added as Rev.Civ.St. Art. 5736b but being a penal provision is published here.

Art. 1057c. Inaccurate samples or false determinations by Babcock test.—(a) It shall be unlawful for any person, either for himself or another or any person, firm, association, or corporation, either by himself or agent, to falsely manipulate or underread or over-read, take inaccurate samples or make any false determinations by Babcock test or any other contrivance used to determine the quantity of fat in milk or cream or value of milk or cream delivered to a creamery, cheese factory, condensary, ice cream plant, milk plant or milk depot, or any other place where milk or cream is purchased, or when sold or purchased. The test shall be clear butterfat, free from sediments, solids and other foreign substance, and must be read at a temperature of 130°–140°. Cream tests must be weighed and must not be taken except from milk or cream which has been thoroughly mixed by stirring with an instrument suitable for that purpose. The scales must be accurate and sensitive to a weight of thirty (30) milligrams; the tester and owner or owners are jointly responsible for their accuracy. For the purpose of providing official supervision of the operation of the Babcock test in all creameries, cheese factories, condensaries, ice cream plants and milk depots using said test, and all receiving stations conducted for the purchase of butterfat either in the form of cream or milk, the following regulations are hereby promulgated: (1) That all individuals, corporations and partnerships authorized

by license or permit to conduct the Babcock test in the State of Texas shall retain in a cool, clean, sanitary place and in tightly stopped bottles or tightly covered jars the exact, properly labeled samples of cream or milk from which the butterfat test has been conducted, until 6 P.M. of the next test day; (2) upon such occasions as may be determined wise, the Agricultural Department or its inspectors may order any sample or samples held for a longer period than provided for by these regulations.

(b) Any person violating the provisions of these Articles shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand ($1,000.00) Dollars and upon the second offense, the Commissioner of Agriculture may revoke for six (6) months the license of any person licensed to make the Babcock test of milk or cream. [Acts 1931, 42nd Leg., p. 735, ch. 287, § 1; Acts 1943, 48th Leg., p. 174, ch. 99, § 1.]

This article was added as Rev.Civ.St. Art. 5736c, but being a penal provision is published here.

Art. 1057d. Commissioner shall establish tolerances; penalties.—The Commissioner shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in this State, similar to the tolerances and specifications recommended by the National Bureau of Standards and he may establish a standard net weight or net count of any commodity, product, or article, and prescribe such tolerance for same as he may in his best judgment deem necessary for the proper protection of the public. Provided, the specifications and tolerances issued by the Commissioner of Agriculture for weighing and measuring devices in conformity with this Article, or any specifications or tolerances issued to protect the public from fraud, shall have the same force and effect as if enacted into Law, and provided, further, any person, firm, or corporation who shall fail or refuse to comply with said specifications and tolerances shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Ten ($10.00) Dollars nor more than Two Hundred ($200.00) Dollars. [As amended Acts 1931, 42nd Leg., p. 125, ch. 83, § 1.]

This article was originally Rev.Civ.St. Art. 5714. As amended it is made a penal provision.

CHAPTER 6.—OFFENSES AGAINST LABELS, TRADE MARKS, ETC.

Art.
1058. Using trade mark of another.
1059. Possession prima facie evidence.
1060. Penalties.
1061. Counterfeiting trade mark, etc.
1062. Unlawfully using or displaying.
1063. Filling or not returning container.
1064. Injuring milk containers, etc.
1065. Ownership of containers, etc.
1066. Dairy trade mark.
1066a. Branding "rebuilt" electric storage batteries.

Article 1058. [1392] Using trade mark of another.—Each manufacturer or dealer in carbonated goods, mineral waters, soda water or other beverage, and each manufacturer of medicine or other compound, requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks The act of so filing and publishing shall operate as a trade mark, securing to said manufacturer the full protection of the law as a trade mark, entitling said manufacturer to the sole and exclusive use in Texas of said mark, name or device. No person, corporate or otherwise, other than the proprietor, or by his written consent, shall fill for sale for the purpose of traffic with any compound whatever, any box, syphon, bottle or other container so marked, recorded and published as provided in this article, or deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; Acts 1901, p. 288.]

Art. 1059. [1393] Possession prima facie evidence.—To wilfully have in possession, otherwise than by contract with the proprietor of the goods above enumerated, or with his duly accredited agents, any vessel in said article enumerated, or to use, buy, sell or dispose of any such vessel, with or without contents of any kind, except by authority of the proprietor, or to wilfully break, damage, or destroy any such vessel, is prima facie evidence of such unlawful use. [Acts 1893, p. 125.]

Art. 1060. [1394] [918c] Penalties.—Whoever violates any provision of the two preceding articles shall be fined for such unlawful use of each and every box, five dollars; for each and every syphon, five dollars; for each and every bottle, five dollars; and for each and every other receptacle, except a fountain, five dollars; and for each fountain, twenty-five dollars; said fines to be the minimum in each case, the maximum not to exceed double the minimum. [Acts 1893, p. 125.]

Art. 1061. [1395] [918d] Counterfeiting trade mark, etc.—Whenever any person, association, private corporations or union of workingmen, incorporated or unincorporated, have adopted, or shall hereafter adopt for their protection any label, trade mark, design, device, imprint or form of advertisement, indicating that goods to which such label, trade mark, design, device, imprint or form of advertisement shall be attached, were manufactured by such person, association, private corporations or union, or by a member or members of such association or union, it shall be unlawful for any person, inclusive of officers, agents, receiver or receivers of corporations, to counterfeit or imitate such label, trade mark, design, device, imprint or form of advertisement or to use such counterfeit or imitation of such label, trade mark, design, device, imprint, or form of advertisement, knowing the same to be counterfeit or imitation, or to aid, assist, countenance or knowingly permit such counterfeit or imitation or the use of such counterfeit or imitation for his own use or benefit, or for the use or benefit of any corporation of which he may then be an officer, agent or receiver. Every person, whether in his individual capacity or as an officer, agent or receiver of a corporation, violating this article, shall be fined not less than twenty-five nor more than one hundred dollars, and each day's violation shall be a separate offense. [Acts 1895, p. 108.]

Art. 1062. [1396] [918e] Unlawfully using or displaying.—Every person, whether in his individual capacity or as the officer, agent or receiver of a corporation, who shall wilfully use or display the genuine label, trade mark, design, device, imprint, or form of advertisement, or name of any such person, association or union, incorporated or unincorporated, not being authorized to use or display the same, or shall aid, assist, countenance or knowingly permit the use of same, not being authorized to use the same, shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

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). [Acts 1918, 4th C.S., p. 167; Acts 1937, 45th Leg., p. 428, ch. 218, § 1.]

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.

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). [Acts 1918, 4th C.S., p. 167; Acts 1937, 45th Leg., p. 428, ch. 218, § 2.]

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. [Acts 1918, 4th C.S., p. 167; Acts 1937, 45th Leg., p. 428, ch. 218, § 3.]

See note to article 1063.

Art. 1066. Dairy trade mark.—Any person, firm or corporation engaged in the dairying business or in the distribution or sale of milk requiring the use of bottles may file in the office of the county clerk of the county in which such person, firm or corporation expects to sell or distribute milk, a fac simile or description of the name, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such fac simile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, the exclusive right to use in said county said name, trade name, mark or design, and the same may be impressed upon the bottles of the owner of such name, mark or design, and such impression upon such a bottle is prima facie proof that the owner of such name, mark or design is the owner of such bottle, either as the original owner or transferee as provided by law. Whoever sells or offers for sale a bottle upon which such name, mark or design appears shall, unless he be the owner thereof, be fined not less than ten nor more than fifty dollars. Any dairyman, milk distributor or milk dealer who shall deliver or sell milk in a bottle bearing a name, mark or design recorded as herein provided without the consent of the owner of said name, mark or design, shall be fined not less than one nor more than fifty dollars. [Acts 1921, p. 161.]

Art. 1066a. Branding "rebuilt" electric storage batteries.—Whoever assembles or rebuilds an electric storage battery for use on automobiles, in whole or in part, out of second hand or used material, such as containers, separators, plates, groups or other battery parts, and sells same or offers same for sale within this State without the word "rebuilt" branded into the side of the containers in letters which are at least one inch high and one-half inch wide, each, shall be guilty of a misdemeanor, and upon conviction therefor, shall be punished by a fine not exceeding One Hundred ($100.00) Dollars or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment. [Acts 1933, 43rd Leg., p. 767, ch. 226, § 1.]

CHAPTER 7.—ASSUMED NAME

Art.
1067. Transacting business under assumed name.
1068. Change of ownership.
1069. Corporations not included.
1070. Punishment.

Article 1067. Transacting business under assumed name.—No person or persons shall carry on or conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business unless such person or persons shall file in the office of the county clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is or is to be conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or the addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct said business in the manner now provided for acknowledgment of conveyance of real estate. [Acts 1921, p. 142.]

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."

Art. 1068. Change of ownership.—Whenever there is a change in ownership of any business operated under any such assumed name as set out in the preceding article, the person or persons withdrawing from said business or disposing of their interest therein, shall file in the office of the county clerk of the county or counties in which such business is being conducted and has a place or places of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged by the person or persons so withdrawing from or selling their interest in said business in the manner now provided for acknowledgment of conveyance of real estate. [Id.]

See note under Article 1067.

Art. 1069. Corporations not included.—The preceding articles shall in no way apply to any corporation duly organized under the law of this State or to any corporation organized under the laws of any other State and lawfully doing business in this State. [Id.]

See note under Article 1067.

Art. 1070. Punishment.—Any person owning, carrying on, or transacting business as described in the preceding articles of this chapter who shall fail to comply with any provision of this Chapter shall be fined not less than twenty-five nor more than one hundred dollars. Each day of such violation shall be a separate offense. [Id.]

See note under Article 1067.

CHAPTER 8.—BLUE SKY LAW OF TEXAS

Art.
1071–1083. [Repealed.]
1083a. Unlawful sale of securities.

Articles 1071–1083. [Repealed by Acts 1935, 44th Leg., p. 255, ch. 100, § 38.]

Art. 1083a. Unlawful sale of securities.—Any dealer, agent, salesman, principal, officer, or employee, who shall, within this State, sell, offer for sale or delivery, solicit subscriptions to or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities, without being registered as in this Act provided, or who shall within this State, sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after the effective date of this Act without having secured a permit as herein provided, or who knowingly makes any false statement of fact in any statement or matter of information required by this Act to be filed with the Secretary of State, or in any advertisement, prospectus, letter, telegram, circular, or any other document containing an offer to sell or dispose of, or in or by verbal or written solicitation to purchase, or in any commendatory matter concerning any securities, with intent to aid in the disposal or purchase of the same, or who knowingly makes any false statement or representation concerning any registration made under the provisions of this Act, or who is guilty of any fraud or fraudulent practice in the sale of, offering for sale or delivery of, invitation of offers for, or dealing in any other manner in any security or securities, or who shall knowingly participate in declaring, issuing or paying any cash dividend by or for any person or company out of any funds other than the actual earnings of such person or company or from the lawful liquidation of the business thereof, shall be deemed guilty of a felony and, upon conviction thereof, shall be sentenced to pay a fine of not more than One Thousand Dollars ($1000), or imprisoned in the penitentiary for not more than two (2) years, or by both such fine and imprisonment. [Acts 1935, 44th Leg., p. 255, ch. 100, § 30.]

CHAPTER 9.—AGRICULTURAL AND LIVESTOCK POOLS

Art.
1084. May incorporate.
1085. Definitions.
1086. Loans and interest.
1087. Agents for borrowers.
1088. Officers to furnish bonds.
1089. To file statement.
1090. Pools may use security.
1091. Term of loan.
1092. Unlawfully disposing of receipt.
1093. Penalty.

Article 1084. May incorporate.—Any association of persons, which may include corporations duly chartered, State banks and trust companies, and national banks and trust companies, and cooperative associations composed of persons engaged in producing or producing and marketing staple agricultural products, or livestock, or both, may organize pools for the purpose of borrowing and lending money on agricultural products and livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock.

Any number of persons not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both such purposes, and may use any of such livestock or farm products, or both, as security in financing such enterprises, and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation. [Acts 2nd C. S. 1923, p. 82.]

Art. 1085. Definitions.—The term "pools" shall mean agricultural financing pools.

The term "agricultural products" shall mean any or all products of the farm, orchard and dairy usually classed as agricultural products other than livestock.

The term "livestock" shall mean any herd of cattle, sheep, goats or swine.

The term "margins" shall mean additional surety in money of legal tender of the United States. [Id.]

Art. 1086. Loans and interest.—The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks, provided that no loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing or producing and marketing staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon. [Id.]

Art. 1087. Agents for borrowers.—All such pools shall have the right to act as agents for all borrowers, in the sale of such commodities, articles or things on which loans have been made and the commissions charged for such service shall not exceed fifty cents per bale for cotton sold and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein. [Id.]

Art. 1088. Officers to furnish bonds.—The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such organization. The board of directors shall elect said president, vice-president, secretary and treasurer from the said board of directors. The secretary-treasurer and each officer in charge of the management shall be required to furnish to such pool a good and sufficient bond conditioned upon the faithful performance of duty. Such bonds shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond. [Id.]

Art. 1089. To file statement.—All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Markets and Warehouses [1] a sworn statement of the condition of the affairs of such pool, and such statement shall be made to show the amount of business done, the number of negotiable receipts on which loans have been made and the value of such commodities, the total of all such loans and the total of all obligations of the pool and to whom due and the amount of interest being paid on same and the quantity or number of sales made for clients and the gross receipts of such sales and the amount of commissions charged thereon, and the number and value of all live stock mortgages and other securities. [Id.]

[1] Office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department and the Weights and Measures Department, abolished and powers and duties transferred to the Commissioner of Agriculture, see Rev. Civ.St. Art. 5611.

Art. 1090. Pools may use security.—All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations, provided that when any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold the negotiable receipt shall be delivered to the maker thereof, and canceled in accordance with the provisions of the Warehouse Acts of this State. [Id.]

Art. 1091. Term of loan.—The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on live stock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both. [Id.]

Art. 1092. Unlawfully disposing of receipt.—No person shall dispose of any negotiable bonded warehouse receipt placed with any pooling organization as security on loan, or to be held by such pool pending the sale of any such commodity, article or thing represented by such receipt, except as provided for in this chapter. [Id.]

Art. 1093. Penalty.—Whoever violates any provision of this chapter shall be fined not less than twenty-five nor more than one thousand dollars, or be imprisoned in jail not more than one year, or be both so fined and imprisoned. [Id.]

CHAPTER 10.—PROTECTING MOVEMENT OF COMMERCE

Art.
1094. Interfering with workers.
1095. Conspiracy to intimidate.
1096. "Intimidation" construed.
1097. Definitions.
1098. Exceptions.
1099. Penalty.
1100. Procedure.

Article 1094. Interfering with workers.—It shall be unlawful for any one by or through the use of any physical violence or by threatening the use of any physical violence, or by intimidation or threatening destruction of his property to interfere with or molest or harass any person or persons engaged in the work of loading or unloading or transporting any commerce within this State. [Acts 4th C. S. 1920, p. 7.]

Law punishing as felony assault on or intimidation of persons engaged in movement of commerce, regardless of intent, held violative of Const.U.S.Amend. 14, as class legislation for failure of this article to make specific intent to hinder commerce essential element thereof. Ratcliff v. State, 106 Cr.R. 37, 289 S.W. 1072.

Art. 1095. Conspiracy to intimidate.—It shall be unlawful for any two or more persons to conspire together to prevent or attempt to prevent, by the use of physical violence or intimidation or by threats of physical violence or by abusive language spoken or written to any person engaged in loading or unloading or transporting any commerce within this State, any person from performing the duties of such employment. [Id.]

Art. 1096. "Intimidation" construed.—Every person who shall through any act or written communication or conversation with any person or persons engaged in loading, unloading or transporting any commerce by any common carrier in Texas, or with the father, mother, wife, sister, brother, child or children of such person or persons while so engaged, or during the hours of day or night while not engaged in such work and when employed for such work, which is reasonably calculated, intended or designed to cause such person or persons so engaged to desist from performing such work through fear of physical violence or destruction of his property, shall be deemed to have intimidated, molested or harassed such person or persons engaged in the work of loading or unloading or transporting commerce within this State. [Id.]

Art. 1097. Definitions.—The term "person or persons engaged in the work of loading or unloading or transporting commerce in this State" as used in this chapter shall be construed as including any person or persons employed in any way in the docks, wharves, switches, railroad tracks, express companies, compresses, depots, freight depots, pipelines, or approaches or appurtenances to or incident to or used in connection with the handling of commerce by common carriers within this State. This article by naming certain occupations and work shall not be construed to exclude any other occupation or work not named, but reasonably incident to and necessary for the transportation of commerce in this State by common carriers. For the purposes of this chapter the words "common carrier" are defined to mean any railway corporation, any express company, any interurban railway company, any street car company, any ship, dock, wharf company, any pipe line company, engaged in the transportation of freight, express or passengers. The word "commerce" is defined to mean any freight, express or passengers being handled or transported by any common carrier as herein defined. [Id.]

Art. 1098. Exceptions.—The provisions of this chapter shall not apply to peace officers in the discharge of their lawful duties. [Id.]

Art. 1099. Penalty.—Any person violating any provision of this chapter shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not less than thirty days nor more than one year, or both. Should any person violating any provision of this chapter use any physical violence upon, or threaten the life of any person engaged in the work of loading or unloading, or transporting any commerce, as defined in this chapter, he shall be confined in the penitentiary not less than one nor more than five years. [Id.]

Art. 1100. Procedure.—Indictment for violation of any provision of this law may be returned by the grand jury of the county in which the violation occurs, or by the grand jury of any county adjoining the county in which the territory embraced in the Governor's proclamation is situated. Any person indicted may be prosecuted and tried in the county in which the indictment is returned, but no indictment shall be returned in any county except where the offense occurred, until after the Governor has issued his proclamation as provided for herein. Nothing in this law as to change of venue shall in any manner abridge the right of the defendant to apply for and secure a change of venue under the existing laws of this State, the same as if the indictment had been returned in the county where the offense is alleged to have been committed.

When the provisions of this law have been violated, and the grand jury of the county in which the offense was committed have returned an indictment the district judge in whose court the indictment may be returned shall grant a change of venue upon motion made by the Attorney General representing this State, or at his direction, or by the local prosecuting attorney. The motion for a change of venue shall be sufficient if it sets out that the offense charged is prohibited by the provisions of this law, and that on account of local conditions, preferences, prejudices or influence, it is the opinion of the Attorney General that a fair and impartial trial can not be had in the county where the indictment is found. Upon the filing and presenting of such motion it will be the duty of the district judge in whose court such case may be pending to immediately issue a proper order changing the venue of such case to such other county as the

court may select not subject in the opinion of the Attorney General to like conditions and objections. [Id.]

CHAPTER 11.—GASOLINE AND PETROLEUM PRODUCTS

Article 1101. Sale under another name.—No person, firm or corporation, shall sell gasoline, benzine, naphtha, or other similar product of petroleum, capable of being used for illuminating, heating or power purposes, under any other than the true name of said products; and such petroleum products shall be subject to inspection by the proper authorities. [Acts 1919, p. 213.]

Art. 1102. Shall mark containers.—No person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naphtha or other highly inflammable substance made from petroleum, shall fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission, unless such regulations should conflict with the provisions of this chapter. [Id.]

Art. 1103. Labeling receptacles or reservoirs of petroleum products.—No person, firm, association of persons, corporation or carrier selling or transporting any gasoline, benzine, naphtha or other similar product of petroleum, shall fail to truly label in large letters showing the name of such person, firm, association of persons, corporation or carrier on any tank car, barrel, cask, tank wagon, receptacle or reservoir in which any petroleum product shall be shipped or stored within this State, or from which sales or delivery of the same are to be made. [Acts 1919, p. 213; Acts 1933, 43rd Leg., p. 94, ch. 46, § 1; Acts 1935, 44th Leg., p. 396, ch. 154, § 1-a.]

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. [Acts 1919, p. 213; Acts 1935, 44th Leg., p. 396, ch. 154, § 1; Acts 1937, 45th Leg., p. 648, ch. 318, § 1.]

Art. 1105. Standard of gasoline or motor fuel.—(a) No person, firm, association of persons, or corporation shall sell, offer for sale, or expose for sale, or possess or store with the intention to sell, as gasoline or motor fuel, any substance, liquid, or product of petroleum which falls below the standard of gasoline or motor fuel, the minimum requirement of which such standard shall be determined by the following distillation range:

1. When the thermometer reads 167 degrees Fahrenheit not less than ten (10) per cent shall be evaporated.

2. When the thermometer reads 284 degrees Fahrenheit not less than fifty (50) per cent shall be evaporated.

3. When the thermometer reads 392 degrees Fahrenheit not less than ninety (90) per cent shall be evaporated.

4. The end or dry point of distillation must not be over 437 degrees Fahrenheit.

5. The residue shall not exceed two (2) per cent.

6. Sulphur shall not exceed twenty one hundredths (0.20) per cent.

(b) Motor fuel or gasoline shall be volatile hydrocarbon fuel, free from water and suspended matter, and shall be practicable and/or suitable for use as fuel in internal combustion engines. [Acts 1919, p. 213; Acts 1933, 43rd Leg., p. 94, ch. 46, § 2; Acts 1935, 44th Leg., p. 396, ch. 154, § 2.]

Art. 1106. Inferior motor fuel.—(a) Liquids, substances, or products of petroleum used, or intended for use, as gasoline or motor fuel, not meeting the minimum requirements and specifications prescribed in Article 1105 hereof for gasoline or motor fuel, shall be known and designated as "Inferior Motor Fuel," and all pumps, receptacles, tanks or containers from which such inferior motor fuel may be sold, offered for sale, or exposed for sale, or in which such inferior motor fuel is stored, or transported with the intention to sell, shall be labeled, in plain, legible lettering in the English language in the full view of the public, with the words "Inferior Motor Fuel," which such lettering shall be of solid black type not less than two (2) inches in height with not less than one-half inch paint stripe of black oil paint on white oil paint background; and it is further provided that any person who shall sell or exchange any such motor fuel shall be required to plainly show on each and every invoice, manifest, ticket or bill of exchange that the commodity sold or exchanged is inferior motor fuel.

(b) No person, firm, association of persons or corporation shall sell or offer for sale as lubricating oil, any oil that has been rerun, refiltered, reclaimed or refined from crank case draining or any other oil that has been theretofore used for purposes of lubrication unless the said oil is sold as and labeled "Reconditioned Motor Oil." [Acts 1919, p. 213; Acts 1933, 43rd Leg., p. 94, ch. 46, § 3; Acts 1935, 44th Leg., p. 396, ch. 154, § 3.]

Art. 1106a. Lubricating oils and greases; sale out of falsely labeled containers, pumps, etc.—Section 1. The term "person" as used in this Act shall include every natural person, firm, copartnership, association, or corporation and if any firm, copartnership, association, or corporation violates any of the provisions of this Act, every director, officer, agent, employee, or member participating in, aiding, or authorizing the act or acts constituting a violation of this Act shall be guilty of violating this Act, and shall be subject to the punishment herein provided.

Sec. 2. When any container, can, tank, pump, or other distributing device containing lubricating oils, greases, and similar products, bearing the name, trademark, symbol, sign, or other distinguishing mark of the lubricating oils, greases, or similar products originally placed in said container, can, tank, pump, or other distributing device by the original manufacturer, processor, or distributor, whose name, trade-mark, symbol, sign, or other distinguishing mark appears on such container, can, tank, pump, or other distributing

device, shall be opened and any part of the contents thereof removed, it shall be unlawful for any person, except such original manufacturer, processor, or distributor, to refill, in whole or in part, or to re-use any such container, can, tank, pump, or other distributing device for the purpose of selling or offering for sale any lubricating oils, greases, or other similar products.

Sec. 3. When any person has in his possession any container, can, tank, pump, or other distributing device, which has been opened and refilled, as described in the above Section, such possession shall be prima facie evidence of possession thereof by such person for the purpose of sale.

Sec. 4. It shall be unlawful for any person, firm, or corporation, to disguise or camouflage his or their own equipment by imitating the design, symbol, trade name, or the equipment, under which recognized brands of lubricating oils, greases, and similar products are generally marketed.

Sec. 5. No person shall expose or offer for sale or sell under any trade-mark, trade name, or name, or other distinguishing mark any lubricating oils, greases, or other similar products, other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trade-mark or name, or other distinguishing mark.

Sec. 6. No person shall aid or assist any other person in violating any of the provisions of this Act by depositing or delivering into any can, tank, pump, receptacle, or other container any lubricating oils, greases, or similar products, other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor, or the trade-mark, trade name, name, or other distinguishing mark of the product displayed on the container itself or on the pump, or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this Act.

Sec. 7. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and, upon conviction, shall be punished by fine of not less than Twenty-five Dollars ($25) nor more than One Thousand Dollars ($1,000), or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

Sec. 8. If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be invalid or 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 of the sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid. [Acts 1941, 47th Leg., p. 1317, ch. 591.]

Art. 1107. Tests of petroleum products.—The apparatus and methods of conducting all tests and arriving at proper standards of gasoline and other products under this Act shall be those now or hereafter authorized and used by the U. S. Bureau of Mines. [Acts 1919, p. 213.]

Art. 1108. Using incorrect measure.—No person, firm, association of persons, corporation or carrier, shall use any scales, measure or measuring device in the handling or sale of petroleum products unless the same is true and accurate according to the standard of weights and measures under the laws of this State nor use any pumping device unless the same is correct according to such standard at three speeds, fast, slow and medium. [Id.]

Art. 1109. Breaking seal on incorrect measure.—The inspector shall seal and forbid the use of any inaccurate measuring device until such time as the defect is corrected. The breaking of said official seal shall be prima facie evidence of a violation of this law and no person, firm, association of persons, corporation or carrier shall refuse to permit the inspector provided for by law to inspect and seal, if deemed necessary, any such measuring device, or to break the seal after being placed by such inspector. [Id.]

Art. 1110. Hindering inspector.—The Director of the Food and Drug Division of the State Board of Health, his inspectors, or any duly authorized representative appointed by the State Comptroller for that purpose, or any highway patrolman, or sheriff, or deputy sheriff, or any other peace officer shall have, in the performance of his duties under this law, the power to inspect any premises or place where petroleum products are made, prepared, stored, transported, sold or offered for sale or exchange, take samples of same, and test measuring devices. It shall be unlawful for any person to hinder or obstruct or refuse to permit said inspectors or any other persons duly authorized to perform said duties in the exercise of such powers. [Acts 1919, p. 213; Acts 1933, 43rd Leg., p. 94, ch. 46, § 4.]

Art. 1111. Punishment.—Any person who shall knowingly violate any of the provisions of Articles 1101 through and inclusive of Article 1110 of the Penal Code shall be 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). [Acts 1919, p. 213; Acts 1935, 44th Leg., p. 396, ch. 154, § 4.]

Art. 1111a. Penalty for violation.

False entries and other unlawful acts

Section 8. Whoever, as producer, first purchaser, subsequent purchaser, or carrier, or whoever shall as a principal or as agent or representative of such principal, knowingly make any false entries or fail to make any proper entries in the books required by this Act with intent to defraud the State; or whoever as such, shall knowingly make a false or incomplete report as required by this Act; or whoever, as such, shall knowingly fail or refuse to make the report required to be made; or whoever, as such, shall destroy, mutilate, or secrete any of the records required to be kept by the provisions of this Act; or whoever shall, as such, hide or secrete with intent to defraud, any of the property upon which a lien is created hereunder, or whoever fails or refuses to permit the Comptroller or the Attorney General or the duly authorized representative of either to inspect the records and reports herein provided for, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than Twenty-five Dollars ($25), nor more than Five Thousand Dollars ($5,000) or confined in the county jail for not less than one month, nor more than six (6) months, or by both such fine and imprisonment. [As amended Acts 1935, 44th Leg., p. 898, ch. 353, § 5.]

Interfering with inspector

Sec. 9a. Each and every person appointed by the Commission and holding the certificate of the Commission authorizing such appointee to inspect oil wells, oil leases, pipe lines, railroad cars or tanks shall have the right of free access to such leases, premises, wells, pipe lines, railroad cars, or tanks, and to motor truck tanks, at any and all times for the purpose of inspection with respect to the production and transportation of oil. Any person or owner producing oil in this State who shall by objection, interference, or otherwise prevent any such person so appointed by the Commission from the free right of access to any leases or premises or wells where oil is produced, or who shall in any manner interfere with such representative's examination of any such leases, premises, or wells to ascertain the quan-

tity and time of production of oil, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

Measuring oil or gas

Sec. 9b. It shall be unlawful for any person owning, leasing, operating, or controlling any oil property within the State of Texas to permit the oil or gas so produced to pass beyond the possession or control of such person into the possession or control of any other person without first accurately measuring the amount of such oil or such gas, and making and preserving an accurate record thereof. It shall also be unlawful for any person to use any method or device to evade such accurate measurement. Upon conviction for a wilful violation of any provision hereof, such person shall be deemed guilty of a felony and, upon such conviction, shall be punished by confinement in the State penitentiary for a term of not less than two (2) nor more than four (4) years. [Acts 1933, 43rd Leg., p. 409, ch. 162.]

Acts 1935, 44th Leg., p. 898, ch. 353, § 5, amended section 8 of this article.

Sections 1–7, 9 and 13 of Acts 1933, are published as Rev. Civ.St. Art. 7057a.

Section 10 repeals Rev.Civ.St. Art. 7071.

Section 11 is published as Rev.Civ.St. Arts. 6032, 6032a.

Section 11a is published as Rev.Civ.St. Art. 7047, subd. 23.

Section 12 is published as Rev.Civ.St. Art. 7105.

Art. 1111a—1. Penalty for misuse of oil and gas enforcement funds.—If any person whose salary is paid out of the funds herein provided for, uses his time or a state-owned automobile for campaign purposes, or for the purpose of furthering the candidacy of his employer or any other candidate for State office, he shall be deemed guilty of a misdemeanor and upon conviction be fined not less than One Hundred Dollars ($100) and not more than Five Hundred Dollars ($500) and shall be confined in jail for not less than thirty (30) nor more than ninety (90) days, and shall be discharged at once, and shall be rendered ineligible for future employment by any State Department. And in event any citizen of this State shall file a civil complaint with any District Court in Travis County, Texas, charging any such employee with any such use of his time or state-owned automobile, such court shall set such complaint for hearing on some date not more than twenty (20) or less than ten (10) days after the date of the filing of such complaint, and shall cause notice to be served on such employee for at least five (5) days prior to the date of such hearing, and if, upon such hearing, such court shall determine that such employee has used his time and/or a state-owned automobile as charged in the complaint said court shall certify such fact to the Department employing such person and order his immediate discharge. Any person against whom such charges shall have been filed shall have the right of appeal to the Court of Civil Appeals, but the pendency of such appeal shall in no wise suspend his discharge. [Acts 1934, 43rd Leg., 2nd C.S., p. 99, ch. 43, § 5; Acts 1935, 44th Leg., p. 618, ch. 245, § 10.]

Sections 1, 2, 4, 5, 8, 9, 11 and 12 of Acts 1935, are published as Rev.Civ.St. Arts. 6032, 6032a, 6032b, 6032c, 6032c—1, 3032c—2, 6032e, 6032f.

Art. 1111b. Tapping pipe line.—Sec. 1. Tapping. The term "Tapping" as used in this Act, is the making of any connection with a pipe line, conduit, or storage tank constructed for the purpose of transporting or storing crude oil, gasoline, naphtha, natural gas, casinghead gas, or any petroleum product whereby such crude oil, gasoline, naphtha, natural gas, casinghead gas, or any petroleum product is permitted or caused to escape from such pipe line, conduit, or storage tank, whether such connection be made by opening a valve therein, removing any plug or other apparatus therefrom, or by drilling or making a hole therein, or by adopting any other means whereby any such contents of such pipe line, conduit, or tank, is permitted to escape.

Sec. 2. Any person who shall unlawfully tap any pipe line, conduit, or storage tank, constructed for the purpose of transporting or storing crude oil, gasoline, naphtha, natural gas, casinghead gas, or any petroleum product without the consent of the owner, and with intent to injure such pipe line, conduit, or storage tank, or to permit the contents thereof to escape, or with intent to appropriate any portion of the contents of such pipe line, conduit, or storage tank to the use and benefit of the person tapping the same, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary for a term of not less than one nor more than five years. [Acts 1933, 43rd Leg., p. 732, ch. 219.]

Art. 1111c. Forging name of agent, officer, or employee of Railroad Commission to permit or tender relating to crude petroleum oil or natural gas.—Sec. 1. Whoever shall forge the name of any agent, officer or employee of the Railroad Commission of Texas to a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either, or who shall forge the name of any person to such tender or permit, or who shall knowingly use such forged instrument to induce another to handle or transport any crude petroleum oil or natural gas or any product or by-product of either, shall be confined in the penitentiary not less than two (2) nor more than five (5) years.

Sec. 2. Whoever shall knowingly procure or cause any agent, officer or employee of the Railroad Commission of Texas to approve or issue a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either containing any statement or representation which is false and which materially misrepresents the true facts with respect to such crude petroleum oil or natural gas or any product or by-product of either, or who shall procure or cause any agent, officer or employee of the Railroad Commission of Texas to issue to him a permit or tender of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either with the intent to defraud shall be confined in the penitentiary not less than two (2) nor more than five (5) years.

Sec. 3. Whoever shall knowingly have in his possession a forged tender or permit of the Railroad Commission of Texas relating to crude petroleum oil or natural gas or any product or by-product of either for the purpose of transporting, handling or the sale of said crude petroleum oil or natural gas or any by-product of either, shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars ($25) nor more than One Thousand Dollars ($1000), or by confinement in the county jail for not less than thirty (30) days nor more than one year; or by both such fine and jail sentence.

Sec. 4. If any section, subsection, clause, sentence or phrase of this Act is for any reason held to be unconstitutional or 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, sentence or phrase thereof irrespective of the fact that any one or more of the sections, subsections, clauses, sentences or phrases be declared unconstitutional. [Acts 1935, 44th Leg., p. 536, ch. 225.]

CHAPTER 11-A.—STORES AND MERCANTILE ESTABLISHMENTS

Art. 1111d. Operating stores or mercantile establishments without license unlawful.

License required

Section 1. That from and after the passage of this Act it shall be unlawful for any person, agent, receiver, trustee, firm, corporation, association or copartnership, either foreign or domestic to operate, maintain, open or establish any store or mercantile establishment in this State without first having obtained a license so to do from the Comptroller of Public Accounts as hereinafter provided.

Application for license to Comptroller of Public Accounts

Sec. 2. Any person, agent, receiver, trustee, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a store or mercantile establishment in this State shall apply to the Comptroller of Public Accounts for a license so to do. The application for a license shall be made on a form which shall be prescribed and furnished by the Comptroller of Public Accounts and shall set forth the name of the owner, manager, trustee, lessee, receiver, or other person desiring such license, the name of such store or mercantile establishment, the location, including the street number of such store, or mercantile establishment, and such other facts and information as the Comptroller of Public Accounts may require. If the applicant desires to operate, maintain, open or establish more than one such store or mercantile establishment, such applicant shall make application for a license to operate, maintain, open or establish each such store or mercantile establishment, but the respective stores or mercantile establishments for which the applicant desires to secure licenses may all be listed on one application blank.

It is hereby made the further duty of the Comptroller to collect, supervise, and enforce the collection of all license and application fees that may be due under the provisions of this Act and to that end the said Comptroller is hereby vested with all of the power and authority conferred by this Act. The Comptroller is further authorized and empowered to promulgate rules and regulations to provide for the collection of the amount of license and application fees due under the provisions of this Act and on the effective date of this Act.

Each application shall be accompanied by a filing fee of fifty (50) cents for each store or mercantile establishment operated or to be operated for the purpose of defraying the cost of administration of this Act.

Each application shall be signed and sworn to by the applicant as being true and correct, before an officer authorized to administer oaths, and may contain such other information as the applicant may wish to include, or as the Comptroller may require.

Examination of application; issuance of license; display of license

Sec. 3. As soon as practicable, after the receipt of any such application, the Comptroller of Public Accounts shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If upon such examination, the Comptroller of Public Accounts shall find that any such application is not in proper form and does not contain the necessary and requisite information, he shall return such application for correction. If an application is found to be satisfactory, and if the filing and license fee as herein prescribed shall have been paid, the Comptroller of Public Accounts shall issue to the applicant a license for each store or mercantile establishment for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the store or mercantile establishment for which such license is issued.

Period of license and renewal

Sec. 4. All licenses shall be so issued as to expire on the thirty-first day of December of each year. On or before the thirty-first day of December of each year, every person, agent, receiver, trustee, firm, corporation, association or copartnership having a license shall apply to the Comptroller of Public Accounts for a renewal license for the calendar year next ensuing. All applications for renewal licenses shall be made on forms which shall be prescribed and furnished by the Comptroller of Public Accounts. Each such application for a renewal license shall be accompanied by a filing fee of fifty (50) cents for each store or mercantile establishment operated or to be operated and by the license fee as prescribed in Section 5 of this Act.

License fees; exemptions

Sec. 5. Every person, agent, receiver, trustee, firm, corporation, association or copartnership opening, establishing, operating, or maintaining one or more stores or mercantile establishments 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 stores or mercantile establishments. The license fee herein prescribed shall be paid annually and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act. Provided that the terms, "store, stores, mercantile establishment or mercantile establishments," wherever used in this Act shall not include: any place or places where or from which nothing is sold except ice; any wholesale and/or retail lumber and/or building material place of business, provided as much as seventy-five (75) per cent of the gross proceeds of the business done each preceding calendar year at such place of business is derived from the sale of lumber and/or building material, providing that the term "building material" as used herein shall be construed to include any material which is used or usable in the construction of buildings, improvements or structures, including materials consumed in and any article to be built into and become a part of buildings, improvements or structures; also mechanics' hand tools used in the construction of buildings, improvements or structures; and/or oil and gas well supplies and equipment dealers; and any place of business commonly known as a gasoline filling station, service station, or gasoline bulk station or plant, provided as much as seventy-five (75) per cent of the gross proceeds of the business done thereat is derived from the selling, storing, or distributing of petroleum products; or any business now paying an occupation tax measured by gross receipts; or any place or places of business used as bona fide wholesale or retail distributing points by manufacturing concerns for distribution of products of their own manufacture only; or any place or

places of business used by bona fide processors of dairy products for the exclusive sale at retail of such products; or any place or places of business commonly known as Religious Book Stores, operated for the purposes of selling Religious Publications of any nature, including Bibles, Song Books, Books upon Religious Subjects, Church Offering Envelopes, Church, Sunday School and Training Union Supplies, provided that gas and/or electric utilities shall not hereafter be required to pay any tax or fee under this Act for the privilege of operating in towns of three thousand (3,000) population or less, according to the next preceding Federal Census, a store or stores for the purpose of selling gas and/or electric appliances and/or parts for the repair thereof, provided as much as seventy-five (75) per cent of the total gross receipts in the preceding calendar year in each such town where such a store or stores are located is derived from the sale therein of gas and/or electric service, and provided further that for the privilege of operating a store or stores in towns of more than three thousand (3,000) population, according to the next preceding Federal Census, for the purpose of selling any or all of the above named commodities, gas and/or electric utilities shall pay only the fees imposed by Sections 2, 4, and 5 of this Act.

The license fees herein prescribed shall be as follows:

1. Upon one (1) store the license fee shall be One Dollar ($1);

2. Upon each additional store in excess of one (1) but not to exceed two (2), the license fee shall be Six Dollars ($6);

3. Upon each additional store in excess of two (2) but not to exceed five (5), the license fee shall be Twenty-five Dollars ($25);

4. Upon each additional store in excess of five (5) but not to exceed ten (10), the license fee shall be Fifty Dollars ($50);

5. Upon each additional store in excess of ten (10) but not to exceed twenty (20), the license fee shall be One Hundred and Fifty Dollars ($150);

6. Upon each additional store in excess of twenty (20) but not to exceed thirty-five (35), the license fee shall be Two Hundred and Fifty Dollars ($250);

7. Upon each additional store in excess of thirty-five (35) but not to exceed fifty (50), the license fee shall be Five Hundred Dollars ($500);

8. Upon each additional store in excess of fifty (50), the license fee shall be Seven Hundred and Fifty Dollars ($750);

Such fees are for the period of twelve (12) months, and upon the issuance of any license after the first day of January of any one year, there shall be collected such fractional part of the license fee hereinabove fixed as the remaining months in the calendar year (including the month in which such license is issued) bear to the twelve-month period. [As amended Acts 1941, 47th Leg., p. 269, ch. 184, Art. XIX, § 1; Acts 1943, 48th Leg., p. 319, ch. 205, § 1; Acts 1945, 49th Leg., p. 72, ch. 51, § 1.]

Section 2 of Article XIX of the Act of 1941 provided that the passage of the Act should not alter the liability of any person, agent, receiver, trustee, firm, corporation, association, or copartnership for the payment of license fees, including the interest and penalty due thereon, then due the State of Texas.

Section 3 provided that the taxes levied by this article shall be allocated as now provided by law for such taxes.

Section 3 of the amendatory Act of 1945 provided that partial invalidity should not affect the remaining portions of the Act.

Furnishing public utility services; license fees

Sec. 5a. Every person, agent, receiver, trustee, firm, corporation, association and/or copartnership opening, establishing, operating and/or maintaining one or more stores or mercantile establishments within this State under the same general management and/or ownership and selling therein any equipment or appliances operated and/or used in connection with any electrical current and/or natural gas and/or artificial gas whether the same be in connection with the sale of electrical current and/or natural gas and/or artificial gas or not and whether such person, firm, agent, receiver, trustee, corporation, association and/or copartnership be also engaged in the business of furnishing some public utility services or not shall pay the license fees hereinabove prescribed for the privilege of opening, establishing, operating and/or maintaining such stores or mercantile establishments. The license fee herein prescribed is applicable to this Section, shall be paid annually, and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act. The license fee herein prescribed and applicable to this Section shall be as follows:

1. Upon one (1) store the license fee shall be One Dollar ($1);

2. Upon each additional store in excess of one (1), but not to exceed two (2), the license fee shall be Six Dollars ($6):

3. Upon each additional store in excess of two (2), but not to exceed five (5), the license fee shall be Twenty-five Dollars ($25);

4. Upon each additional store in excess of five (5), but not to exceed ten (10), the license fee shall be Fifty Dollars ($50);

5. Upon each additional store in excess of ten (10), but not to exceed twenty (20), the license fee shall be One Hundred Fifty Dollars ($150);

6. Upon each additional store in excess of twenty (20), but not to exceed thirty-five (35), the license fee shall be Two Hundred Fifty Dollars ($250);

7. Upon each additional store in excess of thirty-five (35) but not to exceed fifty (50), the license fee shall be Five Hundred Dollars ($500);

8. Upon each additional store in excess of fifty (50), the license fee shall be Seven Hundred Fifty Dollars ($750).

Such fees are for the period of twelve (12) months, and upon the issuance of any license after the first day of January of any year, there shall be collected such fractional part of the license hereinabove prescribed as the remaining months in the calendar year (including the month in which such license is issued) bears to the twelve-month period, provided, however that should this Section 5a and/or any part thereof be for any reason declared void, unconstitutional and/or invalid, such invalidity shall never be construed so as to affect any other section or subsection, part or portion of this Act and shall in nowise affect Section 5 hereof but it is the Legislative intent that all of the remainder of this Act should remain in full force and effect in spite of any invalidity of this Section 5a and/or any part thereof and the Legislature would have imposed the tax imposed in Section 5 hereof regardless of the validity or invalidity of Section 5a and/or any part thereof.

This Section shall be construed as a limitation upon the exception in Section 5 hereof of businesses now paying an occupation tax measured by gross receipts.

Application of act

Sec. 6. The provisions of this Act shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, copartnership 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.

Store defined

Sec. 7. The term "store" as used in this Act shall be construed to mean and include any store or stores or any mercantile establishment or establishments not specifically exempted within this Act which are owned, operated, maintained, or controlled by the same person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign,

in which goods, wares or merchandise of any kind are sold, at retail or wholesale.

Penalty

Sec. 8. Any person who, either for himself or as the agent of any person, receiver, trustee, firm, corporation, copartnership or association, shall operate or maintain any store or stores or mercantile establishment or mercantile establishments as defined in this Act without having displayed in a conspicuous place in such store or mercantile establishment the license fee receipt for the current year as required in this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Twenty-five Dollars ($25); nor more than One Hundred Dollars ($100), and each day of such violation shall constitute a separate and distinct offense.

Expenses of administration; payments to State Treasury

Sec. 9. The expenses incurred by the Comptroller of Public Accounts in the administration of this Act shall not exceed the amount received by him as application fees as herein provided. All monies collected by the Comptroller of Public Accounts under the provisions of this Act shall be paid by him into the State Treasury daily as received; one-fourth of same shall be credited to the account of the Available School Fund and the remainder shall be credited to the account of the General Fund.

No salary paid in the administration of this Act shall be in excess of the amount of salary provided by the Legislature in General Appropriation Bill for the same or similar services.

There is hereby appropriated the sum of Five Thousand Dollars ($5,000) out of any funds in the State Treasury not otherwise appropriated to be used for the purpose of defraying the expenses of the enforcement of this Act.

Clerical assistants

Sec. 10. The Comptroller of Public Accounts is hereby authorized to employ such clerical assistants as may be necessary to carry out and administer the provisions of this Act, and to prepare such blanks, forms, reports, receipts and any and all other things which may be necessary to provide for the administration of this Act.

Partial invalidity

Sec. 11. If any section, provision, phrase or clause of this Act should be declared invalid, such invalidity shall not be construed to affect the portions of the Act not so held invalid. [Acts 1935, 44th Leg., 1st C. S., p. 1589, ch. 400.]

Section 1a of the Act of 1943 provided that partial invalidity should not affect the remaining portions.
Section 2 of the Act of 1945 repealed all conflicting laws.
Section 3 provided that partial invalidity should not affect the validity of the remaining portions.

CHAPTER 12.—MISCELLANEOUS OFFENSES

Article 1112. [963] [566] [408] Shipping articles without inspection.—Whoever shall export from this State, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which by any law of this State may be required to be inspected by a public inspector without having caused said inspection to be made according to law, shall be fined not exceeding one hundred dollars.

Art. 1112a. Removal of inspection placards.—Any person removing inspection placards from a car before it is unloaded, or any person violating any provision of this Act [1] shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than One Hundred Dollars ($100.00), or by imprisonment for not more than sixty days, or by both such fine and imprisonment. [Acts 1929, 41st Leg., 2nd C.S., p. 157, ch. 80, § 8.]

[1] This article and Rev.Civ.St. Art. 117a.
Sections 1–7 and 9 of this Act are published as Rev.Civ. St. Art. 117a.

Art. 1112b. Oil and gas; certain practices prohibited.

Definitions

Section 1. The term "person" as used in this Act shall be construed to mean and include a person and persons, firm and firms, association and associations, corporation and corporations, and the agents, servants, employees and representatives thereof.

By "Governmental Agent" or "Governmental Agency" as used in this Act shall be meant the Railroad Commission of Texas and any other administrative governmental board, and Governmental Agent to which the Legislature of the State of Texas has heretofore or may hereafter delegate the duty of supervising the production of oil and gas within the State of Texas.

The term "oil property" as used herein shall be construed to include any well producing either oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated or controlled as a producing unit by the same person in the same locality and any leasehold estate to the extent that it is owned, operated and controlled by the same person.

Measuring oil or gas sold; record

Sec. 2. It shall be unlawful for any person owning, leasing, operating or controlling any oil property within the State of Texas to permit the oil or gas so produced to pass beyond the possession or control of such person into the possession or control of any other person without first accurately measuring the amount of such oil or such gas, and making and preserving an accurate record thereof.

Preventing accurate measurement

Sec. 3. It shall be unlawful for any such person mentioned in Section 2 of this Act to use any method or device to evade the accurate measurement provided for in Section 2 hereof, and it shall be unlawful for any such person to use any method or device to prevent obtaining an accurate measurement of such production.

Sale from tanks under control of producer

Sec. 4. It shall be unlawful for any such person mentioned in Section 2 of this Act to permit oil produced by him in this State to pass out of his possession or control into the possession or control of any other person, except from tank or tanks under the control of such person producing said oil.

Inspection of properties and records

Sec. 5. The Governmental Agency of the State of Texas shall at all times have access to the oil property of all persons for inspection and examination and to the records of all such persons for inspection, examination and audit, and it shall be unlawful for any person to refuse to permit such Governmental Agency or any agent, servant, representative or employee thereof to have access to such oil property for inspection and examination; or for any person to interfere with such inspection and examination; or to remove, tamper with, mutilate or destroy any device, seal or meter on said property placed thereon or used in such inspection and examination.

Refusing to permit inspection of records

Sec. 5a. It shall be unlawful for any person to refuse to permit such Governmental Agency or any agent, servant, representative or employee thereof, access, for inspection, examination and audit to the books, documents and records pertaining to, used in connection with, or required to be used in connection with, such oil properties.

Preventing inspection of property by enclosure or equipment

Sec. 5b. It shall be unlawful for any such person mentioned in Section 2 hereof so to equip or enclose his oil property, or any part thereof, in such manner as to prevent such inspection and examination, or so to equip or enclose such property in any manner as to prevent such an inspection and examination from revealing the true facts with respect to the amount of oil or oil and gas being produced from such oil property, or the manner in which such oil property is being operated or the manner and method by which the production from such oil property is produced or stored or delivered from the possession or control of such person.

Posting sign with names of owner and operator, stating acreage, etc.

Sec. 6. Every oil property within this State shall at all times be posted with a sign written in the English Language, which sign shall state the name of the owner of said property, the operator of said property, the number of acres contained in said property and the name by which such property is commonly known and identified. Each tank, owned or controlled by such person and to which such property is connected, shall be similarly identified by a sign containing the same information, and each flare to which such property is connected shall be likewise similarly identified. All lettering on all of such signs shall be not less than one inch in height.

Flares

Sec. 7. Whenever the gas from any well producing both oil and gas is not trapped and utilized and

where such gas is capable of being burned in a flare, it shall be unlawful for any person mentioned in Section 2 of this Act to produce oil from said well at any time without simultaneously continuously burning a flare to consume all gas that would otherwise be permitted to escape into the open air.

Limit on daily production

Sec. 7a. It shall be unlawful for any person, as defined in this Act, owning, leasing, operating, producing, or controlling any oil property or oil well within this State to produce or cause to be produced on any day from any such oil property or oil well any oil in excess of the amount allowed to be produced per day from any such oil property or oil well under any order or orders of the Governmental Agency, theretofore promulgated and in force at the time.

Bribing officers

Sec. 7b. It shall be unlawful for any person to corruptly give, offer or promise to give any member of the Governmental Agency, Chief Supervisor, Deputy Supervisor, or any agent or employee thereof, any gift or gratuity with intent to influence any such officer or person in his acts or conduct with respect to:

(a) Enforcing any provision of the law applicable to oil and gas in force at the time within the State of Texas;

(b) Enforcing any order, rule, or regulation of the Governmental Agency made under the power and authority given to it;

(c) Or the discharge of any duty by any such officer or person imposed upon him by the oil and gas laws, orders, rules and regulations duly promulgated and in force at such time with the State of Texas.

Rules and regulations

Sec. 8. The Governmental Agency is hereby authorized to adopt and promulgate, in the manner provided by law for the adoption of rules and regulations of the Railroad Commission, rules and regulations:

(a) To provide for the method of measuring oil and gas produced from any well within this State and to provide for the type of measuring devices to be used in obtaining such measurement;

(b) For the inspection of all oil properties to ascertain that the prescribed measuring devices are installed and are in accurate working condition and are being accurately used;

(c) That no oil or gas is being permitted to leave the possession of the producer thereof without first being accurately measured and an accurate record thereof made and preserved;

(d) That no oil is being produced from any well producing both oil and gas without burning a flare or flares where the installation and use of a flare or flares is [1] required by the terms of this Act;

(e) For the keeping of complete and accurate records correctly reflecting the amount of oil and gas or oil or gas produced from each oil property each calendar day, and the disposition and method of disposition of all such oil and gas so produced, and for the filing monthly with said Governmental Agency of monthly reports accurately reflecting the true facts with respect to all such matters;

(f) For the inspection and examination by such Governmental Agency, its agents, servants and employees of all such oil properties, and for the inspection and examination of the records hereinbefore provided for.

[1] So in enrolled bill. Should probably read "are".

Publication of new rules and regulations

Sec. 8a. Whenever the Governmental Agency shall have adopted any rule or regulation under the power conferred by this Act, such Governmental Agency shall publish in three (3) newspapers of general circulation in the State of Texas (such newspapers to be selected by said Governmental Agency), once each day for three (3) consecutive days a complete copy of such rule and regulation and on and after the 7th calendar day after the date of the last publication, such rule, regulation or order shall become effective and enforceable. Notice of any amendment, repeal, alteration or modification of such order may be similarly promulgated and will become similarly effective after similar notice.

Certificate of adoption and publication of rule prima facie evidence

Sec. 8b. A certificate under the seal of the Governmental Agency executed by any member of such Governmental Agency, setting forth the terms of any rule, order or regulation and that it has been adopted, promulgated and published and was in effect at any date specified in such certificate, shall be prima facie evidence of all such facts, and such certificate shall be admitted in evidence in any cause involving such order, rule or regulation and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

Form of records

Sec. 8c. The rules, regulations and orders of said Governmental Agency with respect to records and reports shall prescribe the form in which the same shall be made and kept, but said records and reports shall contain the data and information as provided for in this Act.

Penalty

Sec. 9. Any person who shall violate any of the provisions of Section 5, 5a or 5b of this Act, or any person who shall fail to comply with any of the provisions of said Sections of this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. Any person who shall violate any other of the provisions of this Act, or any person who shall fail to comply with either of the other terms of this Act, or any person who shall fail to comply with the terms of any rule, regulation or order adopted and promulgated by the Governmental Agency under the terms of this Act, or any person who shall violate either of the rules, regulations or orders of such Governmental Agency adopted under the provisions of this Act, shall upon conviction be deemed guilty of a felony, and upon conviction shall be punished by confinement in the State Penitentiary for a term of not less than two (2) nor more than four (4) years.

The President of each corporation, the chief managing executive of each association, all active members of each firm and partnership, and all trustees of each trust subject to the provisions of this Act shall be responsible for the compliance with the terms of this Act by the corporation, association, firm, partnership or trust of which he is, respectively, president, chief managing executive, member or trustee, and such responsible person shall be liable to prosecution under and subject to the criminal penalties provided by this Act for all violations hereof by the respective corporation, association, firm, partnership or trust of which he has actual knowledge or to which he assents. [As amended Acts 1934, 43rd Leg., 2nd C.S., p. 102, ch. 44, § 1.]

Jurisdiction

Sec. 10. For all prosecutions for violations of either of the terms of this Act, jurisdiction is hereby conferred upon the Courts of the county in which the oil property or any part thereof is situated and with respect to which a violation of either of the terms of this Act is charged.

Persons authorized to serve process, citation, notice, subpœna, or writ

Sec. 10a. In all suits or actions involving the enforcement of the conservation laws of this State or of the orders of the Railroad Commission affecting the conservation of the natural resources of this State, all Texas Rangers and all agents of the Railroad Commission of Texas shall have the power and authority to serve any civil or judicial process, citation, notice, warrant, subpœna or writ (including process of every character in contempt proceedings) just the same and as fully so as any sheriff or constable of a county to whom the process, writ, notice, citation, subpœna or warrant might be directed could within the limits of his own county. Such Rangers and such agents of the Commission may serve such process anywhere within the State of Texas although it may be directed to "any sheriff or constable" of a particular county. They shall make the same return as any other officer, sign their name and add thereunder (in the case of a State Ranger) the title of "State Ranger" and (in the case of an agent of the Commission) the words, "Agent, Railroad Commission of Texas," which shall be sufficient to make it valid if the writ is otherwise properly made out. No fees of any kind shall be allowed such State Rangers or agents of the Railroad Commission, other than their regular salary or compensation.

Provisions cumulative

Sec. 11. The provisions of this Act shall be cumulative of all other provisions of the Civil Statutes, the Penal Code and the Code of Criminal Procedure, and the remedies herein provided shall be cumulative of all other remedies provided in the Civil Statutes, the Penal Code and the Code of Criminal Procedure.

Partial unconstitutionality

Sec. 12. It is hereby declared to be the legislative intent to enact each separate provision of this Act independent of all other provisions, and the fact that any clause, sentence or part of this Act shall be declared unconstitutional shall in no event affect any other clause, sentence or part hereof.

Emergency clause

Sec. 13. The fact that the laws of this State are now inadequate to provide for an accurate check of the amount of oil and gas being produced within this State, and the fact that a great many landowners of this State are being defrauded of their proper royalty interest in oil and gas being produced, and the fact that by reason of the inadequacy of existing laws, the State of Texas is being defrauded of a vast amount of revenue being derived under the gross production tax laws of the State of Texas, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days be suspended, and the same is hereby suspended, and it is so enacted. [Acts 1933, 43rd Leg., p. 422, ch. 165.]

Acts 1934, 43rd Leg., 2nd C.S., p. 102, ch. 44, § 1, amended section 9 of this article.

Section 2 of Acts 1934, provides that if any part of the act is declared invalid, such holding shall not affect the remaining provisions.

Art. 1113. [964] [567] [409] Altering mark.—Whoever shall counterfeit or alter the mark, brand, or stamp directed by any law of this State to be put on any article of commerce, or on the box, cask or package containing the same, shall be fined not exceeding one thousand dollars or imprisoned in jail not exceeding one year.

Art. 1114. [965] [568] [470] False packing.—Whoever with intent to defraud shall put into any hogshead, barrel, cask or keg or into any bale, box or package containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise or commodity with which such container is apparently filled, or with intent to defraud shall sell or barter, give in payment or expose for sale or ship for exportation any such container with any such article of inferior value concealed therein, shall be confined in the county jail not exceeding one year or be fined not exceeding one thousand dollars.

Art. 1115. [966] [569] [471] False packing with inferior quality.—Whoever with intent to deceive and defraud shall conceal within any hogshead, cask, barrel, box, bale, keg or package containing merchandise or other commodity, any merchandise or commodity of a quality inferior to that with which such container is apparently filled, shall be fined not exceeding five hundred dollars. [Acts 1858, p. 170.]

Art. 1116. [1452] [971] Restricting work of foreign crew.—Any officer, sailor, or member of the crew of a foreign seagoing vessel who shall engage in working on the wharves or levees of ports in this State beyond the end of the vessel's tackle shall be fined not less than ten nor more than one hundred dollars or be imprisoned in jail not less than ten nor more than thirty days, or both. [Acts 1885, p. 52.]

Art. 1117. [967] [570] [472] Fraudulent insurance.—If any person shall cause insurance to be made in this State upon any merchandise or other commodity represented to be already shipped or about to be shipped at any place whether within this State or out of it, and shall with intent to defraud the insurer ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be fined not exceeding the amount for which such merchandise or commodity may be insured.

Art. 1117a. Penalty for violation of mutual insurance law.—Any person or corporation violating the provisions of this Act [1] shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars. [Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 20.]

[1] This article and Rev.Civ.St. Arts 4860a—1 to 4860a—19. Sections 1 to 19 of this Act are published as Rev.Civ.St. Arts. 4860a—1 to 4860a—19.

The provisions of this article are not affected by the provisions of Acts 1937, 45th Leg., 2nd C.S., p. 1913, ch. 33, incorporated in Rev.Civ.St., articles 4782, 4782a, 4782b, relating to occupation tax on foreign mutual assessment life insurance companies. See Rev.Civ.St., article 4782a.

Art. 1118. [1000] [580] [479] False certificate by notary public.—If any notary public shall make any false certificate as to the proof or acknowledgment of any instrument of writing relating to commerce or navigation to which by law he is authorized to certify, or shall make any false certificate as to the proof of [1] acknowledgment of any letter of attorney or other instrument of writing relating to commerce or navigation to which he may by law certify, he shall be confined in the penitentiary not less than two nor more than five years.

[1] So in enrolled bill. Should probably read "or".

Art. 1119. [1001] [581] [480] False declaration or protest.—If any notary public shall make any false declaration or protest respecting any matter or thing relating to commerce or navigation or to commercial instruments where he is authorized by law to make such declaration or protest, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1120. [1002] [582] [481] Acts of notary included.—All acts of a notary public done in his official capacity within the proper sphere of his duties and which arise out of transactions respecting commerce or navigation are included in the two preceding articles.

Art. 1121. [1003] [583] [482] False declaration by master of vessel.—If the master or other

officer of a vessel with intent to defraud shall make a false declaration or protest as to the loss or damage of any vessel or cargo, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1122. [1004–1005] [584] Unlawfully throwing ballast.—If any part of the ballast of any vessel shall be thrown from such vessel into the sea within six miles of any bar or harbor in this State, the master or officer in charge thereof at the time shall be fined not less than one hundred nor more than two hundred dollars. [Acts 1879, p. 153.]

Art. 1123. [1006] [586] [483] False entry in book of accounts.—If any person with intent to defraud shall make or cause to be made any false entry in any book kept as a book of accounts; or shall, with like intent, alter, or cause to be altered, any item of an account kept or entered in such book, he shall be fined not less than one hundred nor more than one thousand dollars, or be confined in the penitentiary not less than two nor more than five years.

Art. 1124. Stevedore unlawfully pursuing occupation.—Any contracting stevedore, as that term is defined by the laws of this State, who shall engage in business as such without first obtaining the license and executing the bond required by the statutes of this State, shall be fined not less than one hundred nor more than five hundred dollars for each day he shall pursue such occupation or business without thus qualifying, and any member of a firm or association or any manager of a corporation who comes within the meaning of a contracting stevedore who shall thus offend is amenable to prosecution.

Art. 1125. [1007] Commission merchant.—Whoever shall pursue the business of selling produce or goods, wares or merchandise of any kind upon consignment for commission, without first making and filing the bond required by the laws regulating commission merchants, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1913, p. 179.]

Art. 1125a. Livestock commission merchants.—Section 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.]

Sections 1 to 8 are published as Rev.Civ.St. article 1287a.

Art. 1126. [641] [414] [386] Pawnbroker.—If any pawnbroker, or person doing business as such, shall receive any article in pledge or sell any article pledged to him, without complying with the statutes regulating pawnbrokers, he shall be fined not less than twenty-five nor more than one hundred dollars.

Arts. 1127–1129. [Repealed by Acts 1927, 40th Leg., 1st C.S., p. 30, ch. 17, § 7.]

Art. 1129a. Violations of law by loan brokers.—That if any loan broker or person doing business as such loan broker shall make any loans upon any chattel mortgage on household and kitchen furniture or purchase contracts for wages or salaries or bills of sale upon such household and kitchen furniture, or shall make any loan taking as security for the payment thereof an assignment of wages or salary or an assignment of wages with Power of Attorney to collect same, or purchase contract of salary or wages whether same be called a loan or purchase without first executing the above bond specified herein together with the said affidavit to be filed in the County Clerk's office, receiving receipt therefor, and without fully complying with this Act regulating loan brokers in this State, shall be guilty of a misdemeanor, and that upon conviction in any court of competent jurisdiction shall be punished by a fine not to exceed Five Hundred Dollars or by imprisonment in the County jail for a term of not more than twelve months, or may be punished by both such fine and imprisonment, and that each day that the same may be violated by such loan broker shall constitute a separate offense. [Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, § 8.]

Art. 1130. Patent right notes and liens.—All notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right and if anyone selling a patent or patent right territory shall take a note or lien for the purchase price of the same, contrary to the provisions of this law, he shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1915, p. 128.]

Art. 1131. [1504–1505–1506] Bond investment company.—Any officer, agent, or representative of any domestic or foreign corporation or company doing business in this State as a bond investment company or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, who shall attempt to place or sell shares or transact any business in the name of or on behalf of such company while it fails to comply with the laws of this State requiring deposits to be made with the State Treasurer, shall be fined not less than one hundred nor more than one thousand dollars, or be im-

prisoned in jail not less than thirty days nor more than six months, or both. [Acts 1897, p. 118.]

Arts. 1132, 1133. [Repealed by Acts 1945, 49th Leg., p. 517, ch. 315, § 26.]

Art. 1134. Violating building and loan association law.—Every officer, director, member of any committee, clerk or agent of any building and loan association doing business in this State, who embezzles, abstracts or misapplies any of the moneys, funds or credits of such corporation; or who issues or puts into circulation any warrant or other order; or who assigns, transfers, cancels or delivers up any note, bond, draft, mortgage, judgment, decree, or any other written instrument belonging to such association; or who certifies to or makes a false entry in any book, report or statement of or to such association, with intent in either case to deceive, injure or defraud such association, or any member thereof, or to deceive any one appointed to examine the affairs of such association, shall be confined in the penitentiary not less than one nor more than ten years. [Acts 1st C. S. 1913, p. 72.]

Art. 1135. Failure to make reports.—Any officer of any building and loan association whose duty it is to make the reports required by law of such association, who shall fail to make such reports as required by the law regulating such associations, shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than one nor more than six months. [Id.]

Art. 1136. Acting for unauthorized association.—Whoever acts as agent for any building and loan association not authorized to do business in this State, or shall solicit sales of, sell or dispose of any shares of such unauthorized association, or shall in any manner aid in the transaction of the business of such unauthorized association, shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 1136a—1. Appointment of agents; penalty for selling stock of unauthorized association.—Each foreign building and loan association shall within sixty days after this Act [1] takes effect, file with the Banking Commissioner of Texas, a written statement, naming each and every other person authorized in this State to solicit stock subscriptions or to accept loan applications for such company; such statements may be added to from time to time, and shall, in addition to the name, give the post office address of such agent. It shall be unlawful for any person to act as agent for any foreign building and loan association unless he has been so designated by such foreign company and his name filed with the Banking Commissioner of Texas and it shall be unlawful for any person to act as agent for any building and loan association not authorized to do business in this state; and any person or persons acting for such association without the proper filing of his name as authorized agent, and any person or persons acting for such unauthorized association, or in any manner aiding in the transaction of the business of such association in this State, shall be deemed guilty of misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense, and in default of payment of such fine shall be imprisoned in the county jail for a period not exceeding one year. All fines collected under the provisions of this Section shall be paid into the State Treasury. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 68.]

[1] This article, Articles 1136a—2 to 1136a—9, post, and Rev.Civ.St. Arts. 881a—1 to 881a—68.
Sections 1–19, 21–67, 76, 77 of Acts 1929, are published as Rev.Civ.St. Arts 881a—1 to 881a—68.

Art. 1136a—2. Defining foreign association.—All building and loan associations, under the laws of any other state or the District of Columbia, shall be deemed a "foreign building and loan association", and shall obtain from the Banking Commissioner of Texas a permit or certificate of authority before transacting business in this state, which permit or certificate of authority shall be given only and in the same manner and under like conditions, regulations and discretion, and upon the filing of like papers, documents and statements as set out in Section 56 of this Act,[1] requiring foreign building and loan associations to obtain certificates of authority before beginning business. A failure to procure such permit or certificate of authority before beginning or continuing business (if already engaged in such business when this act takes effect) within the time provided by Section 67 of this Act,[2] shall be a misdemeanor and subject the offender, its or their officers, agents and representatives to a fine of not more than five hundred dollars, and each separate business transaction shall constitute a separate offense. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 69.]

[1] Rev.Civ.St. Art. 881a—55.
[2] Rev.Civ.St. Art. 881a—66.

Art. 1136a—3. Slander.—Any person who shall knowingly make, utter, circulate or transmit to another, or others, any statement untrue in fact, derogatory to the financial condition of any building and loan association, in this state, with intent to injure any such financial institution, or who shall counsel, aid, procure or induce another or originate, make, utter, transmit or circulate any such statement or rumor, with like intent, shall be guilty of an offense and upon conviction shall be punished by a fine not more than Twenty-five hundred dollars or by imprisonment in the state penitentiary for a period not exceeding two years or both by such fine and imprisonment. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 70.]

Art. 1136a—4. Penalty for embezzlement, etc.—Every officer, director, member of any committee, clerk or agent of any building and loan association doing business in this State who embezzles, abstracts or misapplies any of the moneys, funds or credits of such association, who issues or puts into circulation any warrant or other orders, without proper authority, who issues, assigns, transfers, cancels or delivers up any note, bond, draft, mortgage, judgment, decree or any other written instrument belonging to such association, who certifies to or makes a false entry in any book, report or statement of or to such association, with intent in either case to deceive, injure or defraud such association, or any member thereof, or for the purpose of inducing any person to become a member thereof, or to deceive anyone appointed to examine the affairs of such association, shall be deemed guilty of a felony and on conviction thereof shall be imprisoned in the State penitentiary for a period of not less than one year nor more than ten years. Whoever, with intent to deceive, injure, or defraud a building and loan association, as provided by law, or other company, corporation or person, aids or abets any officer, member of any committee or other person in committing any of the prohibited acts enumerated herein shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a period of not less than one year nor more than ten years. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 71.]

Art. 1136a—5. Penalty for declaring greater dividends than earned.—Any member of the board of directors of a building and loan association who knowingly votes to declare or, being secretary or manager thereof, who wilfully declares or advises the board of directors thereof to declare a greater dividend than has actually been earned, or has been previously accumulated as surplus by such association, shall personally refund same and be liable to the corporation therefor jointly and severally. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 72.]

Art. 1136a—6. Penalty for failing to comply with law.—Any building and loan association violating the provisions of this law [1] or failing to comply with the provisions of this law may be required by the Banking Commissioner to pay from Five ($5.00) Dollars per day to Twenty-five ($25.00) Dollars per day to the State Banking Department for each day it so fails after lawful notice of the delinquency by the Banking Commissioner of Texas. The Attorney General is authorized to file suit for the collection of such penalty upon certification by the Banking Commissioner of the failure or refusal of such association to remit the penalty assessed by him. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 73; Acts 1943, 48th Leg., p. 482, ch. 323, § 1.]

1 Articles 1136a—1 to 1136a—9; Rev.Civ.St. arts. 881a—1 to 881a—68.

Art. 1136a—7. Penalty for misrepresentation.—Any person who knowingly and maliciously or with intent to defraud, makes any false or fraudulent statement concerning any association or its affairs shall be guilty of a misdemeanor and fined in the sum of one thousand dollars, or be imprisoned for thirty days. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 74.]

Art. 1136a—8. Penalty for suppressing evidence.—Every officer, director, employee or agent of any building and loan association who, for the purpose of concealing any fact or suppressing any evidence against himself or against any other person, abstracts, removes, mutilates, destroys or secretes any paper, book or record of any building and loan association or of the Banking Commissioner of Texas, shall be deemed guilty of a felony, and upon conviction therefor, shall be punished by confinement in the State penitentiary for a period of not less than one year nor more than five years. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 75.]

Art. 1136a—9. Disclosures of examiners—Penalty.—The Banking Commissioner and any examiner, inspector, deputy, assistant or clerk, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of such officer required him to report upon or take official action regarding the affairs of the association so examined, or who wilfully makes a false official report as to the condition of such association, shall be removed from his position or office and shall be fined not more than five hundred dollars, or imprisoned in the county jail for not more than one year, or both. Reports of examinations made to the Banking Commissioner of Texas shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may, upon request of the Association, be furnished to the Federal Home Loan Bank Board and/or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. Nothing herein shall prevent the proper exchange of information relating to building and loan associations and the business thereof with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of any individual association or company be disclosed. Any official violating any provision of this Section, in addition to the penalties herein provided, shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. [Acts 1929, 41st Leg., 2nd C.S., p. 100, ch. 61, § 20; Acts 1932, 42nd Leg., 3rd C.S., p. 34, ch. 18, § 1.]

Art. 1137. Dealing in acceptances.—Any officer, director, employé, or agent of any corporation organized for the purpose of contracting with reference to, or otherwise dealing in acceptances, bills of exchange, bills of lading, warehouse and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing of agricultural products, who shall enter into, or cause such corporation to enter into, any contract of acceptance, guaranty, indorsement, or suretyship, without complying with the laws of this State regulating such contracts, shall be fined not less than two hundred nor more than one thousand dollars, or be imprisoned in jail not less than three months nor more than one year, or both. [Acts 2nd C. S. 1919, p. 21.]

Art. 1137a. [Repealed by Acts 1943, 48th Leg., p. 654, ch. 372, § 12.]

The article repealed was Acts 1927, 40th Leg., p. 324, ch. 220.

Art. 1137b. Aircraft licenses.

Definitions

Section 1. In this Act "aircraft" means any contrivance now known or hereafter invented, used or designated for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "public aircraft" means any aircraft used exclusively in the Federal governmental service or the State governmental service. The term "civil aircraft" means any aircraft other than public aircraft. The term "airman" means any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way and any individual who is in charge of the inspection, overhauling, or repairing of aircraft.

License required

Sec. 2. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this State should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States Government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the State, whether for commercial, pleasure or noncommercial purposes, unless it is licensed and registered by the Departments of Commerce of the United States in the manner prescribed by the lawful rules and regulations of the United States Government then in force.

License of operator

Sec. 3. No person shall serve as an airman in connection with any civil aircraft when such aircraft is flown or operated in this State until he shall have obtained a license under the provisions of the Federal Air Commerce Act of 1926 and amendments thereto and the Air Commerce Regulations and Air Traffic Rules pursuant thereto.

Personal possession of license

Sec. 4. The certificate of the license herein required shall be kept in the personal possession of the licensee when he is operating aircraft within this State, or serving in connection with any civil aircraft flown or operated in this State, and must be presented for inspection upon the demand of any passenger, any peace officer of this State, or any official, manager or person in charge of any airport or landing field in this State upon which he shall land or perform any service.

Government aircraft excepted

Sec. 5. The provisions of this act shall not apply to any public aircraft owned by the Government of the United States or by this State. Any person who navigates or serves as an airman in any civil aircraft which has not been licensed and registered by the Department of Commerce of the United States in the

manner prescribed by the lawful rules and regulations of the United States Government in force.[1]

[1] So in enrolled bill. Last sentence of section 5 is incomplete.

Penalty

Sec. 6. Any person who navigates within this State any civil aircraft without an airman's license, or who serves as an airman in connection with any civil aircraft flown or operated within this State, without an airman's license issued in accordance with the provisions of the Air Commerce Act of 1926 and amendments thereto, shall be guilty of a misdemeanor and punishable by a fine of not more than $500.00 nor less than $100.00 or by imprisonment in the county jail for not more than six months nor less than thirty days, or both; provided, however, that acts or omissions made unlawful by this article shall not be deemed to include any act or omission which violated the law or lawful regulations of the United States; but it shall not be necessary to allege or prove, as part of the case of the State, that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be matter of defense, unless it affirmatively appears from the evidence adduced by the State. [Acts 1929, 41st Leg., p. 624, ch. 285.]

Section 7 of this Act provides that if any provision of the Act is held invalid, such decision shall not affect the remainder.

Art. 1137c. [Repealed Acts 1929, 41st Leg., 2nd C.S., p. 16, ch. 11, § 2; Acts 1929, 2nd C.S., p. 203, ch. 96, § 10.]

Article repealed was Acts 1929, 41st Leg., 1st C.S., p. 253, ch. 104.

Art. 1137d. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

The article repealed was Acts 1929, 41st Leg., 2nd C.S., p. 203, ch. 96, § 3.

Art. 1137e. Unlawful use of long distance telephone lines.—Sec. 1. It shall be unlawful for any person, without the express consent of the person, firm, co-partnership or corporation in whose home, office or place of business any telephone instrument is located and installed for the purpose of rendering telephone service, to communicate or converse by means or by use of such telephone instrument over any long distance telephone line or lines in this State, and charge or cause to be charged to such person, firm, co-partnership or corporation in whose home, office or place of business such telephone instrument is located and installed, the fee, rate or toll fixed or imposed therefor.

Sec. 2. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than One ($1.00) Dollar nor more than One Hundred ($100.00) Dollars. [Acts 1931, 42nd Leg., p. 27, ch. 22.]

Art. 1137f. Protection of aircraft and equipment.

Definitions

Section 1. Definitions: When used in this Act: (a) "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in the air, except a parachute or other contrivance designed for such navigation, but used primarily as safety equipment.

(b) "Airport" means any locality, either of land or water, which is used or which is made available for the landing and taking off of aircraft, and, as used in this Act, shall include landing fields.

(c) "Beacon" means any light, mark or signal invented, used or designed for the aid and guidance of any aircraft.

Throwing missiles or firing gun into aircraft forbidden

Sec. 2. It shall be unlawful for any person to willfully throw or project a stone or any other missile, or fire any gun or pistol at, against or into any aircraft or parachute or any contrivance designed for navigation of or flight in the air, whether such aircraft, parachute or contrivance be moving or not, or whether the same be in the air or on the ground.

Removal or molesting with aircraft or instruments forbidden

Sec. 3. It shall be unlawful for any person in this State to willfully use, operate, molest, damage, destroy or tamper with any aircraft, parachute or any contrivance designed for the navigation of, or flight in the air; or to willfully remove, molest or change any instrument, attachment, appliance or accessory connected with, or forming a part of such aircraft, parachute or contrivance, without the consent of the owner of such aircraft, parachute or contrivance.

Interference with lights unlawful

Sec. 4. It shall be unlawful for any person to willfully remove, destroy, impair or tamper with any beacon, light, signal or mark erected for the purpose of indicating any airlane, airway, airport or landing field, without the consent of the owner of such beacon, light, signal or mark.

Obstruction of landing fields unlawful

Sec. 5. It shall be unlawful for any person to willfully place any obstruction or impediment calculated or designed to make the operation of any aircraft more unsafe upon any airport, landing field or aeroplane runway, or to willfully place any false beacon, light, signal or mark, in any location with the intent to mislead or deceive the operator of any aircraft as to the true position of any airport, landing field, aeroplane runway, airlane or airway.

Penalty

Sec. 6. Any person found guilty of violating any portion of Sections Two, Three, Four or Five of this Act shall be punished by confinement in the State Penitentiary for any term of years not less than one nor more than five, or by fine of not less than Twenty-five ($25.00) Dollars nor more than One Thousand ($1,000.00) Dollars, or by confinement in the County jail for any term not less than one year. Provided that in the event death results from any of the Acts described in this law, the offense shall be murder, and the same shall be punishable as such. [Acts 1931, 42nd Leg., p. 90, ch. 57.]

Section 7 of this Act repeals all conflicting laws and parts of laws. Section 8 provides that if any provision shall be held invalid, such decision shall not affect the remainder.

Art. 1137g. Fraudulent use of vending and slot machines.—Sec. 1. Any person who shall knowingly operate or use, or cause to be operated or used, or who shall attempt to operate or use, or attempt to cause to be operated or used, any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, by means of a slug or any false, counterfeited, mutilated, sweated or foreign coin, or imitation of any coin, or by any means, method, trick or device whatsoever not lawfully authorized by the owner, lessee or licensee of such machine, coin-box telephone or receptacle; or who shall take, obtain or receive from or in connection with any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, any goods, wares, merchandise, gas,

electric current, article of value, or the use or enjoyment of any telephone or telegraph facility or service, or of any musical instrument, phonograph or other property, without depositing in and surrendering to such machine, coin-box telephone or receptacle lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such machine, coin-box telephone or receptacle shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding Two Hundred ($200.00) Dollars, or imprisonment in the county jail not exceeding ninety days, or both.

Sec. 2. Any person who, with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of any automatic vending machine, slot machine, coin-box telephone or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use or enjoyment of property or service, or who, knowing or having cause to believe that the same is intended for unlawful use, shall manufacture for sale or sell or give away any slug, article, device or substance whatsoever intended or calculated to be placed or deposited in any such automatic vending machine, slot machine, coin-box telephone or other receptacle, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding Two Hundred ($200.00) Dollars, or imprisonment in the county jail not exceeding ninety days, or both.

Sec. 2-A. Provided further, however, that the provisions of this Act shall not apply to any machines or devices being operated in violation of the law.

Sec. 2-B. Provided, that any owner, operator, agent, representative or person controlling the operation of any said machine or machines, who knowingly accepts money so deposited and fraudulently fails to give to the depositor of said money the service or the thing offered for sale, shall be punished as provided herein. [Acts 1931, 42nd Leg., p. 126, ch. 84.]

Art. 1137h. Recording maps or plats of subdivisions of real estate.—Sec. 1. No party shall file for record or have recorded in the official records in the County Clerk's office any map or plat of a subdivision or resubdivision of real estate without first securing approval therefor as may be provided by law, and no party so subdividing or resubdividing any real estate shall use the subdivision's or resubdivision's description in any deed of conveyance or contract of sale delivered to a purchaser unless and until the map and plat of such subdivision or resubdivision shall have been duly authorized as aforesaid and such map and plat thereof has actually been filed for record with the Clerk of the County Court of the county in which the real estate is situated.

Sec. 2. Any party violating any provision of Section 1 of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than Ten Dollars ($10.00) nor more than Five Hundred Dollars ($500.00), or confined in the county jail not exceeding ninety (90) days, or both such fine and imprisonment, and each act of violation shall constitute a separate offense, and in addition to the above penalties any violation of the provisions of Section 1 of this Act shall constitute prima facie evidence of an attempt to defraud. [Acts 1931, 42nd Leg., p. 266, ch. 160.]

Art. 1137i. [Repealed by Acts 1941, 47th Leg., p. 107, ch. 86.]

The article repealed was Acts 1935, 40th Leg., p. 207, ch. 85.

Art. 1137i—1. Sale of merchandise made by convicts or prisoners prohibited; exceptions.—Section 1. It shall be unlawful for any person, firm, partnership, association, or corporation to sell or offer for sale within the State of Texas any goods, wares, or merchandise manufactured wholly or in part by convicts or prisioners in penal or reformatory institutions, except convicts or prisoners on parole or probation, and provided further that nothing in this Section shall be construed to forbid or prohibit the sale of such goods produced or manufactured in the prison institutions of this State to the State, or to any political subdivision thereof, or to any public institution owned or managed and controlled by the State or any subdivision thereof.

Sec. 2. Any person, firm, partnership, association, or corporation which shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200) for the first offense, and not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500) for each subsequent offense. [Acts 1941, 47th Leg., p. 107, ch. 86.]

Section 2a of the Act of 1941 repealed Article 1137i.

Art. 1137j. Fraudulent land deals; conveyances of land in which person has no interest.—Sec. 1. It shall be unlawful for any person, acting for himself or as an officer or purported officer of any association, firm or corporation, to execute or deliver to any other person, association, firm or corporation, any deed, mortgage, deed of trust or any other instrument in writing purporting to convey any land or interest in land within this State, when such person at the time of the execution of such instrument knows that neither he nor the association, corporation or firm for which he is acting or purports to be acting is the owner of or has an interest in the land described in said instrument; and it shall further be unlawful for any person, acting in his said individual capacity or in behalf of the organizations hereinbefore named, to knowingly receive such instrument or to tender for record such instrument, knowing at the time of such receiving or tendering that the person, firm or corporation executing such instrument was not the owner of the land nor the interest therein which said instrument conveys or purports to convey.

Sec. 2. Any person violating any of the provisions of this Act shall be deemed guilty of misdemeanor and, upon conviction thereof, shall be punished by fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 439, ch. 263.]

Art. 1137k. Tickets, sale at price in excess of purchase price without license prohibited; license.—Section 1. Every person who sells, or offers to sell, any ticket or tickets to any sports event, amusement, or entertainment in the State of Texas for which an admission charge is made, in excess of the price for said ticket or tickets as printed thereon, shall be required, before being authorized to do so, to procure a license to engage in such activity on application therefor to the Comptroller of Public Accounts of the State of Texas. Such application shall be in writing on forms prescribed by said Comptroller of Public Accounts and shall be verified by the applicant. The application shall state the name, post office address, residence, and citizenship of the applicant, and contain such other information as shall be required by the Comptroller of Public Accounts. Such application shall be examined by the Comptroller of Public Accounts and if he finds that it complies with the law and that the applicant is entitled to a license, he shall issue such license and deliver same to the applicant upon the payment by the applicant of an annual license fee of Two Hundred and Fifty Dollars ($250). Such license shall run for a period of one year from the date of its issuance.

Sec. 2. The Comptroller of Public Accounts shall not be authorized to issue any license required by this Act to any firm, partnership, association, or corporation in the name of such firm, partnership, association, or corporation; such license may be issued only in the individual name of any officer, member, agent, servant, or employee of any firm, partnership, association, or corporation which officer, member, agent, servant, or employee may in any manner sell, or offer to sell, any ticket or tickets to any sports event, entertainment or amusement in the State of Texas for which an admission charge is made, in excess of the price for said ticket as printed thereon. An individual application and payment of the license fee as required in Section 1 of this Act shall be required of each officer, member, agent, servant, or employee of any firm, partnership, association, or corporation, which shall, for and on behalf of, or as agent for, such firm, partnership, association, or corporation, engage in the activities regulated by this Act.

Sec. 3. All license fees collected from the issuance of licenses required herein shall be paid into the General Fund of the State of Texas.

Sec. 4. Whoever shall sell, or offer for sale, either as an individual or as an officer, member, agent, servant, or employee of any firm, partnership, association, or corporation, any ticket or tickets to any sports event, amusement or entertainment in the State of Texas for which an admission charge is made, in excess of the price for said ticket as printed thereon, without first having procured a license therefor as required by this Act, shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), or be imprisoned in the county jail not to exceed one year or both. Each sale or attempt to sell any ticket or tickets without such license shall be a separate offense.

Sec. 5. If any section or provision of this Act shall be held invalid for any reason, the remainder of this Act shall not be in anywise affected. [Acts 1941, 47th Leg., p. 490, ch. 307.]

Art. 1137*l*. Secondhand watches, sale or exchange of; tag to be attached.—Any person or persons, firm or firms, partnership or partnerships, association or associations, corporation or corporations, engaged in the business of buying or selling watches, or any agent or servant thereof, who may sell or exchange, or offer for sale or exchange, expose for sale or exchange, possess with the intent to sell or exchange, or display with the intent to sell or exchange any secondhand watch, shall affix and keep affixed to the same a tag with the word "secondhand" clearly and legibly written or printed thereon, and the said tag shall be so placed that the word "secondhand" shall be in plain sight at all times. [Acts 1941, 47th Leg., p. 518, ch. 314, § 1.]

Art. 1137*l*—1. Invoice covering secondhand watch; contents; keeping on file.—Any person or persons, firm or firms, partnership or partnerships, association or associations, corporation or corporations, engaged in the business of buying or selling watches, or any agent or servant thereof, who may sell a secondhand watch or in any other way pass title thereto shall deliver to the vendee a written invoice bearing the words "secondhand watch" in bold letters, larger than any of the other written matter upon said invoice. Said invoice shall further set forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the name of the watch or its maker, and the serial numbers, if any, and any other distinguishing numbers or identification marks upon its case and movement. If the serial numbers or other distinguishing numbers or identification marks shall have been erased, defaced, removed, altered, or covered, said invoice shall so state. The vendor shall keep on file a duplicate of said invoice for at least five (5) years from the date of the sale thereof, which shall be open to inspection during all business hours by the County or the District Attorney of the county in which the vendor is engaged in business, or his duly authorized representative. [Acts 1941, 47th Leg., p. 518, ch. 314, § 2.]

Art. 1137*l*—2. Advertising or displaying secondhand watches.—Any person or persons, firm or firms, partnership or partnerships, association or associations, corporation or corporations, or any agent or servant thereof, who may advertise or display in any manner a secondhand watch for sale or exchange shall state clearly in such advertisement or display that said watch is a secondhand watch. [Acts 1941, 47th Leg., p. 518, ch. 314, § 3.]

Art. 1137*l*—3. Watch deemed secondhand when.—A watch shall be deemed to be secondhand if:

(a) It as a whole, or the case thereof, or the movement thereof has been previously sold to or acquired by any person who bought or acquired the same for his use or the use of another, but not for resale; provided however, that a watch which has been so sold or acquired and is thereafter, within one year from the date of original sale, returned either through an exchange or for credit to the original individual, firm, partnership, association, or corporation who sold or passed title to such watch, shall not be deemed to be a secondhand watch for the purposes of this Act, if such vendor shall keep a written or printed record setting forth the name of the purchaser thereof, the date of the sale or transfer thereof, and the serial number, if any, on the case and the movement, and any other distinguishing numbers or identification marks, which said record shall be kept for at least five (5) years from the date of such sale or transfer and shall be opened for inspection during all business hours by the County Attorney or the District Attorney of the county in which such vendor is engaged in business, or his duly authorized representative; or

(b) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks shall be erased, defaced, removed, altered, or covered; or

(c) If its movement is more than one year old and has been repaired by any person or persons, including the vendor, notwithstanding that it may have been returned either through an exchange or for credit to the said original vendor. Cleaning and oiling a watch movement or recasing the movement in a new case shall not be deemed a watch repair for the purposes of this section. [Acts 1941, 47th Leg., p. 518, ch. 314, § 4.]

Art. 1137*l*—4. Violations; punishment.—Any person or persons, firm or firms, partnership or partnerships, association or associations, corporation or corporations, or any agent or servant thereof, who shall violate any of the provisions of this Act shall be guilty of a misdemeanor and shall be punishable by a fine not to exceed the sum of Five Hundred Dollars ($500), or by imprisonment not to exceed one hundred (100) days, or by both such fine and imprisonment. [Acts 1941, 47th Leg., p. 518, ch. 314, § 5.]

Art. 1137*l*—5. Application of act.—The provisions of this Act shall not apply to pawnbrokers' auction sales of unredeemed pledges. [Acts 1941, 47th Leg., p. 518, ch. 314, § 6.]

Art. 1137*l*—6. Partial invalidity.—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. [Acts 1941, 47th Leg., p. 518, ch. 314, § 7.]

TITLE 15—OFFENSES AGAINST THE PERSON

CHAPTER 1.—ASSAULT AND ASSAULT AND BATTERY

Article 1138. [1008] [587] [484] "Assault and battery."—The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

Art. 1139. [1009] [588] [485] Intent presumed, and "injury."—When an injury is caused by violence to the person, the intent to injure is presumed, and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be either bodily pain, constraint, a sense of shame or other disagreeable emotion of the mind.

Art. 1140. [1010–11–12] How it may be committed.—An assault or an assault and battery may be committed by the use of any part of the body of the person committing the offense, as of the hand, foot, head, or by the use of any inanimate object, as a stick, knife, or anything else capable of inflicting the slightest injury; or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person; or by any means used, as by spitting in the face or otherwise, which is capable of inflicting an injury; and may be committed though the person actually injured thereby was not the person intended to be injured.

Art. 1141. [1013] [592] [489] "Coupled with ability to commit."—By the terms "coupled with an ability to commit," as used in article 1138 is meant:

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

3. It follows, that one who is, at the time of making an attempt to commit a battery under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed as that he cannot reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. But the use of any dangerous weapon, or the semblance thereof, in an angry or threatening manner, with intent to alarm another, and under circumstances calculated to effect that object, comes within the meaning of an assault. [Amended in revising in 1879.]

Art. 1142. [1014–15] Lawful violence.—Violence used to the person does not amount to an assault or battery in the following cases:

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

2. To preserve order in a meeting for religious, political or other lawful purposes.

3. To preserve the peace, or to prevent the commission of offenses.

4. In preventing or interrupting an intrusion upon the lawful possession of property.

5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.

6. In self defense, or in defense of another against unlawful violence offered to his person or property.

7. Where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

Art. 1143. [1016] [595] [492] Verbal provocation.—No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in mitigation of the punishment affixed to the offense.

Art. 1144. [1017] [596] [493] "Battery."—The word "battery" is used in this Code in the same sense as "assault and battery."

Art. 1145. [1019] [598] [495] Punishment.—The punishment for a simple assault or for assault and battery shall be a fine not less than five nor more than twenty-five dollars.

Art. 1146. [1021] [600] [495b] Intimidation.—Any person who shall by threatening words or by acts of violence or intimidation prevent or attempt to prevent another from engaging or remaining in or from performing the duties of any lawful employment shall be fined not less than twenty-five nor more than five hundred dollars, or be confined not less than one nor more than six months in jail. [Acts 1887, p. 13.]

CHAPTER 2.—AGGRAVATED ASSAULTS AND OTHER OFFENSES

Article 1147. [1022] [601] Definition.—An assault or battery becomes aggravated when committed under any of the following circumstances:

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

2. When committed in a court of justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

3. When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

4. When committed by a person of robust health or strength upon one who is aged or decrepit.

5. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.

6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

7. When a serious bodily injury is inflicted upon the person assaulted.

8. When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

Art. 1148. [1024] [603] Punishment.—The punishment for an aggravated assault or battery shall be a fine not less than twenty-five nor more than one thousand dollars, or imprisonment in jail not less than one month nor more than two years, or both such fine and imprisonment.

Art. 1149. Assault with motor vehicle.—If any driver or operator of a motor vehicle or motorcycle shall wilfully 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. [Acts 1917, p. 484; Acts 1939, 46th Leg., p. 240, § 1.]

Section 2 of the amendatory act of 1939 repeals all conflicting laws and parts of laws.

Art. 1150. Failure to stop and render aid.—Whenever an automobile, motorcycle or other motor vehicle whatsoever, regardless of the power by which the same may be propelled, or drawn, strikes any person or collides with any vehicle containing a person, the driver of, and all persons in control of such automobile, motor vehicle or other vehicle shall stop and shall render to the person struck or to the occupants of the vehicle collided with all necessary assistance including the carrying of such person or occupants to a physician or surgeon for medical or surgical treatment, if such treatment be required, or if such carrying is requested by the person struck or any occupant of the vehicle collided with; and such driver and person having or assuming authority of such driver shall further give to the occupant of such vehicle or person struck, if requested at the time of such striking or collision or immediately thereafter, the number of such automobile, motorcycle or motor vehicle, also the name of the owner thereof and his address, the names of the passenger or passengers not exceeding five in each automobile or other vehicle, together with the address of each one thereof. Any person violating any provision of this article is punishable by imprisonment in the penitentiary not to exceed five years or in jail not exceeding one year or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [Acts 1917, p. 484.]

Art. 1151. Assault with a prohibited weapon.—If any person shall wilfully commit an assault or an assault and battery upon another with a pistol, dirk, dagger, slung shot, sword cane, spear or knuckles made of any metal or made of any hard substance, bowie knife, or any knife manufactured or sold for the purpose of offense or defense, while the same is being carried unlawfully by the person committing said assault, he shall be deemed guilty of an assault with a prohibited weapon and upon conviction shall be punished by a fine not to exceed two hundred dollars or by imprisonment in jail not to exceed two years, or by confinement in the penitentiary for not more than five years. [Acts 1913, p. 237.]

CHAPTER 3.—HAZING AND OTHER VIOLENCE

Art.
1152. "Hazing" defined.
1153. Teacher, etc., assisting in hazing.
1154. Student punished.
1155. Teacher, etc., punished.
1156. Construction of statute.
1157. Violence to induce confession.
1158. Whipping inmate of Training School.

Article 1152. "Hazing" defined.—No student of the University of Texas, of the A. & M. College of Texas, of any normal school of Texas, or of any other State educational institution of this State, shall engage in what is commonly known and recognized as hazing, or encourage, aid or assist any other person thus offending.

"Hazing" is defined as follows:—

1. Any wilful act by one student alone or acting with others, directed against any other student of such educational institution, done for the purpose of submitting such student made the subject of the attack committed, to indignity or humiliation, without his consent.

2. Any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of intimidating such student attacked by threatening such student with social or other ostracism, or of submitting such student to ignominy, shame, or disgrace among his fellow students, and acts calculated to produce such results.

3. Any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of humbling, or that is reasonably calculated to humble the pride, stifle the ambition, or blight the courage of such student attacked, or to discourage any such student from longer remaining in such educational institution or to reasonably cause him to leave such institution rather than submit to such acts.

4. Any wilful act by any one student alone, or acting with others, in striking, beating, bruising or maiming; or seriously offering, threatening, or attempting to strike, beat, bruise, or maim, or to do or seriously offer, threaten, or attempt to do physical violence to any student of any such educational institution or any assault upon any such students made for the purpose of committing any of the acts, or producing any of the results to such student as defined in the preceding subdivisions of this article. [Sec. 1, Act April 3, 1913, Acts 1913, p. 239.]

Art. 1153. Teacher, etc., assisting in hazing.—No teacher, instructor, member of any faculty, or any officer or director, or a member of any governing board of any of such educational institutions shall knowingly permit, encourage, aid or assist any student in committing the offense of hazing, or wilfully acquiesce in the commission of such offense, or fail to promptly report his knowledge or any reasonable information within his knowledge of the presence and practice of hazing in the institution in which he may be serving to the executive head or governing board of such institution. Any act of omission or commission shall be deemed "hazing" under the provisions of this chapter. [Sec. 2, Id.]

Art. 1154. Student punished.—Any student of any of the said State educational institutions of this State who shall commit the offense of hazing shall be fined not less than twenty-five nor more than two hundred and fifty dollars or shall be confined in jail not less than ten days nor more than three months, or both. [Sec. 3, Id.]

Art. 1155. Teacher, etc., punished.—Any teacher, instructor, or member of any faculty, or officer or director of any such educational institution who shall commit the offense of hazing shall be fined not less than fifty or not more than five hundred dollars, or shall be imprisoned in jail not less than thirty days or not more than six months, or both, and in addition thereto shall be immediately discharged and removed from his then position or office in such institution, and shall thereafter be ineligible to reinstatement or reemployment as teacher, instructor, member of faculty, officer, or director in any such State educational institution for a period of three years. [Sec. 4, Id.]

Art. 1156. Construction of statute.—Nothing herein shall be construed as in any manner affecting or repealing any law of this State respecting homicide, or murder, manslaughter, assault with intent to murder, or aggravated assault. [Sec. 5, Id.]

Art. 1157. Violence to induce confession.—Any sheriff, deputy sheriff, constable, deputy constable, Texas ranger, city marshal, chief of police, policeman, or any other officer having under arrest or in his custody any person as a prisoner who shall torture, torment or punish such person by inflicting upon him any physical or mental pain for the purpose of making or attempting to make such person confess to any knowledge of the commission of any offense against the laws of this State, shall be fined not less than one dollar nor more than one thousand dollars or be imprisoned in jail not to exceed one year, or both such fine and imprisonment, and in addition thereto the jury may state in its verdict that the defendant should never thereafter be allowed to hold any office of profit or trust under the laws of this State, or any subdivision thereof, nor any city or town thereof. Should the jury so state in its verdict, the court trying said case shall render judgment in accordance with said verdict and thereafter the defendant shall forever be barred from holding any such office. [Acts 1923, p. 269.]

Art. 1158. Whipping inmate of Training School.—Corporal punishment in any form shall not be inflicted upon any inmate of the State Training School except as a last resort to maintain discipline, and then only in the presence of the superintendent and a resident nurse. At no time shall any inmate be struck more than twenty times, and that only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment. At no time shall any weapon or instrument of torture be used, or any instrument which by its make, coupled with the manner of its use would be calculated to inflict bodily injury. Anyone violating any provision of this article shall be fined not less than $25.00 nor more than $100.00 or confined not less than thirty nor more than ninety days in jail, or both. [Acts 1st C. S. 1913, p. 11.]

CHAPTER 4.—ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSES

Art.
1159. Assault to maim, disfigure or castrate.
1160. Assault with intent to murder.
1161. "Bowie knife" and "dagger."
1162. Assault with intent to rape.
1163. Assault with intent to rob.
1164. Assault in attempting burglary.
1165. Test of assault to commit offense.

Article 1159. [1025] [604] [499] Assault to maim, disfigure or castrate.—If any person shall assault another with intent to commit the offense of maiming, disfiguring, or castration, he shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not less than two nor more than five years and if such assault be made by a person or persons in disguise, the penalty shall be double. [Acts 1871, p. 20.]

Art. 1160. [1026] [605] [500] Assault with intent to murder.—If any person shall assault another with intent to murder, he shall be confined in the penitentiary not less than two nor more than fifteen years; provided that if the jury find that the assault was committed without malice, the penalty assessed shall be not less than one nor more than three years confinement in the penitentiary; if the assault be made with a bowie-knife or dagger, or in disguise, or by laying in wait, or by shooting into a private residence, the punishment shall be double.

Sec. 2. Upon the trial of any person for assault with intent to murder, the Court, in its charge to the jury, shall define malice aforethought and in a proper case murder without malice, and instruct the jury touching the application of the law to the facts. [O. C. 493; Acts 1871, p. 20; Acts 1903, p. 160; Acts 1931, 42nd Leg., p. 95, ch. 61.]

Section 3 of Acts 1931, repeals all conflicting laws or parts of laws.

Art. 1161. [1027] [606] [501] "Bowie-knife" and "dagger."—A "bowie-knife" or "dagger" as here and elsewhere used means any knife intended to be worn upon the person which is capable of inflicting death and not commonly known as a pocket knife.

Art. 1162. [1029] [608] [503] Assault with intent to rape.—If any person shall assault a woman with intent to commit the offense of rape, he shall be confined in the penitentiary for any term of years not less than two. [O. C. 494, Acts 1895, p. 104.]

Art. 1163. [1030] [609] [504] Assault with intent to rob.—If any person shall assault another with the intent to commit the offense of robbery, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1858, p. 171.]

Art. 1164. [1031] [610] [506] Assault in attempting burglary.—If any person in attempting to commit burglary shall assault another, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 171.]

Art. 1165. [1023–1032] [611] [506] Test of assault to commit offense.—An assault with intent to commit any other offense is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit such other offense, as of maiming, murder, rape or robbery.

CHAPTER 5.—MAIMING, DISFIGURING AND CASTRATION.

Art.
1166. Maiming.
1167. Disfiguration.
1168. Castration.

Article 1166. [1033–4] Maiming.—Whoever shall wilfully and maliciously cut off or otherwise deprive a person of the hand, arm, finger, toe, foot, leg, nose or ear, or put out an eye or in any way deprive a person of any other member of his body shall be confined in the penitentiary not less than two nor more than ten years.

Art. 1167. [1035–6] Disfiguring.—Whoever wilfully and maliciously places any mark by means of a knife or other instrument upon the face or other part of the person of another shall be confined in

the penitentiary not less than two nor more than five years or be fined not exceeding two thousand dollars. [Acts 1858, p. 171.]

Art. 1168. [1037–8] Castration.—Whoever wilfully and maliciously deprives any person of either or both or any part of either or both of the testicles shall be confined in the penitentiary not less than five nor more than fifteen years.

CHAPTER 6.—FALSE IMPRISONMENT

Article 1169. [1039] [618] "False imprisonment."—False imprisonment is the wilful detention of another against his consent and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats or by any other means which restrains the party so detained from removing from one place to another as he may see proper.

Art. 1170. [1040] [619] Assault or violence necessary.—The assault or violence may be such as is spoken of in defining an assault and battery.

Art. 1171. [1041] [620] What impediment necessary.—The impediment must be such as is in its nature calculated to detain the person and from which he cannot by ordinary means relieve himself.

Art. 1172. [1042] [621] Character of threat necessary.—The threat must be such as is calculated to operate upon the person threatened and inspire a just fear of some injury to his or another's person, reputation or property and the age, sex, condition, disposition or health of the one threatened is to be considered in determining whether the threat was sufficient to intimidate and prevent such person from moving beyond the bounds in which he was detained.

Art. 1173. [1043] [622] Lawful detention.—It is no offense to detain one for the objects mentioned in article 1142 as justifying the use of force, but when it is claimed as a justification that such circumstances existed it must be shown also that the detention was necessary to effect any such object.

Art. 1174. [1044] [623] Penalty.—Any person guilty of false imprisonment shall be fined not exceeding five hundred dollars or be confined in jail not exceeding one year.

Art. 1175. [1045] [624] Detention after discharge on habeas corpus.—If any officer or any person shall hold or detain in any manner any one who has been ordered to be discharged by any court or judge upon the hearing of a writ of habeas corpus, he shall be fined not exceeding one thousand dollars or be confined in jail not exceeding two years.

Art. 1176. [1046] [625] Refusal to allow consultation with counsel.—If any officer or any person having the custody of a prisoner shall wilfully prevent such prisoner from consulting or communicating with counsel, or from obtaining the advice or services of counsel in the protection or prosecution of his legal rights, he shall be confined in jail not less than sixty days nor more than six months and be fined not exceeding one thousand dollars.

CHAPTER 7.—KIDNAPPING AND ABDUCTION

Article 1177. [1056] [626] [521] Kidnapping.—When any person is falsely imprisoned for the purpose of being removed from the State, or if a minor under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is "kidnapping." If the person kidnapped to[1] be under fifteen years of age, it is not necessary that there should be want of consent nor that there should be force in order to constitute kidnapping, and, in such a case, consent of such a minor shall be no defense. One guilty of kidnapping shall be confined in the State Penitentiary not less than Five nor more than Twenty-five years, or by fine not exceeding two thousand dollars. [Acts 1858, p. 171; Acts 1929, 41st Leg., p. 543, ch. 266, § 1.]

[1] So in enrolled bill. Should probably be omitted.

Art. 1177a. Kidnapping for extortion.—Sec. 1. That every person who forcibly detains, or forcibly takes, or forcibly confines, or forcibly conceals, or fraudulently entices away any other person for the purpose or with the intent of taking or receiving or demanding or extorting from the person so restrained, or his relatives or from any other person, any money or valuable thing, or every person who by force, threats, fraud, duress, or enticement takes, confines, kidnaps, conceals or entices away any other person for the purpose or with the intent of taking or receiving, or demanding, or extorting from the person so restrained or kidnapped, or his relatives, or from any other person, any money or valuable things, is guilty of a capital felony and upon conviction shall be punished by death or confinement in the penitentiary for any term of years not less than five. [Acts 1931, 42nd Leg., p. 12, ch. 12; Acts 1933, 43rd Leg., 1st C.S., p. 51, ch. 17, § 1.]

Sec. 2. The aforesaid penalty applies in every case regardless of whether the offense originated within or without the State and the venue of the offense shall lie in the County where the kidnapping occurred, or where the person was held or detained or in any County through which the kidnapped person was taken. [Acts 1931, 42nd Leg., p. 12, ch. 12.]

Art. 1178. [1058] [628] [523] If one kidnapped be actually removed.—If the person so falsely imprisoned be actually removed out of the State, the punishment shall be imprisonment in the penitentiary not less than two nor more than ten years.

Art. 1179. [1059] [629] [524] "Abduction."—"Abduction" is the false imprisonment of a woman with intent to force her into a marriage or for the purpose of prostitution.

Art. 1180. [1060] [630] [525] Of female under fourteen.—If a girl under the age of fourteen years be taken for the purpose of marriage or prostitution from her parent, guardian or other person having the legal charge of her, it is abduction whether she consent or not and though a marriage afterward take place between the parties.

Art. 1181. [1061] [631] [526] Abduction complete.—Abduction is complete if the female is detained as long as twelve hours though she may afterwards be relieved from such detention without marriage or prostitution.

Art. 1182. [1062] [632] [527] Punishment for abduction.—One guilty of abduction shall be fined not exceeding two thousand dollars. If by reason of such abduction a woman be forced into marriage the punishment shall be confinement in the pen-

itentiary not less than two nor more than five years; and if by reason of such abduction a woman be prostituted, the punishment shall be confinement in the penitentiary not less than three nor more than twenty years.

CHAPTER 8.—RAPE

Art.
1183. "Rape."
1184. "Force."
1185. "Threat."
1186. "Fraud."
1187. Proof of carnal knowledge.
1188. Defendant must be over fourteen.
1189. Penalty.
1190. Attempt to rape.

Article 1183. [1063] [633] [528] "Rape."—Rape is the carnal knowledge of a woman without her consent obtained by force, threats or fraud; or the carnal knowledge of a woman other than the wife of the person having such carnal knowledge with or without consent and with or without the use of force, threats or fraud, such woman being so mentally diseased at the time as to have no will to oppose the act of carnal knowledge, the person having carnal knowledge of her knowing her to be so mentally diseased; or the carnal knowledge of a female under the age of eighteen years other than the wife of the person with or without her consent and with or without the use of force, threats or fraud; provided that if she is fifteen years of age or over the defendant may show in consent cases she was not of previous chaste character as a defense. [Acts 1891, p. 96; Acts 1895, p. 79; Act April 2, 1918, Acts 4th C.S. 1918, p. 123.]

Art. 1184. [1064] [634] [529] "Force."—The definition of "force" as applicable to assault and battery applies also to rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties and other circumstances of the case.

Art. 1185. [1065] [635] [530] "Threat."—The threat must be such as might reasonably create a just fear of death or great bodily harm, in view of the relative condition of the parties as to health, strength and other circumstances of the case.

Art. 1186. [1066] [636] [531] "Fraud."—The fraud must consist in the use of some stratagem by which the woman is induced to believe the man is her husband, or in administering without her knowledge or consent some substance producing unnatural sexual desire or such stupor as prevents or weakens resistance and committing the offense while she is under the influence of such substance. It is a presumption of law which cannot be rebutted by testimony that no consent was given under the circumstances set out in this article.

Art. 1187. [1067] [637] [532] Proof of carnal knowledge.—Penetration only is necessary to be proved on a trial for rape.

Art. 1188. [1068] [638] [533] Defendant must be over fourteen.—One under the age of fourteen at the time the offense was committed cannot be convicted of rape or assault with intent to rape.

Art. 1189. [1069] [639] [534] Penalty.—A person guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five.

Art. 1190. [1070] [640] [536] Attempt to rape.—If it appear on the trial of an indictment for rape that the offense though not committed was attempted by the use of force, threats or fraud, but not such as to bring it within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to rape and assess his punishment at confinement in the penitentiary for any term of years not less than two.

CHAPTER 9.—ABORTION

Art.
1191. Abortion.
1192. Furnishing the means.
1193. Attempt at abortion.
1194. Murder in producing abortion.
1195. Destroying unborn child.
1196. By medical advice.

Article 1191. [1071] [641] [536] Abortion.—If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused. [Acts 1907, p. 55.]

Art. 1192. [1072] [642] [537] Furnishing the means.—Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Art. 1193. [1073] [643] [538] Attempt at abortion.—If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

Art. 1194. [1074] [644] [539] Murder in producing abortion.—If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

Art. 1195. [1075] [645] [540] Destroying unborn child.—Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

Art. 1196. [1076] [646] [541] By medical advice.—Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

CHAPTER 10.—ADMINISTERING POISONOUS AND INJURIOUS POTIONS

Art.
1197. Poisoning food, well, etc.
1198. Administering injurious substances.
1199. Death within a year, murder.
1200. Malpractice punishable.

Article 1197. [1077] [647] [542] Poisoning food, well, etc.—Whoever shall mingle or cause to be mingled any noxious potion or substance with any drink, food or medicine, with intent to kill or to injure any other person, or shall wilfully poison or cause to be poisoned any spring, well, cistern or reservoir of water with such intent, shall be confined in the penitentiary not less than two or [1] more than ten years.

[1] So in enrolled bill. Should probably read "nor".

Art. 1198. [1078] [648] [543] Administering injurious substances.—Whoever with intent to injure shall cause another person to inhale or swallow any substance injurious to health or any function of the body, or administer such substance with intent to kill, shall be confined in the penitentiary not

less than two nor more than five years. [Acts 1858, p. 172.]

Art. 1199. [1079] [649] [544] Death within a year, murder.—If by reason of the commission of any offense named in the two preceding articles the death of a person be caused within one year, the offender shall be deemed guilty of murder. [O. C. 539.]

Art. 1200. [1080] [650] [545] Malpractice punishable.—If any person engaged in the practice of medicine and claiming to be a physician shall by the use of any noxious substance administered in a grossly ignorant manner produce death, or other great bodily injury, he shall be punished for the offense as any other person would be who had given such substance knowing it to be injurious and intending to kill or injure. [O. C. 540.]

CHAPTER 11.—HOMICIDE

Art.
1201. "Homicide."
1202. Destruction of life must be complete.
1203. Foregoing article refers to acts of others.
1204. Body of deceased must be found.
1205. Person killed must be in existence.
1206. Homicide produced by words, etc.

Article 1201. [1081] [651] [546] "Homicide."—"Homicide" is the destruction of the life of one human being by the act, agency, procurement, or culpable omission of another. [O. C. 541.]

Art. 1202. [1082] [652] [547] Destruction of life must be complete.—The destruction of life must be complete by such act, agency, procurement or omission; but although the injury which caused death might not under other circumstances have proved fatal, yet if such injury be the cause of death, without its appearing that there has been any gross neglect or manifestly improper treatment of the person injured, it is homicide. [O. C. 542.]

Art. 1203. [1083] [653] [548] Foregoing article refers to acts of others.—What is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician or any attendant. If the person inflicting the injury which makes it necessary to call aid in preserving the life of the person injured shall wilfully fail or neglect to call such aid, he shall be deemed equally guilty as if the injury were one which would inevitably lead to death. [O. C. 543.]

Art. 1204. [1084] [654] [549] Body of deceased must be found.—No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed. [O.C. 544; Acts 1887, p. 14.]

Art. 1205. [1085] [655] [550] Person killed must be in existence.—The person upon whom the homicide is alleged to have been committed must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence however frail such existence may be or however near extinction from other causes. [O. C. 445.]

Art. 1206. [1086] [656] [551] Homicide produced by words, etc.—Although it is necessary to constitute homicide that it shall result from some act of the party accused, yet if words be used which are reasonably calculated to produce and do produce an act which is the immediate cause of death, it is homicide; as for example, if a blind man, a stranger, a child, or a person of unsound mind, be directed by words to a precipice or other dangerous place where he falls and is killed; or if one be directed to take any article of medicine, food or drink, known to be poisonous and which does produce a fatal effect; in these and like cases the person so operating upon the mind or conduct of the person injured shall be deemed guilty of homicide. [O. C. 546.]

CHAPTER 12.—JUSTIFIABLE HOMICIDE

Art.
1207. When justifiable.
1208. Killing a public enemy.
1209. Execution of a convict.
1210. By officer in execution of lawful order.
1211. Even though order is erroneous.
1212. Qualification of foregoing.
1213. Order may be written or verbal
1214. Written order.
1215. Verbal order justifies only in felony.
1216. Persons aiding officer justified.
1217. Persons aiding escape.
1218. Federal officers included.
1219. In suppressing riots.
1220. Adultery as justification.
1221. In defense of person or property.
1222. In preventing felonies, etc.
1223. Presumption from weapon of deceased.
1224. Defense against milder attack.
1225. Retreat not necessary.
1226. Requisites of the attack.
1227. Defense of property.

Article 1207. [1087] [657] [552] When justifiable.—Homicide is justifiable in the cases enumerated in the succeeding articles of this chapter.

Art. 1208. [1088–89] Killing a public enemy.—It is lawful to kill a public enemy, not only in the prosecution of war, but when he may be in the act of hostile invasion or occupation of any part of the State. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this State or with the United States. Homicide of a public enemy by poison or by the use of poisoned weapons is not justifiable. Homicide of a public enemy who is a deserter or prisoner of war or the bearer of a flag of truce is not justifiable.

Art. 1209. [1091] [661] [556] Execution of a convict.—The execution of a convict for a capital offense by a legally qualified officer under the warrant of a court of competent jurisdiction is justifiable when the same takes place in the manner authorized by law and directed by warrant.

Art. 1210. [1092] [662] [557] By officer in execution of lawful order.—Homicide by an officer in the execution of lawful orders of magistrates and courts is justifiable when he is violently resisted and has just grounds to fear danger to his own life in executing the order.

Art. 1211. [1093] [663] [558] Even though order is erroneous.—The officer is justifiable though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from a proper authority.

Art. 1212. [1094] [664] [559] Qualification of the foregoing.—The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.
2. It must have such form as the law requires to give it validity.
3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.
4. If the person executing the order be an officer and performing a duty which no other person can by law perform, he must have taken the oath of office and given bond, where such is required by law.

5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.

6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same or hear it read the person charged with its execution shall produce the order and show it or read it.

7. In making an arrest under a written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.

8. The officer or other person executing an order of arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not in any case kill one who attempts to escape, unless in making or attempting such escape the life of the officer is endangered, or he is threatened with great bodily injury.

9. In overcoming a resistance to the execution of an order, the officer or person executing the same may oppose such force as is necessary to overcome the resistance, but he shall not take the life of the person resisting unless he has just ground to fear that his own life will be taken or that he will suffer great bodily injury in the execution of the order.

10. A prisoner under sentence of death or of imprisonment in the penitentiary or attempting to escape from the penitentiary may be killed by the person having legal custody of him, if his escape can in no other manner be prevented.

Art. 1213. [1095] [665] [560] Order may be written or verbal.—The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

Art. 1214. [1096] [666] [561] "Written order."—Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property.

Art. 1215. [1097] [667] [562] Verbal order justifies only in felony.—No officer or other person ordered verbally to arrest another is justified in killing except the arrest be in a case of felony or for the prevention of a felony.

Art. 1216. [1098] [668] [563] Persons aiding officer justified.—Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself.

Art. 1217. [1099] [699] [564] Persons aiding escape.—All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed or who is attempting to escape.

Art. 1218. [1100] [670] [565] Federal officers included.—Officers acting under the authority of the laws or courts of the United States have the same rights and are liable to the rules prescribed in this chapter.

Art. 1219. [1101] [671] [566] In suppressing riots.—Homicide is justifiable when necessary to suppress a riot when the same is attempted to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life.

Art. 1220. [1102] [672] [567] Adultery as justification.—Homicide is justifiable when committed by the husband upon one taken in the act of adultery with the wife, provided the killing take place before the parties to the act have separated. Such circumstance cannot justify a homicide where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection.

Art. 1221. [1104] [674] [569] In defense of person or property.—Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth.

Art. 1222. [1105] [675] [570] In preventing felonies, etc.—Homicide is justifiable when inflicted for the purpose of preventing murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide be committed by the party about to be injured or by another in his behalf, when the killing takes place under the following circumstances:

1. It must reasonably appear by the acts or by words coupled with the acts of the person killed that it was the purpose and intent of such person to commit one of the offenses above named.

2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.

3. It must take place before the offense committed by the party killed is actually completed, except that in case of rape the ravisher may be killed at any time before he has escaped from the presence of his victim, and except also in the cases hereinafter enumerated.

4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.

5. If homicide takes place in preventing a robbery, it is justifiable if done while the robber is in the presence of the one robbed or is flying with the property taken by him.

6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offense.

7. In case of arson the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building or at the place where the theft is committed, or is within reach of gunshot from such place or building.

9. When the party slain in disguise is engaged in any attempt by word, gesture or otherwise to alarm some other person or persons and put them in bodily fear.

Art. 1223. [1106] [676] [571] Presumption from weapon of deceased.—When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapon or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

Art. 1224. [1107] [677] [572] Defense against milder attack.—Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned, and in such cases all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack, and any person interfering in such case in behalf of the party about to be injured is not justified in killing the aggressor unless the life or person of the in-

jured party is in peril by reason of such attack upon his property.

Art. 1225. [1108] [678] [573] Retreat not necessary.—The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant.

Art. 1226. [1109] [679] [574] Requisites of the attack.—The attack upon the person of an individual in order to justify homicide must be such as produces a reasonable expectation or fear of death or some serious bodily injury.

Art. 1227. [1110] [680] [575] Defense of property.—When under article 1224 a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.
2. The possession must be legal, though the right of the property may not be in the possessor.
3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.
4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing.

CHAPTER 13.—EXCUSABLE HOMICIDE

Article 1228. [1111] [681] [576] "Excusable homicide."—Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another who is in the prosecution of a lawful object by lawful means.

Art. 1229. [1112] [682] [577] Must be done by lawful means.—The lawful act causing the death of another must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster or master to chastise the child, ward, scholar, or apprentice, yet if this be done with an instrument likely to produce death, or if with a proper instrument the chastisement be cruelly inflicted and death result, it is murder.

CHAPTER 14.—HOMICIDE BY NEGLIGENCE

Article 1230. [1113] [683] [578] Two kinds.—Homicide by negligence is of two kinds:

1. Such as happens in the performance of a lawful act; and
2. That which occurs in the performance of an unlawful act.

1. IN THE PERFORMANCE OF A LAWFUL ACT

Art. 1231. [1114—5] In first degree.—Whoever in the performance of a lawful act shall by negligence and carelessness cause the death of another is guilty of negligent homicide of the first degree. A lawful act is one not forbidden by the penal law and which would give no just occasion for a civil action.

Art. 1232. [1116] [686] [581] Must be apparent danger of causing death.—To constitute this offense there must be an apparent danger of causing the death of the person killed or some other.

Art. 1233. [1117] [687] [582] How distinguished from excusable homicide.—The want of proper care and caution distinguishes this offense from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances.

Art. 1234. [1118] [688] [583] Examples.—Throwing timbers by a workman from the roof or upper part of the house in a public street or highway, or where a number of persons are known to be around the house, or discharging firearms on or near a public highway other than a street in a town or city in such manner as would be likely to injure persons who might be passing, are examples of negligent homicide of the first degree, in case of death resulting therefrom. If death is caused by the careless discharge of firearms in a public street of a town or city, the offense will be of a higher degree.

Art. 1235. [1119] [689] [584] No apparent intention to kill.—To bring the offense within the definition of negligent homicide either of the first or second degree, there must be no apparent intention to kill.

Art. 1236. [1120] [690] [585] Must be consequence of the act.—The homicide must be the consequence of the act done or attempted to be done.

Art. 1237. [1121] [691] [586] Punishment.—Negligent homicide of the first degree shall be punished by confinement in jail not exceeding one year, or by fine not exceeding one thousand dollars.

2. IN THE PERFORMANCE OF AN UNLAWFUL ACT

Art. 1238. [1122] [692] [587] Previous rules apply to second degree.—The definitions, rules and provisions of the preceding articles of this chapter, with respect to negligent homicide of the first degree, apply also to the offense of negligent homicide of the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions.

Art. 1239. [1123] [693] [588] Only committed, when.—Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing or attempting the commission of an unlawful act.

Art. 1240. [1124] [694] [589] "Unlawful act."—Within the meaning of an "unlawful act" as used in this chapter are included:

1. Such acts as by the penal law are called misdemeanors; and
2. Such acts, not being penal offenses, as would give just occasion for a civil action.

Art. 1241. [1125] [695] [590] If intent is to commit a felony.—When one in the execution of or in attempting to execute an act made a felony by law shall kill another, though without an apparent intention to kill, the offense does not come within the definition of negligent homicide.

Art. 1242. [1126] [696] [591] In attempt at misdemeanor.—When the unlawful act attempted or executed is known as a misdemeanor, the punish-

ment of negligent homicide committed in the execution of such unlawful act shall be imprisonment in jail not exceeding three years, or by fine not exceeding three thousand dollars.

Art. 1243. [1127] [697] [592] Punishment.—If the act intended is one for which an action would lie, but not an offense against the penal law, the homicide resulting therefrom is a misdemeanor, and may be punished by fine not exceeding one thousand dollars, and by imprisonment in jail not exceeding one year.

CHAPTER 15.—MANSLAUGHTER

Articles 1244 to 1255. [Repealed by Acts 1927, 40th Leg., p. 412, ch. 274, § 3.]

CHAPTER 16.—MURDER

Art.
1256. "Murder."
1257. Punishment for murder.
1257a. Evidence.
1257b. Instructions.
1257c. Instructions on issue of murder without malice.
1258. Threats and character of deceased.

Article 1256. [1140] [710] [605] "Murder."—Whoever shall voluntarily kill any person within this State shall be guilty of murder. Murder shall be distinguished from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide or which excuse or justify the killing. [O.C. 607; Act Feb. 12, 1858; Acts 1913, p. 238; Acts 1927, 40th Leg., p. 412, ch. 274, § 1.]

Art. 1257. [1141] [711] [606] Punishment for murder.—The punishment for murder shall be death or confinement in the penitentiary for life or for any term of years not less than two. [O.C. 607; Act Feb. 12, 1858; Acts 1913, p. 238; Acts 1927, 40th Leg., p. 412, ch. 274, § 1.]

Art. 1257a. Evidence.—In all prosecutions for felonious homicide the State or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the homicide, which may be considered by the jury in determining the punishment to be assessed. Provided, however, that in all convictions under this Act and where the punishment assessed by the jury does not exceed five years, the defendant shall have the benefits of the suspended sentence act. [Acts 1927, 40th Leg., p. 412, ch. 274, § 2.]

Art. 1257b. Instructions.—In all cases tried under the provisions of this Act, it shall be the duty of the court to define "malice aforethought" and shall apply that term by appropriate charge to the facts in the case and shall instruct the jury that unless from all the facts and circumstances in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years; provided, however, that no offense committed prior to the taking effect of Chapter 274 of the General Laws of the 40th Legislature of 1927, shall be affected hereby whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of said act, the same as if said act had not been passed. [Acts 1927, 40th Leg., p. 412, ch. 274, § 3a; Acts 1927, 40th Leg., 1st C. S., p. 18, ch. 8, § 1.]

Section 3 of Acts 1927, 40th Leg., p. 412, ch. 274, repeals Title 15, chapters 15 and 18 of Penal Code 1925, and all other conflicting laws, but provides that it shall not be construed as repealing Title 15, chapter 14 of the Penal Code relating to negligent homicide.

Art. 1257c. Instructions on issue of murder without malice.—In all cases tried under the provisions of this Act it shall be the duty of the Court, where the facts present the issue of murder without malice, to instruct the jury that murder without malice is a voluntary homicide committed without justification or excuse under the immediate influence of a sudden passion arising from an adequate cause, by which it is meant such cause as would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper sufficient to render the mind incapable of cool reflection, and in appropriate terms in the charge to apply the law to the facts as developed from the evidence. [Acts 1927, 40th Leg., p. 412, ch. 274, § 3b, as added Acts 1931, 42nd Leg., p. 94, ch. 60, § 1.]

Art. 1258. [1143] [713] [608] Threats and character of deceased.—Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he may be permitted to introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the killing unless it be shown that at the time of the homicide the person killed by some act then done manifested an intention to execute the threat so made. In every instance where proof of threats has been made, it shall be competent to introduce evidence of the general character of the deceased. Such evidence shall extend only to an inquiry as to whether the deceased was a man of violent or dangerous character, or a man of kind and inoffensive disposition, or whether he was such a person as might reasonably be expected to execute a threat made.

CHAPTER 17.—DUELING

Art.
1259. Dueling.
1260. Homicide committed in a duel.

Article 1259. [1145] [715] [610] Dueling.—Any person who shall within this State fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall be confined in the penitentiary not less than two nor more than five years.

Art. 1260. [1146] [716] [611] Homicide committed in a duel.—If in any duel hereafter fought in this State, either of the combatants be killed or receive a wound from which he dies within three months, the survivor shall be deemed guilty of murder.

CHAPTER 18.—GENERAL PROVISIONS RELATING TO HOMICIDE

Articles 1261 to 1264. [Repealed by Acts 1927, 40th Leg., p. 412, ch. 274, § 3.]

CHAPTER 19.—THREATS

Art.
1265. Seriously threatening life.
1266. Threat must be seriously made.
1267. Certain threats not included.
1268. Threatening letter.
1268a. Threats to extort money.

Article 1265. [1442] [962] [809] Seriously threatening life.—Whoever shall seriously threaten to take the life of any human being or to inflict upon any human being any serious bodily injury shall be fined not less than one hundred nor more than two thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Act Feb. 22, 1875, Acts 1875, p. 51.]

Art. 1266. [1443] [963] [810] Threat must be seriously made.—To constitute the offense it is necessary that the threat be seriously made, and it is

for the jury to determine whether the threat, if made, was seriously made or was merely idle and with no intention of executing the same.

Art. 1267. [1445] [965] [812] Certain threats not included.—A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this chapter.

Art. 1268. [1446] [966] [813] Threatening letter.—Whoever shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Added in revising, 1879.]

Art. 1268a. Threats to extort money.—Whoever shall threaten to take the life of any human being or to inflict upon any human being any serious bodily injury, or to burn, injure or destroy any property of any person for the purpose or with the view of extorting money or anything of value from the person threatened shall be guilty of a felony. One guilty of the above offense shall be confined in the State Penitentiary not less than five nor more than twenty-five years. [Acts 1931, 42nd Leg., p. 11, ch. 10, § 1.]

TITLE 16—OFFENSES AGAINST REPUTATION

CHAPTER 1.—LIBEL

Article 1269. [1151] [721] "Libel."—He is guilty of "libel" who, with intent to injure, makes, writes, prints, publishes, sells, or circulates any malicious statement affecting the reputation of another in respect to any matter or thing pointed out in this chapter.

Art. 1269a. [Repealed by Acts 1943, 48th Leg., p. 164, ch. 97, subch. IX, art. 11.]

Similar provisions in Texas Banking Code of 1943, see Rev.Civ.St. art. 342—907.

Art. 1270. [1152] [722] Punishment.—If any person be guilty of libel he shall be fined not less than one hundred nor more than two thousand dollars, or be imprisoned in jail not exceeding two years; and the court may enter up judgment and issue an order thereupon directing the sheriff to seize and destroy all the publications, prints, paintings or engravings constituting the libel as charged in the indictment.

Art. 1271. [1153] [723] Forged writing.—If any person with intent to injure the reputation of another shall without lawful authority make, publish or circulate a writing purporting to be the act of some other person, and which comes within the definition of libel, as given in this chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing.

Art. 1272. [1154] [724] "Maker."—He is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated or caused it to be done by others.

Art. 1273. [1155] [725] "Publisher."—He is the publisher of a libel who, either of his own will or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel he is guilty of no offense.

Art. 1274. [1156] [726] "Circulating."—He is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

Art. 1275. [1157] [727] The ideas the statement must convey.—The written, printed or published statement, to come within the definition of libel, must convey the idea either:

1. That the person to whom it refers has been guilty of some penal offense; or,

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character; or

5. That any person in office or a candidate therefor is dishonest and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

Art. 1276. [1158] [728] Mode of publication.—A libel may be either written, printed, engraved, etched, or painted, but no verbal defamation comes within the meaning thereof; and whenever a defendant is accused of libel by means of a painting, engraving, or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving, or caricature.

Art. 1277. [1159] [729] A manuscript must be circulated.—In order to render any manuscript a libel, it must be circulated or posted up in some public place.

Art. 1278. [1160] [730] Editor, etc., prima facie guilty.—If the libel be in printed form, and issues or is sold in any office or shop where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be

deemed guilty of making or circulating such libel until the contrary is made on the trial to appear.

Art. 1279. [1161] [731] Editor, etc., may avoid responsibility.—The editor, publisher or proprietor of a public newspaper may avoid the responsibility of making or publishing a libel by giving the true author of the same, provided such author be a resident of this State and a person of good character except in cases where it is shown that such editor, publisher, or proprietor caused the libel to be published with malicious design.

Art. 1280. [1162] [732] Mechanical executor not guilty unless.—No person shall be convicted of libel merely on evidence that he has made a manuscript copy of a libel or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for whose account or by whose order it was printed shall be presumed to have known the intent of the publication, and shall be liable for the offense.

Art. 1281. [1163] [733] Actual injury not necessary.—It is sufficient to constitute the offense of libel if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained.

Art. 1282. [1164] [734] Intent to injure presumed.—The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design.

Art. 1283. [1168] [738] The offense relates to persons.—To constitute libel, there must be some injury intended to the reputation of persons, and no publication as to the government, or any of the branches thereof as such is an offense under the name of seditious writings or any other name.

Art. 1284. [1165–6–7–9–70–71] Not libelous.—It is no libel:

1. To make any publication respecting a body politic or corporate as such.

2. To make publications respecting the merits or doctrines of any particular religion, system of morals or politics, or of any particular form of government.

3. To publish any statement respecting any legislative or judicial proceedings, whether in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity.

4. To publish any criticism or examination of any work of literature, science or art or any opinion as to the qualifications or merits of the author of such work.

5. To publish true statements of fact as to the qualifications of any person for any occupation, profession or trade.

6. To make true statements of fact or express opinions as to the integrity or other qualifications of a candidate for any office or public place or appointment.

Art. 1285. [1172] [742] Recorder of minutes not liable.—Where any person by virtue of his office is required to record the proceedings of any department of the government or of any body corporate or politic, or of any association organized for purposes of business or as a religious, moral, benevolent, literary, or scientific institution, he cannot be charged with libel for any entry upon the minutes or records of such department, body, or association, made in the course of his official duties.

Art. 1286. [1173] [743] Members who assent.—If any false statement be entered upon the minutes or record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed, published, or circulated by an individual, according to the previous articles of this chapter, the members of such body or association who assent to and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published, or circulated in any other manner than as a part of the record of proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article.

Art. 1287. [1174] [744] Intent to injure.—The libelous statement referred to in the preceding article is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention.

Art. 1288. [1175] [745] "Malicious."—The word "malicious" is used to signify an act done with evil or mischievous design, and it is not necessary to prove any special facts showing ill feeling on the part of the person who is concerned in making, printing, publishing, or circulating a libelous statement against the person injured thereby.

Art. 1289. [1176] [746] Statement in legislative or judicial proceeding.—No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and from malicious purposes, comes within the definition of libel.

Art. 1290. [1177] [747] Truth of statement may be shown, when.—In the following cases the truth of any statement charged as libel may be shown in justification of the defendant:

1. Where the publication purports to be an investigation of the official conduct of officers or men in a public capacity.

2. Where it is stated in the libel that a person has been guilty of some penal offense, and the time, place and nature of the offense is specified in the publication.

3. Where it is stated in the libel that a person is of notoriously bad or infamous character.

4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office rendering him unworthy of the place. In other cases the truth of the facts stated in the libel can not be inquired into.

Art. 1291. [1178] [748] Province of jury.—The jury in every case of libel are not only the judges of the facts and of the law under the direction of the court in accordance with the constitution, but they are judges of the intent with which a libel may have been published or circulated, subject to the rules prescribed in this chapter.

Art. 1292. [1179] [749] Scope of title.—This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to affect civil remedies for the recovery of damages.

CHAPTER 2.—SLANDER

Article 1293. [1180] [750] Definition and punishment.—If any person shall, orally or otherwise, falsely and maliciously, or falsely and wantonly, impute to any female in this State, married or unmarried, a want of chastity, he shall be deemed guilty of slander and shall be fined not less than one hundred nor more than one thousand dollars, and may be in addition thereto imprisoned in jail not exceeding one year.

Art. 1294. [1181] [751] Procedure.—It shall not be necessary for the State to show that such imputation was false, but the defendant may in justification show the truth of the imputation, and the

general reputation for chastity of the female alleged to have been slandered may be inquired into.

CHAPTER 3.—SENDING ANONYMOUS LETTERS

Article 1295. [1182] Sending or delivering—Punishment.—If any person shall send or cause to be sent to any person any anonymous letter or written instrument of any character whatsoever, reflecting upon the integrity, chastity, virtue, good character or reputation of the person to whom such letter or written instrument is sent or addressed, or of any other person, or wherein the life of such person is threatened, said person so sending such letter or written instrument shall be fined not less than two hundred and fifty nor more than one thousand dollars, and confined in jail for not less than one nor more than twelve months. [Acts 1909, p. 138.]

Art. 1296. [1183] Definition of.—By an anonymous letter or written instrument, within the meaning of this chapter, is meant where the sender of the same withholds his full and true name from the same or where no name or where a fictitious name is signed thereto, or where any description of such sender instead of a name is used, such as "a friend" or the like. [Id.]

Art. 1297. [1184] Joint offender may be made to testify.—If two or more persons are concerned in the composition or sending of any anonymous letter or written instrument, as herein prohibited, then either of such persons shall be compelled to testify thereto; and the fact that such testimony will incriminate such person shall not exempt him from testifying in regard thereto. Where such person has been compelled to testify as above stated, then, when he has testified fully in regard thereto, he shall not be prosecuted for the particular offense about which he has testified. [Id.]

CHAPTER 4.—FALSE ACCUSATION AND THREATS OF PROSECUTION

Article 1298. [423] [292] [273] Malicious prosecution.—Whoever for the purpose of extorting money from another, or the payment or security of a debt due him by such other, or with intent to vex, harass or injure such person, shall institute or cause to be instituted any criminal prosecution against such other person, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not less than one month nor more than one year. [Added in revising, 1879.]

Art. 1299. [1185] [752] Combination to falsely accuse another.—If any two or more persons shall combine falsely to accuse another of an offense, and shall in pursuance of such combination make such accusation before a court or magistrate, or in any newspaper or other public print, or by the circulation of hand bills, or in any other public manner by writing, they shall be fined not exceeding two thousand dollars, or be imprisoned in jail not exceeding two years.

Art. 1300. [1186] [753] Combination to extort money.—If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be by fine not to exceed two thousand dollars, and imprisonment in the penitentiary not to exceed three years.

Art. 1301. [1187] [754] Threats of prosecution to extort money.—Whoever with intent to extort money or any pecuniary advantage shall threaten to accuse another of a felony before any court, or to publish any other statement respecting him which would come within the meaning of libel, shall be punished in the manner set forth in article 1299.

Art. 1302. [1188] [755] Publishing another as a coward.—Whoever in any newspaper or hand bill, or by notice posted up in any place shall publish another as a coward, or use toward him other opprobrious language, shall be fined not exceeding two hundred dollars; and, if such publication or posting be in consequence of a refusal to fight a duel, the punishment shall be by fine of not less than five hundred nor more than one thousand dollars.

Art. 1303. [1189] "Whitecapping."—Whoever shall post any anonymous notice or make any threats or signs or skull and cross bones, or shall by any other method post any character or style of notice or threat to do personal violence or injury to property on or near the premises of another, or who shall cause the same to be sent with the intention of interfering in any way with the right of such person to occupy said premises or to follow any legitimate occupation, calling or profession or with the intention of causing such person to abandon such premises, or precinct or county in which such person may reside, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 215.]

TITLE 17—OFFENSES AGAINST PROPERTY

CHAPTER 1.—ARSON

Article 1304. [1200] [756] [651] "Arson."—"Arson" is the wilful burning of any house

included within the meaning of the succeeding article of this chapter. [O. C. 679.]

Art. 1305. [1201] [757] [652] "House."—A "house" is any building, edifice, or structure inclosed with walls and covered, whatever may be the material used for building. [O. C. 680.]

Art. 1306. [1202] [758] [653] Offense complete, when.—The burning is complete, when the fire has actually communicated to a house, though it may be neither destroyed nor seriously injured. [O. C. 684.]

Art. 1307. [1203] [759] "Design" the essence of the offense.—It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicated therewith, by an explosion, or by any other means. [O. C. 685.]

Art. 1308. [1204] [760] [655] Intent presumed.—When fire is communicated to a house by means of the burning of another house, or some combustible matter, it is presumed that the intent was to destroy every house actually burnt; provided there was any apparent danger of such construction.[1] [O. C. 686.]

[1] So in enrolled bill. Should probably read "destruction".

Art. 1309. [1205] [761] [656] Explosions included.—The explosion of a house by means of gunpowder or other explosive matter comes within the meaning of arson. [O. C. 687.]

Art. 1310. [1206] [762] [657] House destroyed to save others.—A house blown up or otherwise destroyed for the purpose of saving another house from fire is not within the meaning of arson. [O. C. 688.]

Art. 1311. [1207] [763] [658] Owner may destroy.—The owner of a house may destroy it by fire or explosion without incurring the penalty of arson, except in the cases mentioned in the succeeding article. [O. C. 689.]

Art. 1312. [1208] [764] [659] Owner liable, when.—When a house is within a town or city, or when it is insured, or when there is within it any property belonging to another, or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered, the owner, if he burn the same, is guilty of arson. [O. C. 690.]

Art. 1313. [1209] [765] [660] Part owner can not burn.—One of the part owners of a house is not permitted to burn it. [O. C. 691.]

Art. 1314. [1210] [766] [661] Punishment.—Whoever is guilty of arson shall be confined in the penitentiary not less than two nor more than twenty years. [O. C. 694; Acts 1917, p. 352.]

Art. 1315. [1211] [767] [662] State buildings.—Whoever shall wilfully burn the capitol building of the State, the State Office Building, or the executive mansion, shall be confined in the penitentiary for life. [O. C. 694.]

Art. 1316. [1212] [768] [663] Attempt at arson.—Any person who wilfully attempts to set fire to or attempts to burn, or who shall aid or counsel in such attempt, or who shall attempt to procure the burning of buildings or property, such as are mentioned elsewhere in Chapter 1, Title 17 of the Penal Code of 1925, or any person who shall place or distribute any inflammable, or explosive, or combustible material, or any substance of whatsoever kind or character, or any article or device in any building or property mentioned in the said Chapter 1, Title 17 of the Penal Code of 1925, in an arrangement or in preparation with wilful intent to eventually set fire to or burn said building or property, or to cause said property or building to be burned, shall be guilty of an attempt to commit the offense of arson, and shall upon conviction be sentenced and confined in the penitentiary for not less than one year nor more than seven years. [O.C. 708; Acts 1931, 42nd Leg., p. 124, ch. 82; Acts 1933, 43rd Leg., p. 65, ch. 35.]

The amendatory Act of 1931, cited to the text, was declared invalid in Rotner v. State, 122 Cr.R. 309, 55 S.W.(2d) 98, on ground act contained provisions not expressed in caption, in violation of Const. art. 3, § 35.

CHAPTER 2.—OTHER WILFUL BURNING

Article 1317. [1213] [769] [664] Rules of arson applicable.—The rules and definitions contained in the preceding chapter with respect to arson apply, unless clearly inapplicable, to wilful burning under this chapter. [O. C. 597.]

Art. 1318. [1214] [770] [665] Burning other buildings, hay, lumber, etc.—Whoever shall wilfully burn any building not a house as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain, or flax, or any pile of boards, lumber, or wood, or any fence or other inclosure, the property of another, shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars. [O. C. 698.]

Art. 1319. [1215–16] Ship, or other vessel.—Whoever shall wilfully burn any ship or other vessel, or any boat of any kind whatsoever, shall be confined in the penitentiary not less than two nor more than seven years, or be fined not exceeding two thousand dollars. This offense is complete only when some person other than the offender has an interest in the property by insurance or otherwise at the time the burning takes place. [O.C. 699, 700.]

Art. 1320. [1217] [773] [668] Bridge burning.—Whoever wilfully burns any bridge which by law or usage is a public highway shall be confined in the penitentiary not less than two nor more than seven years, or be fined not exceeding five thousand dollars. [O.C. 701; Acts 1858, p. 177.]

Art. 1321. [1218–19] Burning woodland or prairie.—Whoever wilfully or negligently sets fire to, or burns, or causes to be burned, any woodland or prairie not his own, shall be fined not less than fifty nor more than three hundred dollars. This offense is complete where the offender sets fire to his own woodland or prairie and the fire communicates to the woodland or prairie of another. [O.C. 701, 703; Acts 1883, p. 102.]

Art. 1322. [1220] [776] [671] Burning insured personal property.—Whoever with intent to defraud wilfully burns any personal property owned by himself which shall be at the time insured against loss or damage from fire shall be confined in the penitentiary not less than two nor more than five years. [O.C. 704; Acts 1858, p. 178.]

Art. 1323. [1221] [777] [672] Burning another's personal property.—Whoever wilfully burns any personal property belonging to another,

the punishment for which is not otherwise provided for in this chapter, shall be fined not exceeding two thousand dollars. [O. C. 705.]

Art. 1324. [1222] [778] [673] Punishment in case of personal injury.—If any bodily injury less than death is suffered by any one by reason of the commission of any offense named in this and the preceding chapter, the punishment may be increased so as not to exceed double that which is prescribed in cases where no such injury is suffered. [O. C. 706.]

Art. 1325. [1223] [779] [674] When death ensues, murder.—Where death is occasioned by any offense described in this and the preceding chapter the offender is guilty of murder. [O. C. 707.]

Art. 1326. [1224] [780] [675] Attempts at other wilful burning.—Whoever by any means calculated to effect the object, attempts to commit any offense enumerated in this chapter, shall receive such punishment as may be assessed not to exceed one-half of the penalty which would have been affixed in case the offense attempted had been actually committed. When the punishment is confinement in the penitentiary, in no case shall the lowest term be less than two years. [O.C. 708; Acts 1858, p. 178.]

Arts. 1327, 1328. [Repealed by Acts 1947, 50th Leg., p. 947, ch. 404, § 2.]

Art. 1329. Preventing escape of sparks.—All logging and railroad locomotives, dinkey engines and other engines and boilers operated or used within two hundred feet of any forest, cut-over, brush or grass land, which do not use oil as fuel, shall be equipped with efficient appliances or devices to prevent the escape of fire and sparks from the smoke stacks, ash pans and fire boxes thereof. Such appliances and devices shall at all times be kept in proper adjustment and in good repair, and the State Forester or his designated agents may examine any locomotive or other engine to determine the condition of said appliances and devices. Any person operating any logging or railroad locomotive, dinkey engine or other engine or boiler in violation of any provision of this article shall be fined not less than ten nor more than one hundred dollars for each offense. [Acts 1923, p. 270.]

Art. 1330. [Repealed by Acts 1947, 50th Leg., p. 947, ch. 404, § 2.]

CHAPTER 3.—MALICIOUS MISCHIEF

Article 1331. [1233] [789] [681] Tampering with buoy or signal.—If any person shall wilfully remove any buoy, beacon, light or any other mark or signal erected for the purpose of indicating the channel in any bay, river, lake or other navigable water within the State, or shall erect any false buoy, beacon, light or mark or signal to indicate the channel in any such navigable water, with intent to mislead or deceive, he shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars; if death occurs by reason of such unlawful act the offender is guilty of murder. [Acts 1858, p. 179.]

Art. 1332. [1227] [783] [676] Sinking or destroying vessel.—If any person shall wilfully and maliciously cast away, sink, or destroy in any way other than by fire any vessel or boat which together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars. If the life of any person is lost by such act the offender is guilty of murder. [Acts 1858, p. 178.]

Art. 1333. Using boat without consent.—Whoever shall use in this State without the consent of the owner thereof any boat of any size or kind, which is capable of being used or operated on any bay, lake,

river or body of water or any part thereof in this State, or who shall without such consent remove therefrom any motor or part thereof, oars, rowlocks, oarlocks, anchor, anchor chain or rope, paddles, seats, planks, poles, or any rigging whatever belonging to such boat, shall be fined not less than five nor more than one hundred dollars. [Acts 1921, p. 141.]

Acts 1925, 39th Leg., ch. 172, p. 404, § 47, repeals chapter 72 of Acts 1921, 37th Leg., p. 141, from which this article was taken. See note to Article 871, ante.

Art. 1334. [1228] [784] [677] Telegraph or telephone.—If any person shall intentionally break, cut, pull or tear down, misplace or in any other manner injure any telegraph or telephone wire, post, machinery, or other necessary appurtenances to any such line, or in any way wilfully obstruct or interfere with the transmission of messages along such telegraph or telephone line, he shall be confined in the penitentiary not less than two nor more than five years or be fined not less than one hundred nor more than two thousand dollars. [Acts 1885, p. 10.]

Art. 1335. [1229] [785] [678] Obstructing railroad track, etc.—If any person shall wilfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or displace or interfere with any switch thereof, or in any way injure such road, or do any damage to any railroad, locomotive, tender or car whereby the life of any person might be endangered, he shall be confined in the penitentiary not less than two nor more than seven years. If the life of any person is lost by such act the offender is guilty of murder. [Acts 1887, p. 14.]

Art. 1336. [1259] [808] [691e] Injuring railroad, etc.—Whoever wilfully injures any railroad, locomotive engine or tender, or baggage, passenger or freight car of any railroad so as to prevent the use of the same shall be fined not less than one hundred dollars and imprisoned in jail not less than three nor more than twelve months. [Acts 1887, p. 72.]

Art. 1337. [1257] [806] [691c] Preventing moving of train.—Whoever shall by force, threats, or intimidation of any kind against any railroad engineer or any conductor, brakeman, or other officer or employé employed or engaged in running any passenger, freight or construction train running upon any railroad in this State, prevent the moving or running of such train shall be fined not less than one hundred nor more than five hundred dollars and be imprisoned in jail not less than three nor more than twelve months. Each day such trains are prevented from moving on their road is a separate offense. [Acts 1887, p. 72.]

Art. 1338. [1238] [792] [683a] Injuring baggage.—Any baggage master, express agent, hack driver or other common carrier whose duty it is to handle, remove, transfer or take care of trunks, valises, boxes or other baggage while handling the same, whether or not in the employ of any common carrier, who shall maliciously, carelessly or recklessly break, injure or destroy said baggage shall be fined not exceeding one hundred dollars. [Acts 1881, p. 17.]

Art. 1339. [1239] [793] [683b] Throwing or firing into car, etc.—Whoever shall wilfully or maliciously throw a stone or other missile or fire any gun or pistol at, against or into any engine, tender, coach, passenger car whether moving or not, or any other car of any moving train on any railway, or any railway depot, or any private residence, school house, church house, court house, store house, hotel or other public or private building, private or public tent, sailboat or steamboat, shall be fined not less than five nor more than one thousand dollars or be confined in jail not less than ten days nor more than two years. [Acts 1889, p. 36, Acts 1895, p. 161, Acts 1897, p. 41.]

Art. 1339a. [Repealed by Acts 1932, 42nd Leg., 3rd C.S., p. 111, ch. 43, § 6.]

Article repealed was Acts 1931, 42nd Leg., p. 286, ch. 167.

Art. 1339b. Stench bombs; explosion.—Sec. 1. It shall be unlawful to break, open, or explode or to abet in the breaking, opening, or exploding of any stink bomb or any stinking, offensive smelling, or injurious bomb or substance with a malicious intent wrongfully to injure, molest or coerce another, or to injure the property or business of another, or to molest another in the use, management, conduct or control of his business or property.

Sec. 2. It shall be unlawful for any person to have in his possession or to sell or manufacture in this State any stink bomb or any stinking, offensive smelling, or injurious substance, which is [1] contained in any bomb or container, and which is [1] so devised as to be designed to be broken or exploded for the purpose of emanating an unpleasant or injurious odor or gas for the purpose of injuring or being unpleasant to another or injuring the property of another.

Sec. 3. The provisions hereof shall not apply to any duly constituted police or military authorities or peace officers in the discharge of their duties.

Sec. 4. The provisions of Section 2, hereof shall not apply to licensed physicians, nurses and pharmaceutists.

Sec. 5. Any person who violates any of the provisions of this Act shall, upon conviction, be guilty of a felony, and shall be confined in the penitentiary for not less than one (1) year, nor more than twenty-five (25) years or shall be fined not less than Twenty-five ($25.00) Dollars nor more than Five Thousand ($5,000.00) Dollars, or be punished by both such fine and imprisonment. [Acts 1932, 42nd Leg., 3rd C.S., p. 111, ch. 43.]

[1] So in enrolled bill. Session Laws read "are".

Art. 1340. [1232] [788] [680a] Using animal without consent.—Any person who shall take and use or take up and use any horse, mule, ox, cow or any other dumb animal the property of another, without the consent of the owner thereof, shall be fined not less than ten nor more than one hundred dollars. This article shall not be held to interfere with the laws as to estrays, nor to prevent a prosecution for theft. [Acts 1879, p. 129, Acts 1889, p. 319.]

Art. 1341. Driving vehicle without consent.—Whoever wilfully and in the absence of the owner drives or operates or causes to be so driven or operated upon any public road or highway any automobile, motor cycle, or other motor vehicle, bicycle, buggy or other horse driven vehicle without the consent of the owner thereof, shall be fined not to exceed one thousand dollars, or be imprisoned in jail not to exceed one year, or both. [Acts 1913, p. 187; Acts 1915, p 160; Acts 1917, p. 483.]

Art. 1342. Unlawful use of State's vehicle.—Whoever uses any automobile, truck or other motor vehicle owned by this State for any purpose except in the transaction of business for the State shall be fined not less than five nor more than five hundred dollars. [Acts 1921, p. 122.]

Art. 1343. Manipulating starter or lever of vehicle.—Any person who shall without the consent of the owner or person in charge of a motor vehicle climb upon or in such vehicle, whether the same be in motion or at rest, or shall while said vehicle is at rest and unattended attempt to manipulate any of the levers, starting crank or other device or to set said vehicle in motion shall be fined not to exceed one hundred dollars or be imprisoned in the county jail for sixty days or both. [Sec. 34, p. 484, Acts 1917.]

Art. 1344. Tampering with motor vehicle.—Any person who shall individually or in association with one or more others wilfully break, injure or tamper with any part of any motor vehicle for the purpose of injuring, defacing or destroying such vehicle or temporarily or permanently preventing its useful operation or for any other purpose against the will

and without the consent of the owner thereof, or in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle, shall be fined not to exceed one thousand dollars or be imprisoned in jail not to exceed twelve months or both, provided that when such offense comes within the definition of felony theft, this article shall not be applicable. [Sec. 33, p. 484, Acts 1917.]

Art. 1345. Mischief with motor vehicle.—Whoever shall wilfully cut, mark, scratch or damage the chassis, running gear, body, sides, top, robe covering or upholstering of a motor vehicle, the property of another, or shall wilfully destroy any part thereof with any liquid or other substance, or shall wilfully cut, mash, mark or in any other way damage or destroy the cylinder, radiator, starter, battery, or any device, emblem or monogram, or any other attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner thereof, or whoever wilfully shall drain or start the drainage of any radiator or oil tank upon a motor vehicle without permission of the owner thereof, or wilfully puts any metallic or other substance or liquid in the radiator, carburetor, oil-tank, grease cup, oilers, lamps or machinery of a motor vehicle with the intent to injure or damage the same or impede the working of the machinery, maliciously tighten or loosen any bracket, bolt, wire, nut, screw or other fastening on such vehicle, shall be imprisoned in jail not to exceed one year. [Acts 1913, p. 187.]

Art. 1346. Removing parts of motor vehicle.—Whoever shall maliciously or wilfully and without authority from the owner unlawfully remove from any motor vehicle or bicycle any portion of the running or steering gear, pump, or any tire, rim, robe, cover, tube, clock, casing, radiator, fire-extinguisher, tool, lamp, starter, battery, coil, spring, gas or oil tank, bell or any signal device, speedometer, license number, horn, box, basket, trunk or carrier, shield, hood, oiler, gauge, chain or any device, emblem or monogram thereon, or any attachment, fastenings or other appurtenances or any other part attached to such vehicle which is necessary in the use or operation thereof, or whoever knowingly buys, receives or has in his possession any of said articles or any part thereof so unlawfully removed, shall be fined not exceeding one hundred dollars, or be imprisoned in jail not less than six months nor more than one year. [Acts 1913, p. 187.]

Art. 1347. Throwing glass, etc. in road.—Whoever throws or deposits in or on any public road, street or alley, or any public highway any glass bottles, glass, nails, tacks, hoops, wire, cans or any other substance likely to injure any person, animal, automobile or any vehicle upon such highway shall be fined not to exceed two hundred dollars. [Acts 1913, p. 131, Acts 1917, p. 483.]

Art. 1348. [1248] [801] [687] Removing rock, etc. from premises.—Whoever knowingly enters upon the land or premises of another and takes or removes therefrom any rock, earth, coal, slate or mineral of any kind, without the consent of the owner of such land or premises shall be fined not exceeding one thousand dollars. [Acts 1876, p. 28.]

Art. 1349. [1234] [790] [682] Robbing orchards, etc.—Whoever shall take or carry away from the farm, orchard, garden or vineyard of another without his consent, any fruit, melons or garden vegetables, shall be fined not to exceed one hundred dollars. [Acts 1874, p. 55.]

Art. 1350. [1235] [791] [683] Injuring personal property.—If any person shall wilfully and mischievously injure or destroy any growing fruit, corn, grain or other like agricultural product, or if any person shall wilfully or mischievously injure or destroy any real or personal property of any description whatever in such manner as that the injury does not come within any of the offenses otherwise provided for by this Code; or if any person who is in charge or possession of any real property of another shall wilfully, without consent of the owner, tear down, injure or destroy any house, building, edifice or material located thereon; he shall be fined not exceeding one thousand dollars; provided that when the value of the property injured is fifty dollars or less, then he shall be fined not exceeding two hundred dollars. [Acts 1889, p. 35; Acts 1927, 40th Leg., p. 254, ch. 176, § 1.]

Art. 1351. [854] Fencing land of another.—Whoever knowingly and without the consent of the owner makes any fence on or around the land of another shall be fined not to exceed two hundred dollars. [Acts 1884, p. 68.]

Art. 1351a. Misuse of grazing land under one fence, injunction.—Sec. 1. That, where one owner or lessee holds a separate tract or tracts of grazing or pasture land adjoining or adjacent to a tract or tracts of similar land held by another owner or lessee, fenced under one fence or enclosure surrounding said tracts, separately owned or leased, or enclosed with natural barriers and fences, it shall be unlawful for either owner or lessee of any such tract, or tracts, so enclosed, desiring to pasture the tract or tracts owned or leased by him, to place or keep, or cause to be placed or kept in said general enclosure, more cattle or other livestock than the tract, or tracts, owned or leased by him will reasonably pasture. Any one owning or leasing such land within said general enclosure injured by any other owner or lessee placing or keeping in said general enclosure, more cattle, or other livestock than the land owned or leased by him separately will reasonably pasture, may recover his damages by suit against the person excessively grazing said land or placing excess cattle and other livestock in such general enclosure, and shall have a lien upon the livestock of said person thus offending until said damages and all costs recovered are fully paid. It shall be unlawful for any person to place, or cause to be placed in said general enclosure, cattle or other livestock, unless he has a sufficient permanent supply of water on the land owned or leased by him in such general enclosure for such cattle or livestock; and the placing or causing to be placed in such general enclosure cattle or other livestock by any person holding or leasing land in such general enclosure but not having a sufficient permanent supply of water on the land owned or leased by him shall be deemed guilty of intentional and willful fraud and also subject to said full civil damages.

Sec. 1-a. The words "reasonably pasture" used in the foregoing Section are hereby interpreted to mean: "that number of livestock that a prudent and experienced livestock raiser is accustomed to graze on a range similar to the enclosure referred to in said Section 1 above and that such enclosure will supply ample grazing to, under the usual condition of such community wherein such enclosure is located."

Sec. 2. Any person who shall willfully violate any provision of the preceding Article shall be fined not less than Ten Dollars ($10) nor more than Five Hundred Dollars ($500), or imprisoned in the County Jail not exceeding six (6) months, or by both such fine and imprisonment, and each animal placed in the general enclosure referred to in the preceding Article in violation of the terms thereof, for each day or part of a day, shall constitute a separate offense. [Acts 1935, 44th Leg., p. 721, ch. 313.]

Sec. 2-a. Any person entitled to recover damages by suit under the provisions of Section 1 of this Act, or any person in whose favor a suit for damages may lie under the provisions thereof, shall, in addition to all other relief and remedies provided for in said Section, be entitled to an injunction in the proper court against any person or persons violating any of the provisions of this Act, upon proper showing and proof, enjoining the further violation or

threatened violation of said provisions. [Added Acts 1945, 49th Leg., p. 544, ch. 330, § 1.]

Section 3 of this Act repeals all conflicting laws and parts of laws.

Art. 1352. [1240] [794] [684] Injuring fence.—If any person shall break, pull down or injure the fence of another without his consent, or shall wilfully and without the consent of the owner thereof open and leave open any gate leading into the enclosure of another, or shall knowingly cause any hogs, cattle, mules, horses or other stock to go within the inclosed lands of another without his consent, or shall tie or stake out, or cause to be tied or staked out to graze within any inclosed lands not his own and without the consent of the owner any horse, mule or other animal, he shall be fined not less than ten nor more than one hundred dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Acts 1873, p. 41.]

Art. 1353. [1242] [795] [684a] Wilfully cutting fence.—Any person who shall wilfully and wantonly or with intent to injure the owner cut, injure or destroy any fence or part of a fence (unless such fence is the property of the person so cutting or destroying the same) shall be confined in the penitentiary not less than one nor more than five years. A fence within the meaning hereof is any structure of wood, wire, or of both, or of any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, provided however, that it shall constitute no offense for any person owning or residing upon land inclosed by the land [1] of another who refuses permission to such person residing within such inclosure free egress or ingress to their said land for said person to open a passage way through said inclosure. [Acts 1884, p. 34.]

[1] So in enrolled bill. Should probably read "fence".

Art. 1354. [1243–1244] Removal of party fence.—No person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to or connected with any fence owned or controlled by any other person shall remove the same except by mutual consent or as hereinafter provided. Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person shall have the right to withdraw or separate his fence or part of a fence from the fence of any other person; such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee of his intention to separate or withdraw his fence or part thereof for at least six months prior to the time of such intended withdrawal or separation. Any person failing to comply with the provisions of this article shall be fined not less than two nor more than fifty dollars. Every ten days shall constitute a separate offense. [Acts 1889, p. 45.]

Art. 1355. [1245] [798] Notice requiring removal.—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined or connected in any manner may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice in writing for at least six months to such person, his agent, attorney, or lessee to disconnect and withdraw his fence back on his own land. Any person who shall wilfully or negligently fail to disconnect his fence and remove the same back upon his own land after the expiration of said notice shall be fined not less than ten nor more than fifty dollars, and each ten days failure after such notice shall constitute a separate offense. [Id.]

Art. 1356. [1253] Injuring drainage canal or ditch.—Whoever shall wilfully fill up, cut, injure, destroy or in any manner impair the usefulness of any canal, drain, ditch or water course or other work constructed, repaired or improved under the provisions of the law providing for drainage districts for the purpose of drainage and protection from an overflow of water, shall be fined not exceeding one hundred dollars or be confined in jail not exceeding two months. [Acts 1907, p. 88; Acts 1911, p. 258.]

Art. 1357. Injuring levee.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment.

Laws 1925, 39th Leg., ch. 21, p. 80, § 66, repeals chapter 146 of Acts 1915, 34th Leg., p. 244, from which this article is taken. See Rev.Civ.St. Art. 8038.

Art. 1358. Destroying line work.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark, or other object fixed or established in connection with the work herein authorized shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment.

Laws 1925, 39th Leg., ch. 21, p. 80, § 66, repeals chapter 146 of Acts 1915, 34th Leg., p. 244, from which this article is taken. See Rev.Civ.St. Art. 8038.

Art. 1359. [1236] [791a] Introducing Johnson Grass.—Whoever shall wilfully and with intent to injure, sow, scatter or place, on any land not his own, the seed or roots of Johnson Grass, or Russian Thistle, or wilfully and knowingly sell, or give away any oats, hay, straw, seed or grain containing or intermixed with the seeds or roots of Johnson Grass, to any one who is ignorant of the fact that such seeds or roots are so contained in or intermixed with such oats, hay, straw, seed or grain shall be fined not less than twenty-five nor more than one thousand dollars. It shall not be necessary to allege or prove the name of the owner of the land but it shall be sufficient to allege and prove that the land was not defendant's. [Acts 1895, p. 160.]

Art. 1360. Johnson Grass and Russian Thistle.—No person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, waste-way or lateral shall permit Johnson Grass or Russian Thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district. Any person violating any provision of this article shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail not less than thirty days nor more than six months, or both. This article shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Acts 1913, p. 378; Acts 1917, p. 232.]

Art. 1361. Injuring irrigation property.—Any person who shall wilfully cut, dig, break down, destroy or injure, or open any gate, bank, embankment or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure, or other work, which is the property of another or in which another owns an interest or which is in the

lawful possession or use of another, and which is used for the purpose of irrigation, milling, mining, manufacturing, for the development of power, for domestic purposes or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this article named, or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water or to the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, machine, structure or other irrigation work, shall be fined not less than ten nor more than one thousand dollars, and may be imprisoned in jail not exceeding two years, or be so fined and imprisoned. [Acts 1917, p. 228.]

Art. 1362. Mischief with irrigation works.—Whoever shall deposit in any canal, lateral, reservoir or lake, used for any of the purposes enumerated in the preceding article, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character or any other article which might pollute the water or obstruct the flow in any such canal or other similar structure, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned in jail not exceeding six months, or be so fined and imprisoned. [Acts 1917, p. 228.]

Art. 1363. Unlawfully constructing levee.—No person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer shall construct, attempt to construct, cause to be constructed, maintain or caused to be maintained any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows so as to control, regulate or otherwise change the flood waters of said stream. Any person violating this article shall be punished by fine of not exceeding $100.00 and each day such structure is maintained or caused to be maintained shall be a separate offense. The provisions of this article shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations. [Acts 1913, p. 248; Acts 4th C.S. 1918, p. 113.]

Art. 1364. [416] Mischief with topographical survey.—Whoever destroys or defaces any mark or object fixed as a line, corner or bearing of any survey or any permanent mark or any bench mark made or set by the topographical surveyors shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 286.]

Art. 1365. [415] [289] [270] Mischief with surveys.—Whoever without authority of law shall wilfully destroy, deface, alter or change any established line, corner, or line or bearing tree of any legal survey, or shall wilfully make any new line or corner on any established legal survey without authority of law shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 220.]

Art. 1366. Injuring or defacing library property.—Whoever wilfully injures or defaces any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public library, reading room, museum, or other educational institution, by writing, marking, tearing, breaking, or otherwise mutilating, shall be fined not exceeding twenty-five dollars. [Acts 2nd C. S. 1919, p. 155.]

Art. 1367. Detaining book, etc.—Whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading room, museum, or other educational institution for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such property may be kept, shall be fined not less than one nor more than twenty-five dollars. [Acts 1913, p. 281.]

Art. 1368. [1250] [802] [690] Unlawfully herding stock.—Whoever shall herd any drove of horses, mules, cattle, sheep, goats or hogs, numbering more than five head, upon any land not his own and within one-half mile of the residence of any citizen of this State whenever the owner, lessee or legal representative of such land shall forbid such herding, and fails or refuses to remove such drove at once upon the request of such owner, lessee or legal representative; or whoever herds or causes to be herded any such drove upon the inclosed lands or pasture of another, without the consent of such owner, lessee or legal representative shall be fined not exceeding one hundred dollars. Each hour of delay after notice given or request made is a separate offense. This article shall not apply to droves which are driven through pastures by the usual route in the most direct and practicable route to any named destination traveling at the greatest practicable speed, and where there is no public road leading to the point of destination. No one shall be authorized under this article to drive any drove or herd of stock of any kind into any inclosure of another for the purpose of grazing or holding such drove or herd of stock for any length of time whatever, without the consent of the owner, lessee or person in charge of such inclosure. This article does not apply to stock while being held for shipment. [Acts 1873, p. 186; Acts 1885, p. 29; Acts 1897, p. 183.]

Art. 1369. [1241] Local option "Hog Law."—Whoever shall wilfully turn out or cause to be turned out on land not his own or under his control or wilfully fail or refuse to keep up any stock, prohibited by law from running at large in any county or subdivision of any county in which the stock law has been adopted, or wilfully allow such stock to trespass upon the land of another in such county or subdivision thereof, or wilfully permit to run at large any stock of his own, or of which he is the agent or of which he has the control, and not permitted to run at large in any county or subdivision of any county in which the stock law has been adopted, shall be fined not less than five nor more than fifty dollars. [Acts 1897, p. 112; Sec. 20a, Acts 1907, p. 124.]

Art. 1370. [1249] Local option "Horse Law."—Whoever shall knowingly permit any horses, mules, jacks, jennets, and cattle to run at large in any territory in this State where the provisions of the laws of this State have been adopted prohibiting any of such animals from running at large shall be fined not less than five nor more than two hundred dollars. [Sec. 20b, Act April 3, 1907, Acts 1907, p. 124.]

Art. 1370a. Animals running at large on State highways; enforcement notwithstanding other laws.—Sec. 1. Any person owning or having control of any horse, mule, donkey, cow, bull, steer, hog, sheep, goat or any other livestock who permits the same to traverse or roam at large, unattended, on the right-of-way of any designated State Highway in this State where the same is enclosed by fences on both sides shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred ($200.00) Dollars.

Each day that such animal as aforesaid is allowed or permitted to so roam at large on the right-of-way of any designated State Highway in this State, where

same is enclosed by fences shall constitute a separate offense.

Sec. 2. It is further provided that the State Highway Patrolmen, as well as local enforcement officers, shall have the power and authority and it shall be their duty to enforce all the provisions of this Act. Notwithstanding the provisions of Articles 6928 to 6953, inclusive, of the 1925 Revised Civil Statutes of the State of Texas; provision of Article 6954 of the 1925 Revised Civil Statutes of the State of Texas as amended by Acts 1926, Thirty-ninth Legislature, First Called Session, Page 17, Chapter 11, Section 1; Acts 1927, Fortieth Legislature, Page 363, Chapter 245, Section 1; Acts 1929, Forty-first Legislature, Page 9, Chapter 5, Section 1; Acts 1929, Forty-first Legislature, First Called Session, Page 185, Chapter 71, Section 1; Acts 1929, Forty-first Legislature, Third Called Session, Page 240, Chapter 8, Section 1; Acts 1930, Forty-first Legislature, Fourth Called Session, Page 25, Chapter 15, Acts 1931, Forty-second Legislature, Page 781, Chapter 313; Acts 1933, Forty-third Legislature, Special Laws, Page 57, Chapter 48, the provisions of Article 6955 of the 1925 Revised Civil Statutes of the State of Texas as amended by Acts 1930, Forty-first Legislature, Fourth Called Session, Page 28, Chapter 17, Section 1; and the provisions of Articles 6956 to 6971, inclusive, of the 1925 Revised Civil Statutes of the State of Texas, and notwithstanding the results of any elections heretofore or hereafter held in accordance therewith, this Act, wherein it conflicts with the above named statutes, shall be controlling as to the territorial limits herein affected. [Acts 1935, 44th Leg., p. 467, ch. 186.]

Art. 1371. Permitting bad dog to run at large.—Any owner, keeper, or person in control of any dog accustomed to run, worry or kill goats, sheep or poultry, knowing such dog to be so accustomed who shall permit such dog to run at large shall be fined not to exceed one hundred dollars. Each time such dog runs at large is a separate offense. [Acts 1923, p. 201.]

Art. 1371a. Unregistered dogs prohibited from running at large.

Registration; identification tag

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 connty 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.]

Section 8 of the Act of 1937 repealed conflicting laws.

Art. 1372. [1246–7] Dogging stock when fence insufficient.—Any owner, proprietor, lessee, or other person in charge of cleared and cultivated land surrounded with an insufficient fence, or the agent or employé of such person, who shall, with fire-arms, dogs, or otherwise, maim, wound or kill any cattle, horses or hogs of another within such inclosure, or who shall cause or procure the same to be done, shall be fined not less than ten nor more than two hundred dollars. An "insufficient fence," means a fence less than five feet high, or with openings, or crevices in some part thereof sufficiently large for the passage of the animal so maimed, wounded or killed. [Act Oct. 18, 1871, p. 10.]

Art. 1373. [1230] [1786] [679] Maiming, wounding or disfiguring domesticated animal; killing, etc., to injure owner.—Whoever shall wilfully maim, wound or disfigure any horse, ass, mule, cattle, sheep, goat, swine, dog or other domesticated animal, or whoever shall wilfully kill, maim, wound, poison, or disfigure any dog, domesticated bird or fowl of another with intent to injure the owner thereof, shall be fined not less than Ten Dollars ($10) nor more than Two Hundred Dollars ($200). In prosecutions under this Article the intent to injure may be presumed from the perpetration of the act. [Acts 1858, p. 178, amended in revising 1879; Acts 1945, 49th Leg., p. 395, ch. 257, § 1.]

Art. 1373—a. Killing certain domestic animals; scattering or depositing poison.—Whoever shall wilfully kill any horse, ass, mule, cattle, sheep, goat or swine of another, or whoever shall wilfully scatter or deposit poison on the lands owned or in possession of another, with intent to injure the owner thereof, or on any open range, public road or highway or other public area, and by so scattering or depositing poison kills or injures any horse, ass, mule, cattle, sheep, goat or swine of another, shall be punished as follows:

1. If the value of the animal or animals killed, or the injury to the animal or animals poisoned as above set out, but not killed, is Fifty Dollars ($50) or over, the punishment shall be confinement in the penitentiary for not less than two (2) nor more than ten (10) years.

2. If the value of the animal or animals killed, or the injury to the animal or animals poisoned as above set out, but not killed, is under Fifty Dollars ($50) and over Five Dollars ($5), the punishment shall be imprisonment in jail not exceeding two (2) years and by fine not exceeding Five Hundred Dollars ($500), or by such imprisonment without fine.

3. If the value of the animal or animals killed, or the injury to the animal or animals poisoned as above set out, but not killed, is of the value of Five Dollars ($5) or under, the punishment shall be a fine not exceeding Two Hundred Dollars ($200). [Added Acts 1945, 49th Leg., p. 395, ch. 257, § 2.]

Art. 1374. [1231] [787] [680] Cruelty to animals.—Whoever overdrives, wilfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, or carries any animal in or upon any vehicle, or otherwise, in a cruel or inhumane manner, or causes or procures the same to be done, or who

having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink, or cruelly abandons it, shall be fined not exceeding two hundred dollars. As used in this article the word "animal" includes every living dumb creature, and the words "torture" and "cruelly" includes every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief. [Acts 1913, p. 168; Acts 1919, p. 99.]

Art. 1375. Cruelty to impounded animal.—Whoever under the laws of this State or any municipality shall impound or cause to be impounded any animal in any pound or corral, shall supply it during such confinement with sufficient quantity of wholesome food and water, and in default thereof shall be fined not less than five nor more than fifty dollars. [Acts 1913, p. 168.]

Art. 1376. Cruelty to fowls and poultry.—Whoever receives live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses or other market houses or by any other person when to be closely confined, shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides and of such height that the fowls can stand upright without touching the top, have troughs or other receptacles easy of access at all times by the birds confined therein and so placed that their contents shall not be defiled by them, in which receptacles clean water and suitable food shall be constantly kept; keep such coops, crates or cages in a clean and wholesome condition, place only such numbers in each coop, crate or cage as can stand without crowding one another but have room to move around; not expose same to undue heat or cold; remove immediately all injured, diseased or dead fowls or other birds, and in default thereof shall be fined not less than five nor more than two hundred dollars. [Id.]

Art. 1377. [1235] Entering inclosed land to hunt or fish.—Whoever shall enter upon the inclosed land of another without the consent of the owner, proprietor or agent in charge thereof, and therein hunt with firearms or thereon catch or take or attempt to catch or take any fish from any pond, lake, tank or stream, or in any manner depredate upon the same, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not less than $10.00 nor more than $200.00 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 lands" is meant such lands as are 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 may be made by parol testimony. Provided, however, that this Act shall not apply to inclosed lands which are 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 cents per acre per year or any part of a year for such hunting, fishing or camping privileges, or where more than $4.00 per day per person is charged for such hunting, fishing or camping privileges. And provided further that this exemption 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 lands 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. [Acts 1885, p. 80; Acts 1893, p. 87; Acts 1903, p. 159; Acts 1929, 41st Leg., 1st C.S., p. 242, ch. 100; Acts 1929, 41st Leg., 2nd C.S., p. 41, ch. 26.]

Sections 3 and 4 of Acts 1929, 41st Leg., 2nd C.S., p. 41, ch. 26, repeals Article 1378, post, and all conflicting laws and parts of laws.

Acts 1939, 46th Leg., Spec.L., p. 835, relating to entry upon lands without consent of owner to hunt or fish, in counties of 15,149 to 15,300, was repealed by Acts 1941, 47th Leg., p. 57, ch. 39, § 1.

Art. 1377a. Killing, injuring, or molesting Antwerp Messenger or homing pigeons; removing or altering identification mark.—Section 1. It shall be unlawful for any person, other than the owner thereof, to shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Homing Pigeon, commonly called "carrier pigeon," having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. It shall be no defense that any person, knowingly committing such prohibited act, did not know that the Antwerp Messenger or Homing Pigeon had the name of its owner stamped upon its wing or tail or bore upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon.

Sec. 2. It shall be unlawful for any person other than the owner thereof or his authorized agent to remove or alter any stamp, leg band, ring, or other mark of identification attached to any Antwerp Messenger or Homing Pigeon.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Twenty-five Dollars ($25) for every such offense. [Acts 1941, 47th Leg., p. 721, ch. 446.]

Art. 1378. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 242, ch. 100; Acts 1929, 41st Leg., 2nd C.S. p. 41, ch. 26, § 3.]

Art. 1378a. Interference with traps and transportation of live predatory animals, penalties.—Sec. 10. Any person who shall maliciously or wilfully tamper with any of said traps, or any part thereof, or removes the same from the position in which the same was placed by the hunter or trapper, shall be fined not less than $50.00 nor more than $200.00.

Sec. 11. Any person who shall steal or fraudulently take any trap belonging to the State of Texas or United States Department of Agriculture shall be deemed guilty of a misdemeanor and shall be fined not less than $100.00 and not more than $200.00.

Sec. 12. Any person who shall steal or take away from any trap any animal mentioned in this Act[1] that may be therein shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than $100.00 and not more than $200.00 and such animals shall be regarded as the property of the State of Texas and complaints alleging violations shall allege the ownership of the animal in the State of Texas and the only proof necessary for establishing ownership shall consist in proving that the animal was taken from a trap which had been set by a trapper or hunter authorized by this Act.

Sec. 13. It shall be unlawful to move or transport any live predatory animals mentioned in this Act[1] on or along any public road, thoroughfare, or street without first securing a written permit from the Chairman of the Live Stock Sanitary Commission. Any person who violates this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum of not less than $100.00 nor more than $200.00 for each of said live predatory animals so moved or transported. Any person who has any such live predatory animals in his possession and delivers the same to any person for the purpose

of moving or transporting said live predatory animals along any public road, thoroughfare or street without said written permit, or who allows any other person to so transport or move any live predatory animals shall be deemed guilty of violating this provision and shall be punished as herein provided. The penalties provided in this section shall not apply to persons, firms or corporations that move or transport any such animals along any public road, thoroughfare or street if said animals are being moved for the purpose of exhibition or for show purposes at any menagerie, zoo, circus, show or fair; nor shall said penalties apply to any person owning or controlling any of said animals which have been tamed and domesticated, which are moved or transported along or on any public road, street or thoroughfare. [Acts 1929, 41st Leg., 1st C.S., p. 235, ch. 96.]

[1] This article and Rev.Civ.St. Art. 192b.
Sections 1–9 and 15 of this Act are published as Rev.Civ. St. Art. 192b.

CHAPTER 4.—TIMBER AND LOGS

Art.
1379. Cutting or destroying merchantable timber.
1380. Procedure.
1381. Road repairs, etc.
1382. If the offense is theft.
1383. Destroying walnut trees.
1384. Pecans and pecan timber.
1385. Log brand.
1386. Shall make report of logs cut, etc.
1387. Evidence of ownership.
1388. Offenses and definitions.
1388a. Injuring or destroying trees, shrubs or flowers on private land or in parks.
1388b—1. Setting fire to timber, fences, grass, rubbish, weeds or stubble; attempts.

Art. 1379. [1289–90] 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.]

Art. 1380. [1291–2] Procedure.—The indictment need not allege the name of the owner of the timber, but is sufficient if it alleges that the timber was not the property of the accused, and describes the land by the name of the owner or of the original grantee, or by any name by which it may be commonly known in the neighborhood in which the offense was committed. Upon a trial under the preceding article, the State may prove the ownership of the land to be in some person other than the accused by either of the following modes:

1. By a copy of a grant duly certified from the General Land Office.

2. By a deed, or a copy of a deed, or other evidence of title, duly certified, from the office of the clerk of the county court of the county where the prosecution is pending.

3. By certificate from the Comptroller's office, or from the assessor and collector of the county, that some person other than the accused pays taxes on the land.

4. By verbal testimony of title, or of notorious use and possession of the land by some person other than the accused; and such proof shall be held sufficient until contradicted by competent evidence on the part of the accused that he is the owner of the land. [Acts 1858, p. 179.]

Art. 1381. [1293] [829] Road repairs, etc.—It is no offense to cut or use timber for the purpose of making or repairing any public road or bridge passing over or immediately adjacent to the land on which such tree or timber may be found, or to use a reasonable amount of wood standing outside of an enclosure for the purpose of making fires while traveling upon the road.

Art. 1382. [1294] [830] If the offense is theft.—Nothing contained in the foregoing articles shall exempt a person from the penalty affixed to theft whenever timber is taken in such manner as to be theft.

Art. 1383. [1295] [831] Destroying walnut tree.—Whoever shall cut down or otherwise destroy or injure any walnut tree on land not his own without authority in writing from the owner of such tree, shall be fined not less than twenty-five nor more than fifty dollars. [Acts 1871, p. 42.]

Art. 1384. [1296] Pecans and pecan timber.—Whoever shall gather any pecan nuts upon inclosed land not owned, leased or controlled by him, unless it be made to appear in defense that it was done by consent of the owner, lessor, or person in control, or any person who shall cut, destroy or injure any pecan timber upon lands not his own, unless it be made to appear in defense that it was done with the consent of the owner thereof, shall be fined not less than five nor more than three hundred dollars, or be imprisoned in jail not more than three months or both. [Acts 1897, p. 53.]

Art. 1385. [1297–8] Log brand.—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded, and shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk in a book to be kept by said clerk for that purpose. [Acts 1879, p. 81.]

Art. 1386. [1299] [834] Shall make report of logs cut, etc.—Any persons who float any logs or timber in this State shall on the first day of April, July, October, and January of each year, or within fifteen days of such dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut, and such clerk shall record and index the same in a book kept for that purpose. This article shall not apply to pickets, posts, rails or firewood. [Id.]

Art. 1387. [1300] [835] Evidence of ownership.—A certificate, under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it, signed and acknowledged by such owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. [Id.]

Art. 1388. [1301–2] Offenses and definitions.—Whoever shall buy or sell any timber or log floating or that has been floated in this State, before the same has been branded, shall be fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. Whoever shall float any unbranded log or timber for market, or who shall fail to make the reports required under article 1386, or who shall brand any log or timber of another without his authority, or who shall deface any brand on any log or timber otherwise than when it is in the act of being

sawed or manufactured into lumber or other commodity for use in building, or any person not an employé of the owner, who shall without the written consent of the owner, take into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber or shingle floating in any of the waters of this State, or deposited upon the banks of any river or stream in this State, shall be fined not exceeding two hundred dollars for each offense. The accused may be prosecuted in any county in which the timber or lumber was deposited in the water, or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased or branded. By "lumber" is meant lumber attached or bound together in some way for floating, and not loose lumber; and by "shingles" is meant shingles in bunches or bundles, and not loose shingles. [Id.]

Art. 1388a. Injuring or destroying trees, shrubs or flowers on private land or in parks.—Sec. 1. That it shall be unlawful for any person wilfully to pick, pull, pull up, tear up, dig up, cut, break, injure, burn or destroy any tree, shrub, vine, flower or moss growing upon the enclosed land of another, or upon any land reserved, set aside, or maintained by this State as a public park, or as a preserve, or sanctuary for trees, plants, wild animals, birds, or fish, without having previously obtained the permission of such other or his representative or of the superintendent or custodian of such park, refuge, or sanctuary, so to do.

Sec. 2. That it shall be unlawful for any person to transport, carry, or convey, on any public highway, or to sell or expose for sale in any place any holly, youpon, smilax, dogwood, redbud, (Judas Tree) grey beard (fringe tree), jessamine, bluebonnets, Indian blankets (Indian paint brushes), cactus, gallardias, gentians (Texas Blue Bells), gay feathers (blazing star of liatris), wild or native, or evergreen or decorative trees, shrubs, vines, flowers, ferns, or moss which has been gathered, picked, cut, or dug in violation of this Act.

Provided, however, that in any prosecution under this Section it shall be a defense, that the plants, or the flowers, roots, bulbs, or other parts thereof transported, carried, or conveyed or sold, or offered for sale by him were grown under cultivation, or were taken from his own land or land under lease by him or were taken from the land of another with such other's, or his representative's permission.

Sec. 3. That any person who shall wilfully do any act made unlawful by this Act shall be punished by a fine of not less than One Dollar ($1.00) nor more than Ten Dollars ($10.00); provided that the provisions of this Act shall not apply to persons, firms or corporations while in the act of clearing and maintaining rights of way and poles, wires and other construction by or for Public Utilities; nor shall this Act apply to any person under seventeen years of age.

Sec. 4. That as used in this Act the words "person" and "another" shall be construed to embrace any firm, partnership, corporation, association, society, or organization, as well as a natural person. [Acts 1933, 43rd Leg., p. 772, ch. 230.]

Art. 1388b—1. Setting fire to timber, fences, grass, rubbish, weeds or stubble; attempts.—Section. 1. Any person who willfully or negligently sets fires 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 such fire, or who willfully or negligently causes fire to be communicated to such woods, forests, fences, grass or rubbish, or who willfully or negligently sets on fire or causes to be set on fire any timber, weeds or marshes so as to cause loss or injury to another, and any person who willfully or negligently sets fire to any pine forest which is used for the purpose of procuring turpentine, and any person who willfully or 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 every person who willfully or negligently sets fire to or communicates fire to timber lands, woods, brush, grass or stubble or lands not their own, shall upon conviction be fined not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) or be confined in the county jail for not less than thirty (30) days nor more than one (1) year or both such fine and imprisonment.

Sec. 2. Whoever by any means calculated to effect the object, attempts to commit any offense enumerated in Section 1 hereof shall be guilty of a misdemeanor and upon conviction shall be punished in the same manner as is provided in Section 1 hereof. [Acts 1939, 46th Leg., p. 242; Acts 1947, 50th Leg., p. 947, ch. 404, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws, including articles 1327, 1328 and 1330. Section 3 provided that partial invalidity should not affect the remaining portions of the Act.

CHAPTER 5.—BURGLARY

Article 1389. [1303] [838] [704] "Burglary."—The offense of burglary is constituted by entering a house by force, threats or fraud, at night, or in like manner by entering a house at any time, either day or night, and remaining concealed therein, with the intent in either case of committing a felony or the crime of theft. [O.C. 724; Acts 1876, p. 231; Acts 1897, p. 65.]

Art. 1390. [1304] [839] [705] "Burglary" by breaking.—He is also guilty of burglary who, with intent to commit a felony or theft, by breaking, enters a house in the daytime. [O. C. 725, Acts 1876, p. 231.]

Art. 1391. [1305–12–13] Burglary of private residence at night.—The offense of burglary of a private residence at night is constituted by entering a private residence by force, threats or fraud, at night, or in any manner by entering a private residence at any time, either day or night, and remaining concealed therein until night, with the intent, in either case, of committing a felony, or the crime of theft. The term "private residence," as used herein, means any building or room occupied and actually used at the time of the offense by any person as a place of residence. One guilty of burglary of a private residence at night shall be confined in the penitentiary for any term not less than five years. Such burglary is a distinct offense, and nothing making it such shall alter or repeal the two preceding articles. [Act June 5, 1899, Acts 1899, p. 318.]

Art. 1392. [1306] [840] [706] "Entry" defined.—The "entry" into a house includes every kind of entry but one made by the free consent of the occupant, or of one authorized to give such consent; it is not necessary that there should be any actual breaking to constitute burglary, except when the entry is made in the daytime.

Art. 1393. [1307] [841] [707] "Entry" further defined.—The entry is not confined to the entrance of the whole body; it may consist of the entry of any part for the purpose of committing a felony or theft, or it may be constituted by the discharge of fire-arms or other deadly missile into the house, with intent to injure any person therein, or by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced. [O. C. 726.]

Art. 1394. [1308] [842] [708] "Breaking."—By "breaking," as used in this chapter, is meant that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking; it may be by lifting the latch of a door that is shut, or by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose. [O. C. 727.]

Art. 1395. [1309] [843] [709] "House."—A "house" within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, or this State, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed. [O. C. 728.]

Art. 1396. [1310] [844] [710] "Daytime" defined.—By "daytime" is meant any time of the twenty-four hours from thirty minutes before sunrise until thirty minutes after sunset.

Art. 1397. [1311] [845] [711] Punishment for burglary.—One guilty of burglary shall be confined in the penitentiary not less than two nor more than twelve years.

Art. 1398. [1315–1316] Burglary by explosives.—Whoever shall commit burglary, as defined in this chapter, and in the commission thereof uses nitro-glycerine, dynamite, gunpowder or other high explosives, shall be confined in the penitentiary not less than twelve years. [Acts 1907, p. 210; Acts 1925, p. 331.] [39th Leg., ch. 129, § 1.]

Art. 1399. [1317] [846] [712] Offenses committed after entry.—If a house be entered in such manner as to be burglary, and the one guilty of such burglary shall after such entry commit any other offense, he shall be punished for burglary and also for whatever other offense is so committed. [O. C. 734, Acts 1858, p. 180.]

Art. 1400. [1318] [847] [713] Felony committed after entry.—If the burglary was effected for the purpose of committing one felony, and the one guilty thereof shall while in the house commit another felony, he shall be punishable for any felony so committed as well as for the burglary. [O. C. 735.]

Art. 1401. [1319] [848] [714] In case of domestic servant.—An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant or other inhabitant of such house; but a theft committed by such person after entering a house is punishable as in other cases. [O. C. 736.]

Art. 1402. [1320–21] Attempt at burglary.—An "attempt" is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling short of the ultimate design in any part of it. Whoever shall attempt to commit burglary shall be confined in the penitentiary not less than two nor more than four years. [Acts 1860, p. 100.]

CHAPTER 6.—OFFENSES ON VESSELS, STEAMBOATS AND RAILROAD CARS

Article 1403. [1322] [851] [717] Nighttime burglary of railroad car, etc.—Whoever, by any of the means enumerated in article 1389, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 738.]

Art. 1404. [1323] [852] [718] Entry by breaking.—Whoever shall, by breaking, enter a vessel, steamboat or railroad car in the daytime, with intent to commit a felony or theft, shall be punished as prescribed in the preceding article. [O. C. 739.]

Art. 1404—a. Attempted burglary.—An "attempt" is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling short of the ultimate design in any part of it. Whoever shall attempt to commit burglary of any vessel, steamboat, or railroad car, shall be confined in the penitentiary not less than two (2) nor more than four (4) years. [Acts 1935, 44th Leg., p. 767, ch. 335, § 1.]

Art. 1405. [1324] [853] [719] Offenses committed after entry.—If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglary, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in the first article of this chapter, and also for whatever other offense he may so commit. [O. C. 740.]

Art. 1406. [1325] [854] [720] Rules of burglary applicable.—The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter; and the rules prescribed in articles 1389, 1390, 1392, 1393 and 1394 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car. [O. C. 741.]

Art. 1407. [1326] [855] [721] Theft on board by servant.—A theft on board a steamboat, vessel or railroad car, committed by a servant or employé, except in cases where there has been an actual breaking in, is punishable simply as theft. [O. C. 742.]

CHAPTER 7.—ROBBERY

Article 1408. [1327] [856] [722] Robbery.—If any person by assault, or violence, or by putting in fear of life or bodily injury, shall fraudulently take from the person or possession of another any property with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary for life, or for a term of not less than five years; and when a firearm or other deadly weapon is used or exhibited in the commission of the offense, the punishment shall be death or by confinement in the penitentiary for any term not less than five years. [O.C. 743; Acts 1866, p. 202; Acts 1883, p. 80; Acts 1895, p. 89.]

Art. 1409. [1328] [857] [723] Acquisition of property by threats.—If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the

same to his own use, he shall be imprisoned in the penitentiary not less than two nor more than five years. [O.C. 744; Acts 1858, p. 180.]

CHAPTER 8.—THEFT IN GENERAL

Article 1410. [1329] [858] [724] "Theft" defined.—"Theft" is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. [O. C. 745.]

Art. 1411. [1330] [859] [725] Property must have some value.—The property must be such as has some specific value capable of being ascertained. It embraces every species of personal property capable of being taken. [O. C. 746.]

Art. 1412. [1331] [860] [726] Asportation not necessary.—To constitute "taking" it is not necessary that the property be removed any distance from the place of taking; it is sufficient that it has been in the possession of the thief, though it may not be moved out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offense is complete.

Art. 1413. [1332] [861] [727] The "taking" must be wrongful.—The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete. [O.C. 748.]

Art. 1414. [1333] [862] [728] Possession and ownership.—To constitute theft it is not necessary that the possession and ownership of the property be in the same person at the time of taking. [O. C. 749.]

Art. 1415. [1334] [863] [729] Possession.—Possession of the person so unlawfully deprived of property is constituted by the exercise of actual control, care and management of the property, whether the same be lawful or not.

Art. 1416. [1335] [864] [730] Theft of one's own property.—No person can be guilty of theft by taking property belonging to himself, except in the following cases:

1. Where the property has been deposited with the person in possession as a pledge or security for debt.
2. Where it is in the possession of an officer of the law by process from a court of competent jurisdiction.
3. Where the property is in the possession of an executor or administrator for the purpose of administration.
4. In all other cases where the person so deprived of possession is, at the time of taking, lawfully entitled to the possession thereof as against the true owner. [O. C. 751.]

Art. 1417. [1336] [865] [731] Theft by part owner.—If the person accused of the theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time. [O. C. 752.]

Art. 1418. [1337] [866] [732] "Property."—The term "property," as used in relation to the crime of theft, includes money, bank bills, goods of every description commonly sold as merchandise, every kind of agricultural produce, clothing, any writing containing evidence of an existing debt, contract, liability, promise or ownership of property real or personal, any receipts for money, discharge, release, acquittance, and printed book or manuscript, and in general any and every article commonly known as and called personal property, and all writings of every description, provided such property possesses any ascertainable value. [O. C. 753.]

Art. 1419. [1338] [867] [733] Domesticated animals and birds.—Within the meaning of "personal property," which may be the subject of theft, are included all domesticated animals and birds, when they are proved to be of any specific value. [O. C. 755.]

Art. 1420. [1339] [868] [734] Particular penalties exclude general.—Theft of certain particular kinds of property, as of a horse, etc., have a punishment affixed differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offense; but in other cases, whenever it is declared to be an offense to steal or otherwise fraudulently appropriate property, the provision is intended to include any and every species of personal property according to its general and broadest signification. [O. C. 754.]

Art. 1421. [1340] [869] [735] Punishment for felony theft.—Theft of property of the value of fifty dollars or over shall be punished by confinement in the penitentiary not less than two nor more than ten years. [O.C. 756; Acts 1895, p. 15.]

Art. 1422. [1341] [870] [736] Punishment for misdemeanor theft.—Theft of property under the value of fifty dollars and over the value of five dollars shall be punished by imprisonment in jail not exceeding two years, and by fine not exceeding five hundred dollars, or by such imprisonment without fine; theft of property of the value of five dollars or under shall be punished by a fine not exceeding two hundred dollars. [O.C. 757; Acts 1858, p. 181; Acts 1876, p. 242; Acts 1895, p. 15; Acts 1927, 40th Leg., p. 232, ch. 157, § 1.]

Art. 1423. [1342] [871] [737] General penalties not applicable when.—The two preceding articles do not apply to theft of property from the person nor to cases of theft of any particular kind of property where the punishment is specially prescribed. [O. C. 758.]

Art. 1424. [1343] [872] [738] Voluntary return.—If property taken under such circumstances as to constitute theft be voluntarily returned within a reasonable time, and before any prosecution is commenced therefor, the punishment shall be a fine not exceeding one thousand dollars. [O.C. 759; Acts 1858, p. 181.]

Art. 1425. [1344] [873] [739] "Steal" and "Stolen."—The words "steal" or "stolen," when used in this Code in reference to the acquisition of property, include property acquired by theft. [O. C. 760.]

Art. 1426. [1345] [874] [740] Stealing agricultural products.—Whoever shall fraudulently take or pluck, sever, or carry away any Indian corn, or wheat, cotton, potatoes, rice or other agricultural product, growing, standing or remaining ungathered in any plantation, field, or other ground, shall be guilty of theft. [O. C. 761.]

Art. 1426a. Stealing cotton and cotton seed.—Whoever shall fraudulently take cotton and cotton seed or either cotton or cotton seed under the value of Fifty ($50.00) Dollars, shall upon conviction for the first offense be fined not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars and by confinement in the County Jail not less than thirty (30) days nor more than six (6) months; and for the second and subsequent offenses he shall be punished by confinement in the Penitentiary not less than one year nor more than five years. [Acts 1929, 41st Leg., p. 62, ch. 28, § 1.]

This statute held too indefinite to denounce a criminal offense. Musick v. State, 121 Cr.R. 616, 51 S.W.2d 715, followed in Brunson v. State, 123 Cr.R. 342, 58 S.W.2d 1090.

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 without 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. [Acts 1931, 42nd Leg., p. 450, ch. 270; Acts 1939, 46th Leg., p. 244.]

Section 3 of the Act of 1939 provided that partial invalidity should not affect the remaining portions.

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.]

Art. 1427. [1346] [875] [741] Stealing record books or filed papers.—Whoever shall take and carry away any record book or filed paper from any clerk's office, public office, or other place where the same may be lawfully deposited, or from the lawful possession of any person whatsoever, with intent to destroy, suppress, alter or conceal, or in any wise dispose of the same, so as to prevent the lawful use of such record book or filed paper, shall be confined in the penitentiary not less than three nor more than seven years. [Acts 1858, p. 181.]

Art. 1428. [1347] [876] [742] Stealing from wreck.—Whoever with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore from any vessel wrecked, stranded or burned on the seashore, or on any river, bay or harbor of the State shall be confined in the penitentiary not less than two nor more than five years. [O. C. 770.]

Art. 1429. [1348] [877] [742a] Conversion by a bailee.—Any person having possession of personal property of another by virtue of a contract of hiring or borrowing, or other bailment, who shall without the consent of the owner, fraudulently convert such property to his own use with intent to deprive the owner of the value of the same, shall be guilty of theft, and shall be punished as for theft of like property. [Acts 1887, p. 14.]

Art. 1430. [1349] [878] [743] Receiving stolen property.—Whoever shall receive or conceal property which has been acquired by another in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, shall be punished in the same manner as if he had stolen the property. [O.C. 745a; Acts 1858, p. 180; Acts 1897, p. 26.]

Art. 1431. Motor vehicle without engine number.—No person in this State shall have or retain in his possession, or sell or offer to sell any motor vehicle from which the engine number has been removed or obliterated. Every such owner of a motor vehicle from which the engine number has been removed, erased, or destroyed in any manner, before using the same upon the public highways of this State, or selling or offering for sale any such motor vehicle, shall make application to the Highway Commission for an engine number, and the number assigned by the Highway Commission shall be stamped with a steel die on the engine of such motor vehicle. Anyone violating any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 253.]

Art. 1432. Record of engine number.—The State Highway Commission shall cause to be kept in the State Highway Department a separate register in which shall be recorded the engine number assigned to owners of motor vehicles, from which the original engine number has been removed, erased or destroyed in any manner, and before assigning any such number the Commission shall require the filing of an application for same, attested by oath of the applicant, that he is the owner of such motor vehicle, and such record shall disclose the name and address of the owner; the trade name and model of the motor vehicle; the year manufactured, and the engine number assigned. Anyone failing to comply with the requirements of this article shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 1433. When engine number is removed.—Whoever makes an application to the county tax collector for the registration of any motor vehicle from which the original engine number has been removed, erased, or destroyed in any manner until it bears the new engine number designated by the State Highway Department under the provisions of this law shall be fined not less than fifty nor more than one hundred dollars; and it shall be the duty of any person who has applied to and received from the State Highway Department a new engine number as herein provided, to present the receipt received for the registration of such new engine number from the Department to the County Tax Collector when applying for the registration of such motor vehicle under the provisions of the law and failure to so present such receipt to the county tax collector shall subject the owner of said motor vehicle to a fine of not less than ten nor more than fifty dollars. Any tax collector who shall knowingly accept an application for the registra-

tion of a motor vehicle from which the original engine number has been removed, erased or destroyed in any manner, and which does not have on it the number designated by the Highway Department, shall be fined not less than ten nor more than fifty dollars. [Id.]

Art. 1434. Second-hand motor vehicle—License fee receipt.—No person, acting for himself or another, shall sell, trade or otherwise transfer any used or secondhand vehicle required to be registered under the laws of this State unless and until said vehicle at the time of delivery has been duly registered in this State for the current year under the provisions of said law; provided, however, that a dealer may demonstrate such motor vehicle for the purpose of sale, trade or transfer under a dealer's license plate issued such dealer for demonstration purposes. Whoever, acting for himself or another, sells, trades, or otherwise transfers any such vehicle shall deliver to the transferee at the time of delivery of the vehicle the license receipt issued by the department for registration thereof for the current year and a properly assigned Certificate of Title or other evidence of title as required under the provisions of Article 1436-1 of the Penal Code of the State of Texas. Whoever, acting for himself or another, sells, trades or otherwise transfers any secondhand or used vehicle without delivering to the transferee at the time of delivery of the vehicle the license receipt issued therefor for the current year and a properly assigned Certificate of Title as herein required shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding Two Hundred Dollars ($200). [Acts 1919, p. 253; Acts 1927, 40th Leg., 1st C.S., p. 205, ch. 77, § 1; Acts 1931, 42nd Leg., p. 36, ch. 29, § 1; Acts 1947, 50th Leg., p. 732, ch. 364, § 1.]

Section 2 of the act of 1947 enacted article 1435.
Section 3 provided that partial invalidity should not affect the remaining portions of the Act.
Section 4 repealed conflicting laws.
Article was repealed by Acts 1939, 46th Leg., p. 602, § 65, as amended by Acts 1941, 47th Leg., p. 343, ch. 187, § 7, in so far as it required the delivering of bills of sale on motor vehicles to the transferee when the same are sold or transferred.

Art. 1435. Used automobiles, requirements on transfer of; filing; fee.—The current year registration license receipt and the properly assigned Certificate of Title or other evidence of title required to be delivered to the transferee of a used or secondhand vehicle under the terms of Article 1434 as amended by this Act shall be filed by the transferee within ten (10) days of the date of transfer with the County Tax Assessor-Collector of the county in which the transferee resides as an application for transfer of title as required under Article 1436—1, Penal Code of the State of Texas and as an application for transfer of license and in addition to the fees required under Article 1436—1 for the transfer of title there shall be paid a transfer fee of fifty cents (50¢) for the transfer of registration; provided that if said transferee does not file said applications within ten (10) days a penalty or fee of Five Dollars ($5) shall be paid upon the filing of such application and such penalty shall be collected for each vehicle upon application filed by the transferee. The Tax Assessor-Collector and his bondsmen shall be liable for the penalty herein provided in the event such penalty is not collected. For his services under this Act the County Tax Assessor-Collector shall retain as commission one-half (½) of fees collected for transfer of registration and one-half (½) of any penalties collected for delinquent filing of applications and the other one-half (½) such fees and penalties shall be reported to and remitted to the Highway Department on Monday of each week as other registration fees are now required to be reported and remitted. Upon receipt of an application for transfer of Certificate of Title and registration the application for transfer of title shall be handled by the Tax Assessor-Collector as provided under Article 1436—1, Penal Code of the State of Texas and in addition the Department shall issue or cause to be issued a transfer of registration receipt on the application for transfer of registration. The Department may promulgate such reasonable rules and regulations and prescribe such forms as it shall deem necessary to carry out the orderly operation of this Act. It is expressly provided that upon the transfer of any vehicle from one person to another in the State of Texas, all papers or documents relating to or supporting transfer of registration and/or Certificate of Title shall be executed in full and dated as of the date of such transfer, and any person who shall transfer a vehicle and execute such papers or documents as provided for herein wholly or partly in blank leaving out any information that is required to be furnished, shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars ($50) and not exceeding Two Hundred Dollars ($200). It is further provided that any transferee who accepts transfer papers as herein provided executed wholly or partly in blank or any person who alters, changes, or mutilates such transfer papers, or whoever violates any provision of this Section for which no specific penalty is provided shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars ($50) nor exceeding Two Hundred Dollars ($200). [Added Acts 1947, 50th Leg., p. 732, ch. 364, § 2.]

Article 1435 of Penal Code, as derived from Acts 1919, p. 253, as amended by Acts 1931, 42nd Leg., p. 36, ch. 29, § 2, relating to transfer of second-hand motor vehicles, was repealed by Acts 1939, 46th Leg., p. 602, § 65, as amended by Acts 1941, 47th Leg., p. 343, ch. 187, § 7.

Art. 1436. Records to be kept of motor vehicle.—Every person, firm or corporation engaged in the business of operating a repair shop or garage of every kind, within this State, where the repairing, rebuilding or repainting of automobiles is carried on, or electrical work in connection with the repair of automobiles is done and performed, and every person, firm or corporation engaged in the business of the purchase and sale of second hand or used automobiles within this State, shall keep a well bound book in the office or place of business where said work is carried on, or said business conducted, in which shall be kept, in a clear and intelligent manner, a register of each repair or change in any automobile of every description so repaired or dealt in by any party mentioned in this law. Repairs of a value not exceeding one dollar are hereby excepted.

Said register shall contain a substantially complete and accurate description of each car upon which there is performed said repairs, or upon which there is installed any new parts or accessories of any character, and where the said car is bought or sold as a used car, the said register shall particularly show in each of the cases mentioned, the make of the automobile, the number of cylinders, motor number, passenger capacity, model, and also the name, apparent age and sex and any special identifying physical characteristics of the party or parties claiming to be the owner or owners of the automobile, his or their usual place of address, and the State register number of such automobile. In case of the sale of a used or second-hand car by any dealer, or the owner or proprietor of any garage, a like register shall be made as to the name and address and description of said purchaser, the character and description of said car and the state register thereof. Said registers shall be kept in a secure place and be subject at all times to the inspection of any peace officer desiring to examine the same or any party or parties interested in tracing or locating stolen automobiles.

Any owner of a motor vehicle registered in the State Highway Department, as provided by law, and of which motor vehicle the cylinder block has been so damaged as to make necessary the installation of a

new cylinder block shall cause the original engine number of the motor vehicle to be stamped with a steel die on the new cylinder block, and the owner of the garage or repair shop so installing the new cylinder block and impressing the number thereon, as herein provided, shall enter a record in a substantially bound book showing the name of the owner of such vehicle, his address, the engine number, and the registration number of said vehicle. All records required to be kept by the requirements of this article shall be preserved for one year after the date recorded and shall be open to the inspection of the public at all reasonable hours. Whoever shall fail to comply with any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 253.]

Art. 1436—1. Motor vehicles; Certificate of Title Act.

Short title; legislative intent; "Motor Vehicle" includes "House Trailer"

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 house trailers, and the importation into this State of, and traffic in, stolen motor vehicles and house trailers, and the sale of encumbered motor vehicles and house trailers without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle or house trailer stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end. The terms hereinafter set out, as herein defined, shall control in the enforcement and construction of this Act, and it is further provided that wherever the term "Motor Vehicle" appears in this Act, it shall be construed to include "House Trailer." [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 1; Acts 1947, 50th Leg., p. 168, ch. 105, § 1.]

Accessories, inapplicable to

Sec. 1a. The provisions of House Bill No. 407, Chapter 4, Acts of the Forty-sixth Legislature, Regular Session, and as by this Act amended, shall not apply to the filing or recording of a lien or liens which are created only upon tires, radios, heaters, or other automobile accessories. [Added Acts 1941, 47th Leg., p. 343, ch. 187, § 8.]

"Motor vehicle" defined

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.

"House Trailer" defined

Sec. 2a. The term "House Trailer" means a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle. [Added Acts 1947, 50th Leg., p. 168, ch. 105, § 2.]

"Lien" defined

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.

"Owner" defined

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.

"Mortgagee" defined

Sec. 5. The term "Mortgagee" means any person, firm, association, or corporation holding a lien as herein defined on a motor vehicle.

"Mortgagor" defined

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.

"First Sale" defined

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.

"Subsequent Sale" defined

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.

"New Car" defined

Sec. 9. The term "New Car" means a motor vehicle which has never been the subject of a first sale.

"Used Car" defined

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.

"Person" defined

Sec. 11. The term "Person" includes individuals, firms, associations, and corporations required by law to register motor vehicles owned or used thereby, including officers, employees, or agents acting for the State of Texas or any Governmental subdivision or agency thereof, but shall not include the Federal Government or any of its agencies not required by law to register motor vehicles owned or used thereby. [As amended Acts 1947, 50th Leg., p. 284, ch. 174, § 1.]

"Hereafter" defined

Sec. 12. The term "Hereafter" means after the effective date of this Act.

"Receipt" defined

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.

"Stolen" and "Converted" defined

Sec. 14. The terms "Stolen" and "Converted" mean the same as defined in the Penal Code.

"Concealed Motor Vehicle" defined

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.

"Manufacturer" defined

Sec. 16. The term "Manufacturer" means any person regularly engaged in the business of manufactur-

ing or assembling new motor vehicles, either within or without this State.

"Importer" defined

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.

"Distributor" defined

Sec. 18. The term "Distributor" means any person engaged in the business of selling to a dealer motor vehicles theretofore bought from a manufacturer.

"Dealer" defined

Sec. 19. The term "Dealer" means any person purchasing motor vehicles for resale at retail to owners.

"Motor Number" defined

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.

"Serial Number" defined

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.

"Manufacturer's Certificate" defined

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.

"Importer's Certificate" defined

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.

"Certificate of Title" defined

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 transferree and transferer at any subsequent sale.

(b) The make.

(c) The body type.

(d) The motor number.

At such time as the stamping of permanent identification numbers on motor vehicles in a manner and place easily accessible for physical examination is universally adopted by Motor Vehicle Manufacturers as the permanent vehicle identification, the Department is authorized to use such permanent identification number as the major identification of motor vehicles subsequently manufactured. The motor number will continue to be the major identification of vehicles manufactured before such change is adopted.

(e) The serial number.

(f) The license number of the current Texas plates.

(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. [As amended Acts 1947, 50th Leg., p. 544, ch. 321, § 1.]

Certificate of title section transferred to Highway Department

Sec. 24a. The certificate of title section, and its personnel, property, equipment, and records, now a part of the Department of Public Safety of the State of Texas, are hereby transferred to and placed under the jurisdiction of the Highway Department of the State of Texas. [Added Acts 1941, 47th Leg., p. 343, ch. 187, § 9.]

"Department" defined

Sec. 25. The term "department" means the State Highway Department of the State of Texas. [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 2.]

"Designated Agent" defined

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.

Application for certificate of title before sale

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.

Manufacturer's certificate

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.

Importer's certificate

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.

Vehicles brought into state

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.

Receipts issued by designated agents

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 marked "Original" 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; provided however, that in the event there is a lien disclosed in the application, the said receipt shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed or delivered by every such designated agent to the first lien holder as disclosed in said application; the other said copy shall be marked "Duplicate Original" and shall be mailed or delivered to the address of the applicant as disclosed in the said application, 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. [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 3.]

Issuance of certificate of title

Sec. 32. Every designated agent within this State shall, on the same day issued by him, forward to the Department, by mail 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 marked "Original" on the face thereof and send the same to the address of the applicant as given in his application by first class mail; provided however, that in the event there is a lien disclosed in the application the said certificate of title shall be issued in duplicate, one of which shall be marked "Original" and shall be mailed to the address of the first lien holder as disclosed in said certificate of title by first class mail; the copy of said certificate of title shall be marked "Duplicate Original" and shall be sent by first class mail to the address of the applicant as given in his application. [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 4.]

Duplicate original

Sec. 32a. The receipt or certificate of title marked "Duplicate Original" shall be used only as evidence of title of said motor vehicle and shall not be used by any person in transferring any interest in said motor vehicle or to establish any lien thereon. [Added Acts 1941, 47th Leg., p. 343, ch. 187, § 10.]

Sale; transfer of certificate; affidavit

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.

New certificate of title when all forms have been used

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.

Transfer by operation of law; new certificate

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 divesture 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.

Loss or destruction of certificate; certified copy

Sec. 36. Should a certificate of title, "Duplicate Original" or "Original," be lost or destroyed, the owner or lien holder thereof may procure a certified copy of same directly from the Department by making affidavit upon such form as may be prescribed by the Department from time to time, accompanied by a fee of Twenty-five (25) Cents, which shall be deposited in the State Highway Fund and be expended as provided by Section 57 of this Act, provided however, that the certified copy of the certificate of title marked "Original" shall issue only to the first lien holder where a lien is disclosed thereon. Said certified copy and all subsequent certificates of title issued, until transfer of ownership of said motor vehicle, shall be plainly marked across their faces "Certified Copy," and all subsequent purchasers or lien holders of said motor vehicle shall acquire only such rights, title, or interest in such motor vehicles as the holder of the said certified copy had, provided however, that upon the transfer of title to said motor vehicle, the words "Certified Copy" shall be eliminated from the new certificate of title. Any purchasers or lien holders of such motor vehicle may at the time of such purchase or at the time lien is established require the seller or owner to indemnify him and all subsequent purchasers of said motor vehicle against any loss which he or they may suffer by reason of any claim or claims presented upon the said original certificate of title. In the event of recovery of the said certificate of title, "Duplicate Original" or "Original" thereof, the said owner shall forthwith surrender the same to the Department for cancellation and the words "Certified Copy" shall be eliminated from said certificates thereafter issued by the Department. [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 5.]

Junking motor vehicle; rebuilding or assembling motor vehicle

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.

Grounds for refusing or revoking certificate

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.

Hearing after refusal or revocation; appeal

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.

Authority to execute application or transfer

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.

Lien; notation on certificate

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.

Lien; application for new title; persons without notice

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.

Priority of liens

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.

Notation of lien

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.

Mortgagee's rights not affected by exposure for sale

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.

Creditors, liens valid against

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.

Discharge of lien

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.

Cancellation of discharged lien

Sec. 47a. The Department is hereby authorized to cancel any discharged lien which has been properly recorded on a Certificate of Title provided the record mortgages,[1] whether such mortgages [1] be an individual, firm, corporation, bank, estate, or any Governmental loaning agency, is nonexistent, or cannot be located to enable the registered owner to obtain a release of such discharged lien, provided such properly recorded lien may not be cancelled unless and until such recorded lien has been of record for six (6) years or more. [Added Acts 1947, 50th Leg., p. 1008, ch. 426, § 1.]

[1] Probably should read "mortgagee"

Duplicate receipt or certificate

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.

Alteration, forging or counterfeiting certificates; motor and vehicle numbers

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) It shall hereafter be unlawful for any person to alter, change, erase, or mutilate, for the purpose of changing the identity, any motor number, serial number, or manufacturer's number placed on a vehicle, or any part thereof by the manufacturer, or any motor number or serial number assigned by the State Highway Department and placed or caused to be placed on a vehicle by the owner as provided by law for the purpose of identification. It shall also be unlawful for any person other than a vehicle manufacturer to stamp or place any motor number or manufacturer's serial number other than a number assigned by the State Highway Department as provided by law, on any vehicle or any part thereof. Any person violating the provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200). [As amended Acts 1947, 50th Leg., p. 251, ch. 147, § 1.]

(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.

(e) If no serial number is die stamped upon a house trailer by the manufacturer of such house trailer, or if the serial number so assigned and die stamped by the manufacturer has been removed or obliterated, the Department shall, upon proper application, assign a serial number for such house trailer, and this assigned serial number shall be die stamped by the applicant, at the place designated by the Department upon such house trailer for which such serial number is assigned. The manufacturer's serial number or the serial number assigned by the Department shall be used as the major identification of the house trailer in the issuance of a Certificate of Title thereon. [Added Acts 1947, 50th Leg., p. 168, ch. 105, § 3.]

Another par. (e) was added by Acts 1947, 50th Leg., p. 452, ch. 255, § 1. See post.

(e) Any owner of a motor vehicle, trailer or semi-trailer making application for an assigned motor number for a motor vehicle or serial number for a trailer or semitrailer, shall present with the application for an assigned motor number or serial number the outstanding Certificate of Title; in the event no Certificate of Title is outstanding on the motor vehicle, trailer or semitrailer the application shall be accompanied by bill of sale or such other sufficient evidence of ownership as may be required by the Department. A fee of One Dollar ($1) shall accompany each such application and shall be deposited in the State Highway Fund. [Added Acts 1947, 50th Leg., p. 452, ch. 255, § 1.]

Another par. (e) was added by Acts 1947, 50th Leg., p. 168, ch. 105, § 3. See ante.

Stolen, converted or concealed motor vehicle

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.

Offering for sale or as security without receipt or certificate forbidden

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.

Buying without demanding receipt and certificate forbidden

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.

Sales in violation of act void

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.

Stolen, converted or concealed vehicle; application unlawful

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.

Rules and regulations; forms

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.

Designated agents; liability on bond

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.

Fees; expenses of administration

Sec. 57. Each applicant for a certificate of title or re-issuance thereof shall pay to the designated agent the sum of Fifty (50) Cents, of which Twenty-five (25) Cents shall be retained by the designated agent, from which he shall be entitled to sufficient money to pay expenses necessary to efficiently perform the duties set forth herein; and the remaining

Twenty-five (25) Cents shall be forwarded to the Department for deposit to the State Highway Fund, together with the application for certificate of title, within twenty-four (24) hours after same has been received by said designated agent, from which fees the Department shall be entitled to and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein; and there is hereby appropriated to the Department all of such fees for salaries, traveling expense, stationary, postage, contingent expense, and all other expenses necessary to administer this Act through the biennium ending August 31, 1945. Provided, any such designated agent may employ any and all necessary assistants and incur any and all necessary expense in administering this Act in his county. Such designated agent shall pay such employed assistants and such necessary expenses incurred by him from the funds retained by him hereunder, and any amount of such funds remaining in his hands in any event shall be by him remitted to the Road and Bridge Fund of his county. [As amended Acts 1941, 47th Leg., p. 343, ch. 187, § 6; Acts 1943, 48th Leg., p. 404, ch. 272, § 1.]

Alteration of certificate or receipt

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.

False or fictitious name or address

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.

Application of Act

Sec. 60. The provisions of this Act shall not apply to vehicles owned or operated by the Federal Government or any of its agencies unless such 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 vehicle; but shall apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government; provided however, that the provisions of Section 57 of this Act requiring the payment of fees, shall not apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government. [As amended Acts 1947, 50th Leg., p. 285, ch. 174, § 2.]

False or fictitious name or address; misrepresentations

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.

Violations

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.

Effective date; receipt forms

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 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.

Partial invalidity

Sec. 64. If any section, subsection, or clause of this Act is, for any reason, held to be unconstitutional, such decision shall not effect 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.]

Section 65 of Acts 1939, 46th Leg., p. 602, as amended by Acts 1941, 47th Leg., p. 343, ch. 187, § 7, read as follows: "That Article 1434, Chapter 8, Title 17 of the Penal Code of Texas, 1925, as amended by Chapter 77 of the First Called Session of the Fortieth Legislature and as amended by Chapter 29 of the Forty-second Legislature, Regular Session, 1931, be and the same is hereby repealed, in so far as it requires the delivering of bills of sale on motor vehicles to the transferee when the same are sold or transferred. That Article 1435, Chapter 8, Title 17 of the Penal Code of Texas, 1925, as amended by Chapter 29 of the Forty-second Legislature, Regular Session, 1931, be and the same is hereby repealed. That Article 5490 of the Revised Civil Statutes of Texas, 1925, Acts of the Thirty-ninth Legislature, Chapter 157, page 368, be and the same is hereby repealed in so far only as it affects the filing and recording of liens on motor vehicles. That all Acts or parts of Acts inconsistent with this Act in so far as they may affect motor vehicles or title thereto are hereby repealed."

Acts 1941, 47th Leg., p. 847, ch. 523, transferred to the State Highway Fund all unexpended and unobligated balances of appropriations made to the Department of Public Safety for use in paying salaries and other costs of the Certificate of Title Division; made an appropriation out of the General Revenue Fund to the State Highway Department to carry out the provisions of Acts 1941, 47th Leg., p. 343, ch. 187; provided for the repayment of any amounts expended from the appropriation to the General Revenue Fund from certificate of title fees received during the biennium ending August 31, 1943; and provided "that the State Highway Department pay no salaries to any persons employed by the Certificate of Title Division of the State Highway Department in excess of the amount or amounts paid for the same or similar positions in any Department of the State Government."

Section 2 of each of chapters 147, p. 251, ch. 174, p. 284, ch. 255, p. 452, ch. 321, p. 544 and ch. 426, p. 1008 of Acts 1947, 50th Leg. provided that partial invalidity should not affect the remaining portions of such acts. Section 3 of each of such Acts repealed all conflicting laws and parts of laws to the extent of such conflict.

Section 4 of Acts 1947, 50th Leg., p. 168, ch. 105, provided that partial invalidity should not affect the remaining portion.

Saved From Repeal. The Uniform Act Regulating Traffic on Highways, Acts 1947, 50th Leg., p. 967, ch. 421, incorporated in Vernon's Ann.Civ.St. art. 6701d, provides, in section 156, that such act is not intended to repeal this article.

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, tele-

phone 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 purchase, 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.]

Art. 1436b. Theft of mercury from meter of gas pipe-line; felony.—Section 1. Any person who shall enter upon any premises or gas pipe-line right of ways with intent to steal or carry away without the consent of the owner, or with intent to aid or assist in stealing or so carrying away any mercury from and out of any gas meter or any device by or through which the flow, movement, or pressure of gas is measured or regulated, or which is capable of being used to measure, regulate or control the movement of gas, shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than one (1) year nor more than five (5) years, or by confinement in the county jail for not less than ninety (90) days nor more than two hundred (200) days, or shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), or by both such fine and imprisonment.

"Gas" as that term is used herein means natural gas or artificial gas or a combination or mixture of any such gases.

Sec. 2. It is the finding and declaration that the public health, safety, and welfare require that title to any mercury should be transferred by a written bill of sale.

"Mercury" as that term is used herein means the common mineral known by that term not in combination with any other liquid, fluid, or mineral.

Sec. 3. Any person who may be found in any county in this State with mercury in his possession, and who has not in his possession a bill of sale, or other written evidence of title to said mercury shall be guilty of a felony, and upon conviction thereof, shall be confined in the penitentiary for a term of not less than one (1) year nor more than five (5) years, or shall be confined in the county jail for not less than ninety (90) days nor more than two hundred (200) days, or shall be fined not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500), or by both such fine and imprisonment.

Sec. 4. This Act shall be cumulative of all laws of the 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 mercury, and the word "steal" need not be defined in any indictment for the prosecution of any offense hereunder.

Sec. 5. If any section, paragraph, sentence, clause, or word of the Act is held to be unconstitutional, the remaining portions of the same nevertheless shall be valid and the Legislature declares that the Act would have been enacted without such unconstitutional portion. [Acts 1941, 47th Leg., p. 788, ch. 490.]

CHAPTER 9.—THEFT FROM THE PERSON

Article 1437. [1350] [879] [744] Punishment.—Whoever shall commit theft by privately stealing from the person of another shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 762.]

Art. 1438. [1351] [880] [745] Ingredients of the offense.—To constitute the offense each following circumstance must concur:

1. The theft must be from the person; it is not sufficient that the property be merely in the presence of the person from whom it is taken.

2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.

3. It is only necessary that the property stolen should have gone into the possession of the thief; it need not be carried away in order to complete the offense. [O. C. 763.]

Art. 1439. [1352] Attempt to commit theft from the person.—Whoever attempts to commit theft from the person as defined in the two preceding articles shall be confined in the penitentiary not less than one nor more than three years. [Acts 1909, p. 70.]

CHAPTER 10.—THEFT OF ANIMALS

Art.
1440. Theft of horse, ass or mule.
1441. Theft of cattle or hog.
1442. Theft of sheep or goat.
1442a. Theft of chicken or turkey.
1442b. Theft of certain domestic fowl.
1443. Wilfully driving stock from range.
1444. May drive stock in range.
1444a. Permits for transporting live-stock.

Article 1440. [1353] [881] [746] Theft of horse, ass or mule.—Whoever shall steal any horse, ass or mule shall be confined in the penitentiary not less than two nor more than ten years. [O.C. 765; Acts 1858, p. 181; Acts 1897, p. 83.]

Art. 1441. [1354] [882] [747] Theft of cattle or hog.—Whoever shall steal any cattle or hog shall be confined to the penitentiary not less than two (2) nor more than ten (10) years. [O.C. 766; Acts 1873, p. 80; Acts 1893, p. 25; Acts 1937, 45th Leg., p. 416, ch. 211, § 1.]

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. [O.C. 766; Acts 1873, p. 80; Acts 1905, p. 16; Acts 1937, 45th Leg., p. 415, ch. 210, § 1.]

Art. 1442a. Theft of chicken or turkey.—Whoever shall steal any chicken or turkey, shall be confined in the penitentiary not less than one year nor more than two years, or by fine not to exceed two hundred dollars, or by imprisonment in jail not to exceed one hundred days, or by such fine and imprisonment. [Acts 1926, 39th Leg., 1st C. S., p. 22, ch. 15, § 1.]

This article was held invalid in Redding v. State, 109 Cr.R. 551, 6 S.W.(2d) 360; 109 Cr.R. 550, 6 S.W.(2d) 361, and Williams v. State, 109 Cr.R. 539, 6 S.W.(2d) 362, as combining incongruous enactments in one statute, in violation of Const. art. 3, § 35, requiring an act to embrace but one subject.

Art. 1442b. Theft of certain domestic fowl.—Whoever shall steal any chicken, turkey, duck, goose, guinea or other domestic fowl, shall upon conviction, be guilty of a felony and shall be confined in the penitentiary for not more than two years, or shall be confined in jail for not more than one hundred days, or shall be fined not more than two hundred dollars, or be punished by both such fine and imprisonment in jail. [Acts 1929, 41st Leg., p. 247, ch. 108, § 1.]

Art. 1443. [1356–58] Wilfully driving stock from range.—If any person shall wilfully take into possession and drive, use or remove from its accustomed range, any live stock not his own, without the consent of the owner and with intent to defraud the owner thereof, he shall be confined in the penitentiary not less than two nor more than five years or be fined not to exceed one thousand dollars, or both. It shall only be necessary for the State to prove the act of driving, using or removing from its accustomed range any live stock not belonging to or under the control of the accused. It shall devolve upon the accused to show any fact under which he can justify or mitigate the act. [Act Nov. 12, 1866, Acts 1866, p. 187.]

Art. 1444. [1357] [885] [750] May drive stock in range.—Nothing in the preceding article shall prevent any person from driving his own and other stock that may be mixed therewith to the nearest convenient point within the usual range of such stock for separation. [Id.]

Art. 1444a. Permits for transporting livestock.—Any person who is the driver of any truck, automobile or other vehicle containing any livestock or domestic fowl which is upon or being driven upon any land of which said driver is not owner, lessee, renter or tenant, or which is upon or being driven upon any highway, public street or thoroughfare, who fails to have in his possession and exhibit to any person or peace officer upon demand a written permit authorizing said movement, signed by the owner or caretaker of said livestock or domestic fowl or from the owner or person in control of the land from which said driver began said movement shall be fined not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars for each head of livestock and each domestic fowl in said movement, unless said driver upon demand of said person or peace officer makes, signs and delivers to said person or peace officer a written statement containing all the information herein required to be included in permits. Said driver shall be fined not less than Twenty-five ($25.00) Dollars nor more than Two Hundred ($200.00) Dollars for each head of livestock and each domestic fowl in said movement which is not covered by all the following information: Name of place of origin, including name of ranch or other place; point of destination including name of ranch, market center, packing house or other place; number of livestock or fowls with the description thereof, including kind, breed, color, and also marks and brands if there be any. Failure or refusal of such driver to exhibit to a person or peace officer said permit or to make said statement, shall constitute probable cause for any person or peace officer to search said truck or vehicle to ascertain if it contains any stolen livestock or stolen domestic fowls and to detain said movement a reasonable length of time to ascertain whether any stolen livestock or stolen fowls are contained therein. Any driver who has in his possession any false or forged permit or who makes any false written statement shall be fined not less than Two Hundred ($200.00) Dollars nor more than Five Hundred ($500.00) Dollars or he shall be imprisoned in the county jail not less than sixty (60) days nor more than six (6) months, or he shall be punished by both such fine and imprisonment. It is provided that the provisions of this Act shall also apply to slaughtered livestock and fowls and butchered portions thereof. [Acts 1929, 41st Leg., 2nd C.S., p. 32, ch. 19, § 1.]

CHAPTER 11.—RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THEFT THEREOF

Art.
1445. Want of bill of sale.
1446. Driving stock to market without bill of sale.
1447. Butchering unmarked or unbranded animals.
1448. Preceding article not applicable.
1449. Failing to report animals slaughtered.
1450. Butchers to register.
1451. Failure to make bond.
1452. Butcher to keep record.
1453. Purchasing slaughtered cattle without hide and ears.
1454. Record open for inspection.
1455. Inspector to keep record.
1456. Counties exempt.
1457. Auctioneer selling animal.

Article 1445. [1359] [887] [752] Want of bill of sale.—Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species, the possession of such stolen animal by the accused, without a written transfer or bill of sale containing a specific description of such animal, shall be prima facie evidence against the accused that such possession was illegal. [Acts 1866, p. 223, Acts 1899, p. 87.]

Art. 1446. [1360] [888] [753] Driving stock to market without bill of sale.—Any person who may be found in any county of this State driving to market any animals such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any of such animals as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which said animals have been driven, shall be fined not exceeding two thousand dollars. [Acts 1866, p. 223.]

Art. 1447. [1361] [889] [754] Butchering unmarked or unbranded animals.—If any butcher or other person engaged in the slaughter of animals shall kill or cause to be killed any unmarked or unbranded animal for market, or shall purchase and kill or cause to be killed, any animal, without having taken a bill of sale or written transfer from the party selling the same, he shall be fined not less than fifty nor more than three hundred dollars. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1448. [1362] [890] [755] Preceding article not applicable.—The preceding article shall not apply to the slaughter of any animal raised by the person slaughtering the same. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1449. [1363] [891] [756] Failing to report animals slaughtered.—If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this State shall fail to report to the commissioners court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be fined not less than fifty nor more than three hundred dollars. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1450. [1364] Butchers to register.—Before engaging in the business of slaughter and sale of animals for market, every person so desiring must first register his name with the county clerk indicating his purpose to engage in such business. Upon failure to so first register his name, he shall be fined not less than five nor more than twenty-five dollars. Nothing herein applies to slaughter houses in this State slaughtering as many as three hundred cattle per day. [Acts 1907, p. 239.]

Art. 1451. [1366] [893] Failure to make bond.—Whoever shall carry on the business of butcher or slaughterer of animals, without having filed with the clerk of the county court of the county in which he conducts such business the bond provided for by law, shall be fined not less than five nor more than two hundred dollars. [Sec. 2, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1452. [1367] [894] Butcher to keep record.—Every person who shall carry on the business of butcher or slaughterer of animals and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased and slaughtered by him, together with a description of each animal, including brand, age, color, weight and from whom purchased and the date of purchase, or shall fail to have the hide and ears of such animal or animals inspected by the inspector or some magistrate within twenty days after such animal is slaughtered, shall be fined not less than twenty nor more than two hundred dollars. [Sec. 3, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1453. [1368] [895] Purchasing slaughtered cattle without hide and ears.—Any person engaged in butchering or slaughtering and who shall purchase any cattle that have been slaughtered by another without the hide and ears of such animal accompanying the same, or shall purchase any animal that has been slaughtered by another when the ear mark or brand on the hide accompanying the same, when offered for sale, has been changed, mutilated or destroyed, shall be fined not less than fifty nor more than two hundred dollars. [Sec. 4, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1454. [1369] [896] Record open for inspection.—The record provided for in article 1452 of this chapter shall be open to the inspection of all parties, and any butcher refusing to permit such inspection at any reasonable hour shall be fined not exceeding twenty-five dollars. [Sec. 5, Act April 6, 1889; Acts 1893, p. 38; Acts 1899, p. 87.]

Art. 1455. [1371] [898] Inspector to keep record.—The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom and when inspected, and return a copy of the same to the clerk of the county court of the county in which it was inspected within thirty days after said inspection. Any inspector or magistrate failing to keep such book or to make such report as above provided for, shall be fined not less than one nor more than twenty-five dollars. [Acts 1893, p. 38; Acts 1899, p. 87.]

Art. 1456. [1372] [899] Counties exempt.—The counties exempt from the provisions of the five (5) preceding Articles shall be the counties now or hereafter exempted by the Statutes of this State; provided that the Counties of Angelina, Tyler, Jasper and Newton shall not be exempt from the provisions of Articles 1445 to 1455, both inclusive. [Acts 1917, p. 358; Acts 1933, 43rd Leg., Spec. L., p. 121, ch. 93.]

Art. 1457. [1373–4] Auctioneer selling animal.—Whoever sells at auction any horse, mule, or ox, without first requiring from the party for whom such sale is made a written statement signed by him of the manner in which and the name and residence of the person from whom he acquired such animal, or fails within ten days after such sale to file with the clerk of the county court such written statement, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the name and residence of the seller and purchaser, shall be fined not less than fifty nor more than one hundred dollars. [Acts 1874, p. 98; Acts 1899, p. 89.]

CHAPTER 12.—OTHER OFFENSES RELATING TO STOCK

Article 1458. [1376] [903] [759] Illegal marking and branding.—Whoever shall mark or brand any horse, mule, ass or cattle, or who shall mark any sheep, goat or hog, not his own, without the consent of the owner and with intent to defraud, shall be punished as if he had stolen such animal. [O. C. 767.]

Art. 1459. [1377] [904] [760] Altering or defacing mark or brand.—Whoever shall alter or deface the mark or brand of any horse, mule, ass or cattle, or shall alter or deface the mark of any sheep, goat or hog, not his own, without the consent of the owner and with intent to defraud, shall be punished as if he had stolen such animal. [O. C. 768, Acts 1858, p. 181.]

Art. 1460. [1378] [905] [761] Using mark or brand not on record.—Whoever shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record shall be fined not exceeding five hundred dollars. [Acts 1866, p. 188.]

Art. 1461. [1379] [906] [762] Altering mark or brand to one unrecorded.—Whoever shall alter or change any mark or brand upon any stock of his own, or under his control, without first having such changed mark or brand recorded, shall be fined not exceeding five hundred dollars. [Acts 1866, p. 188.]

Art. 1462. [1380–81] Killing unmarked or unbranded cattle.—Whoever knowingly kills any unmarked or unbranded animal of the cattle species, or any unmarked hog, sheep or goat, not his own, shall be fined not less than twenty-five nor more than one hundred dollars. It shall only be necessary to allege and prove that the animal killed was not the property of the accused, without stating or proving the true owner. [Id.]

Art. 1463. [1382] [909] [765] Skinning cattle.—Whoever removes the hide or any part thereof from any cattle not his own, without the consent of the owner, shall be fined not less than twenty nor more than one hundred dollars. Each hide so removed is a separate offense. [Acts 1887, p. 105.]

Art. 1464. [1383] [910] Having hide without owner's consent.—Whoever is found in possession of any hide of any cattle not his own, obtained without the consent of the owner or his legal representative, shall be fined not less than twenty nor more than one hundred dollars. [Id.]

Art. 1465. [1384] [911] [765b] Having hide with brand disfigured.—Whoever is found in possession of any hide of any cattle with brand cut out or disfigured, and shall offer the same for sale, shall be fined not less than twenty nor more than one hundred dollars. The possession and offer of sale of each hide with the brand cut out or disfigured is a separate offense; nothing in this article shall prevent anyone guilty of theft of such hide from being convicted for theft. [Id.]

Art. 1466. [1385] [912] [766] Milking another's cow.—Whoever without the consent of the owner shall take up, use or milk any cow, not his own, shall be fined not exceeding ten dollars. [Acts 1866, p. 188.]

Art. 1467. [1386–8] Driving live stock from range.—Whoever shall wilfully kill, destroy, drive, or remove any live stock not his own from its accustomed range, without the consent of the owner, under such circumstances as not to constitute theft, shall be fined not exceeding one thousand dollars. In any prosecution under this article, after proof of the act of killing, destroying, driving, using or removing from the range of any stock not belonging to or under the control of the accused, it shall devolve upon the accused to show any fact under which he can justify or mitigate his act. [Id.]

Art. 1468. [1387] [914] Preceding article qualified.—The preceding article shall not be construed to prevent one from driving his own and other stock which may be mixed therewith until the same can be conveniently separated, nor to authorize anyone under any circumstances to remove any live stock not his own from their usual range. [Id.]

Art. 1469. [1389] [916] Use of false pedigree or certificate of sale.—Whoever shall wilfully furnish or give to a purchaser of any animal any false pedigree or false certificate of sale of such animal, or shall wilfully use, for the purpose of deceiving, any false pedigree or false certificate of sale of any animal, whether such false pedigree or false certificate was furnished, given or procured in this State or elsewhere, shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail not exceeding six months, or both. [Acts 1891, p. 84.]

Art. 1470. [1390–91] Estrays.—Whoever shall unlawfully remove, sell, or in any other manner dispose of any animal which has been taken up by him as an estray, or, without complying with the law regulating estrays, shall take up and use or otherwise dispose of any animal coming within the meaning of estray, shall be fined not exceeding two hundred and fifty dollars. If such taking or disposition be effected so as to be theft, the offender shall be punished for that offense. [Acts 1858, p. 184.]

CHAPTER 13.—PROTECTION OF STOCK RAISERS

Art.
1471. Inspector giving fraudulent certificate.
1472. Inspector failing to examine hides, etc.
1473. Inspector failing to keep record.
1474. Certificate by inspector.
1475. Return of certified copies, etc.
1476. Unlawful counterbranding.
1477. Driving cattle into Mexico.
1478. Shipping imported hides.
1479. Selling hides without inspection.
1480. Driving cattle without road-branding.
1481. Driving stock out of county without owner's consent.
1482. Purchasing animal without bill of sale.
1483. Agent selling without power of attorney.
1484. More than one brand or mark.
1485. Branding or marking outside a pen.
1486. Clerk improperly recording brand.
1487. Receiving uninspected animals for shipment.
1488. Counties exempted.

FEEDING STUFF

1489. Tag and certificate.
1490. "Feeding stuff."
1491. To file statement and deposit samples.
1492. To pay inspection tax and affix tag.
1493. Failure to affix tag or label.
1494. "Counterfeiting tag."
1495. "Importer."
1496. "Adulterated."
1497. Wholesome mixture.
1498. Manufacture or sale of adulterated feeding stuffs.

LIVE STOCK COMMISSION MERCHANT

1499. Live stock commission merchant.
1500. Failure to give bond.
1501. Failure to remit promptly.
1502. Appropriating proceeds.
1503. To post copy of bond.

Article 1471. [1397] [919] [772] Inspector giving fraudulent certificate.—Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently

issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars. [Sec. 31, Act Aug. 23, 1876, Acts 1876, p. 302.]

Art. 1472. [1398] [920] [772a] Inspector failing to examine hides, etc.—If any inspector or deputy inspector of hides and animals shall knowingly fail or refuse to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, he shall be fined not less than twenty-five nor more than two hundred dollars. [Act April 4, 1889, Acts 1889, p. 36.]

Art. 1473. [1399] [921] [772b] Inspector failing to keep record.—Any inspector of hides and animals who shall fail to provide and keep a well bound book and record therein a correct statement, showing the number, ages, and marks and brands of each animal inspected by him or by his deputy, and the number and all the marks and brands of all hides inspected by him or by his deputy, and whether the hides are dry or green, and the names of the vendors and purchasers of said animals or hides, shall be fined not less than fifty nor more than three hundred dollars. [Id.]

Art. 1474. [1400] [922] [772c] Certificate by inspector.—Any inspector or deputy inspector of hides and animals who shall fail to correctly state in his certificate of inspection or in his certificate of acknowledgment all the marks and brands of all animals and hides inspected by him shall be fined not less than twenty-five nor more than three hundred dollars. [Acts 1889, p. 36.]

Art. 1475. [1401] [923] [772d] Return of certified copies, etc.—Any inspector of hides and animals who shall fail to return a certified copy of all entries made in his record during each month to the county clerk of his county on the last day of each month shall be fined not less than fifty nor more than three hundred dollars. [Acts 1889, p. 36.]

Art. 1476. [1402] [924] [773] Unlawful counterbranding.—Whoever counterbrands any cattle without the consent of the owner or his agent shall be fined not less than ten nor more than fifty dollars for each animal so counterbranded. [Sec. 32, Act Aug. 23, 1876, Acts 1876, p. 302.]

Art. 1477. [1403] [925] [774] Driving cattle into Mexico.—Whoever drives any cattle across the Rio Grande into Mexico, at any other point than where a United States custom house is established, or where there is a place of inspection by United States custom house officers, or without first having the same inspected in accordance with law, shall be confined in the penitentiary not less than two nor more than five years. [Sec. 35, Id.]

Art. 1478. [1404] [926] [775] Shipping imported hides.—Whoever ships from any port in this State any hides of cattle imported from Mexico without first having procured a certificate of importation and inspection in accordance with law shall be fined not less than one nor more than five dollars for each hide so shipped. [Sec. 35, Id.]

Art. 1479. [1405] [927] [776] Selling hides without inspection.—Whoever sells any hides of cattle without the same having been inspected shall be punished as prescribed in the preceding article. [Sec. 36, Id.]

Art. 1480. [1406] [928] [777] Driving cattle without road-branding.—Whoever drives any cattle out of any county with the intention of driving the same beyond the limits of the State to a market, without first having road-branded the same in accordance with law shall be fined not less than twenty nor more than one hundred dollars for each animal so driven. [Sec. 37, Id.]

Art. 1481. [1407] [929] [778] Driving stock out of county without owner's consent.—Whoever drives any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article. [Sec. 39, Id.]

Art. 1482. [1408] [930] [779] Purchasing animal without bill of sale.—Whoever purchases any animal or hides of cattle without obtaining a bill of sale from the owner or his agent shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased. [Sec. 39, Id.]

Art. 1483. [1409] [931] [780] Agent selling without power of attorney.—Whoever shall as the agent of another sell any cattle without first having obtained a power of attorney from the owner duly authenticated shall be fined not less than fifty nor more than five hundred dollars. [Sec. 40, Id.]

Art. 1484. [1410] [932] [781] More than one brand or mark.—Whoever in originally branding or marking cattle uses more than one mark or brand shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked. [Sec. 41, Id.]

Art. 1485. [1411] [933] [782] Branding or marking outside a pen.—Whoever shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked. [Sec. 42, Id.]

Art. 1486. [1412] [934] [783] Clerk improperly recording brand.—Any county clerk who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed shall be fined not less than ten nor more than fifty dollars. [Sec. 43, Id.]

Art. 1487. [1413] [935] [784] Receiving uninspected animals for shipment.—If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each such animal. [Acts 1883, p. 71.]

Art. 1488. [1414] [936] [785] Counties exempted.—The counties exempted from the laws regulating the inspection of hides and animals are those as are or may be exempted by statute. [Acts 1921, p. 43.]

FEEDING STUFF

Art. 1489. [730] Tag and certificate.—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag described in article 1492, carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed where the contents are of a mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 1497, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of

crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of North America. [Acts 1905, p. 207.]

Art. 1490. [731] [732] "Feeding stuff."—The term "feeding stuff," as used in this chapter, is defined to mean and include wheat bran, wheat shorts, linseed meal, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feed, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broom-corn, or any other whole or unground grains or seed. [Acts 1905, p. 208.]

Art. 1491. [733] To file statement and deposit samples.—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name and trade mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in article 1489, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not apply to farmers who grind their own feeding stuff, and who do not adulterate same. [Acts 1907, p. 243.]

Art. 1492. [734] To pay inspection tax and affix tag.—The manufacturer, importer, agent or seller of each feeding stuff, shall before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station, an inspection tax of ten cents for each ton of such feeding stuff sold or offered for sale in this State, for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel, or other package of such feeding stuff a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said Experiment Station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in article 1489, and paid the inspection tax, no agent or seller of said manufacturer, importer, or shipper shall be required to file such statement or pay such tax. [Id.]

Art. 1493. [735] Failure to affix tag or label.—Any manufacturer, importer, or agent, selling, offering or exposing for sale, any feeding stuff, without the statement required by article 1489, and the tax tag required by the preceding article, or with a label stating that said feeding stuff contains a larger percentage of protein, fat or nitrogen-free extract, or a smaller percentage of crude fiber, than is contained therein, shall be fined not less than one hundred nor more than five hundred dollars.

Art. 1494. [736] Counterfeiting tag.—Whoever shall counterfeit or knowingly use a counterfeit of the tag or tags mentioned in the two preceding articles, or shall use them a second time after the said tags shall have been once attached, shall be fined not exceeding five hundred dollars, one-half of which shall be paid to the informer. [Acts 1905, p. 207.]

Art. 1495. [739] "Importer."—The term "importer" means all persons as shall bring into or offer for sale within this State feeding stuff manufactured without this State. [Id.]

Art. 1496. [740] "Adulterated."—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corn cobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. [Acts 1907, p. 243.]

Art. 1497. [740] Wholesome mixture.—No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. [Id.]

Art. 1498. [740] Manufacture or sale of adulterated feeding stuff.—Every person who shall directly or for another or for any corporation, association of persons, or for a firm, or through or by any agent, manufacture, sell or offer for sale any adulterated feeding stuff within this State shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than thirty nor more than sixty days, or both. [Id.]

LIVE STOCK COMMISSION MERCHANT

Art. 1499. Live stock commission merchant.—Any person, firm or corporation who pursues the business of selling live stock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks and jennets, or any of them, upon consignment for a commission or other charges, or who solicits consignment of live stock as a commission merchant or agent, or who advertises or holds himself out to be such shall be held to be a live stock commission merchant within the meaning of this chapter. [Acts 1921, p. 175.]

Art. 1500. Failure to give bond.—Whoever advertises or solicits business as a live stock commission merchant or in any way pursues the occupation of a live stock commission merchant without first having made the bond required by the laws of this State, or fails to keep and maintain said bond in full force and effect as required by such laws, shall be confined in the penitentiary not less than one nor more than two years, or be fined not less than five hundred nor more than five thousand dollars or be both so fined and imprisoned. [Id.]

Art. 1501. Failure to remit promptly.—Any person engaged in the business of a live stock commission merchant, as defined by this chapter, who shall intentionally fail and refuse, within forty-eight hours after the sale of any live stock consigned to him to remit the net proceeds thereof to the person rightfully entitled to receive the same, or to such person, firm or corporation as said party rightfully entitled thereto shall direct, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than one nor more than twelve months, or both. [Id.]

Art. 1502. Appropriating proceeds.—Any person engaged in the business of live stock commission merchant who shall appropriate or use for any purpose other than remitting to such person, firm or corporation entitled to receive the same, any portion of the net proceeds of live stock so sold by such live stock commission merchant, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 1503. To post copy of bond.—Any live stock 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 law shall be fined not to exceed one hundred dollars. Each day said copy shall not be so posted is a separate offense. [Id.]

CHAPTER 14.—DISEASES OF ANIMALS AND BEES

Article 1504. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1504a. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

Art. 1505. Live Stock Sanitary Commission.—The word "Commission" as used in this chapter shall mean The Live Stock Sanitary Commission of the State of Texas.

Arts. 1506—1511. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Arts. 1506a—1511c. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

Art. 1512. Failure to dip for scabies.—Any person owning, controlling or caring for any cattle which are infected with cattle scabies, or sheep which are infected with sheep scabies, or that are exposed to said cattle scabies or sheep scabies, or that are on premises or other places on which cattle or sheep scabies are known to exist, or that have at some time within three months next preceding the issuance of the written direction to dip as provided by law, been exposed to the said cattle or sheep scabies, or been on premises or other place on which the cattle or sheep scabies is known to exist, who shall fail or refuse to dip any of said cattle or sheep at such time and in such manner as directed in writing by the Commission, or its chairman, as provided for by law, shall be fined not less than fifty nor more than five hundred dollars and each day of such failure or refusal shall constitute a separate offense. [Acts 1923, p. 303.]

Art. 1513. Disinfecting shearing plant and apparel.—Any person owning, controlling or having charge of any itinerant shearing plant or crew, or any person shearing sheep, or handling or packing the wool therefrom, which are infected with scabies, or located upon premises under quarantine for sheep scabies, who fails or refuses to disinfect the said shearing plant or any portion thereof, or his wearing apparel as required by law, shall be fined in any sum not less than one nor more than one hundred dollars. [Acts 1923, p. 306.]

Art. 1514. Disinfecting premises quarantined.—When any premises are placed under quarantine for sheep scabies infection it shall be the duty of the owner, lessee or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep are closely confined in the following manner: All manure and litter shall first be removed and burned or buried, then the surface of such corrals, water lots, pens, sheds or other places where sheep are closely confined, with which sheep confined therein may come in contact shall be sprayed with a solution made of 6 oz. of 95 per cent. carbolic acid to each gallon of water or a solution containing 4 oz. of cresol compound U. S. P. to each gallon of water, under the supervision of an authorized inspector of the Commission before any sheep which are not infected with scabies, or which have been dipped therefor, shall be permitted in such corrals, water lots, pens, sheds or other places where sheep are closely confined. Whoever violates the provisions of this article shall be fined not less than twenty-five nor more than fifty dollars. [Id.]

Art. 1515. [1267] Moving stock with scabies.—No person, company or corporation shall drive, drift, haul by common carrier or private conveyance, or in any other manner transport along or across any public road or railroad, or on or across the lands or premises of another, any cattle or sheep which are infected with cattle or sheep scabies. Any person violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1923, p. 307.]

Art. 1516. Importing sheep.—Importations of sheep into this State by rail or any other mode of move-

ment shall not be made except under the following requirements:

1. The importer must apply to and receive from the Live Stock Sanitary Commission of this State permission to import such sheep into this State.

2. Such importation shall be accompanied by a certificate of a regularly employed and duly authorized sheep scab inspector of the state of origin, or a duly appointed and acting sheep scab inspector of the United States Bureau of Animal Industry certifying that said sheep are free from scabies or exposure thereto, or that said sheep have been dipped in a dipping fluid recognized by the United States Bureau of Animal Industry for the eradication of sheep scabies within ten days next preceding the date of such importation; provided, however, that sheep dipped for infection at point of origin shall be held under quarantine at the point of destination for a period of ninety days. By "point of destination" as used herein is meant the range upon which said sheep are placed in this State.

All importations of sheep by rail shall be billed to a recognized sheep dipping center where the Commission maintains an inspector to supervise the dipping of sheep, except sheep imported for show purposes only, or for immediate slaughter, and upon arrival thereat shall be dipped in accordance with the provisions of law unless the same are accompanied by a certificate of dipping at place of origin as provided in paragraph "2" of these requirements. Whoever imports any sheep into this State in violation of this article shall be fined not less than one nor more than two dollars for each head of sheep so unlawfully imported, and the venue shall be in any county through, or into which such importation is carried. [Acts 1923, p. 307.]

Art. 1517. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1517a. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

Art. 1518. Failing to report charbon or anthrax.—Each person residing in a district where charbon or anthrax is prevalent or where the same is supposed to be prevalent shall report in writing to the county health officer, who in turn shall report in writing to the president of the State Board of Health all cases where an animal or animals are suffering with charbon or anthrax or supposed to have such disease, and each physician practicing in the State of Texas shall report in writing to the president of the State Board of Health all persons suffering from charbon or anthrax or supposed to be suffering from same and in case of failure to do so any person so failing shall be fined not less than ten nor more than twenty-five dollars. Each case of which no report is made shall constitute a separate offense. [Sec. 10b, Act March 31, 1913, Acts 1913, p. 147.]

Art. 1519. Failing to destroy carcass.—Carcasses of stock which have died from charbon or anthrax shall be destroyed by burning by the owner or person in charge within twenty-four hours after death and any owner or person having charge of said animals who should fail to destroy said carcasses as herein provided shall be fined not less than twenty-five nor more than one hundred dollars and each twenty-four hours after the first twenty-four hours that said carcass is permitted to remain undestroyed shall be a separate offense. [Sec. 10e, Id.]

Art. 1520. Disobeying charbon quarantine.—The county health officer shall be the exclusive judge of the necessity of isolation or quarantine of all animals infected with charbon or anthrax and when in the judgment of said county health officer there exists a necessity therefor said county health officer shall issue a proclamation directing that all animals of certain classes which he may specify in the infected district, in either the entire county or any political subdivision thereof, shall be placed and kept in an enclosure by the owners or keeper thereof, and any owner or keeper of such animals for the owners who shall fail or refuse to obey the requirements of such proclamation shall be fined not less than ten nor more than fifty dollars and where any owner or keeper for the owner shall have more than ten animals subject to the quarantine regulations herein provided the fine shall be doubled and each day that any owner or keeper for such owner shall fail to comply with the proclamation of said county health officer shall constitute a separate offense and such quarantine shall continue and be in effect as long as in the judgment of such county health officer it may be necessary to prevent the spread of charbon or anthrax. [Sec. 10f, Id.]

Art. 1521. Permitting animals to run at large.—From and after the issuance and posting according to law of the proclamation declaring the result of the election held in a charbon district to be against the running at large of domestic animals therein it shall be unlawful for any owner or keeper of cattle, horses, sheep, goats and hogs, or any of them, to permit such animals as have been voted upon to run at large within such county or subdivision thereof at any time within which the same has been prohibited; and in case of failure or refusal of any owner or keeper of such stock or any of them to comply with such proclamation he shall be fined not less than five nor more than fifty dollars. Each day that any owner or keeper for such owner shall fail to comply with the law as herein provided for, shall constitute a separate offense. [Acts 1913, p. 150.]

Art. 1522. [1282] [824b] Refusing examination by commissioner.—Any person who owns or is in possession of live stock which is reported to be affected with any infectious or contagious disease, who shall refuse to allow the State live stock sanitary commissioners to examine such stock, or shall hinder or obstruct the said commissioners in any examination of or in any attempt to examine such stock shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1893, p. 72.]

Art. 1522a. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53, § 38.]

Art. 1523. [1260] [809] [692] Failing to confine animal with glanders.—Whoever wilfully fails or refuses to place in secure confinement apart from all other stock any animal of the horse or ass species belonging to him or subject to his control diseased with glanders or farcy shall be fined not less than twenty-five nor more than two hundred dollars or imprisoned in jail not less than ten nor more than ninety days. [Acts 1876, p. 211.]

Art. 1524. [1261] Sale or trade of animal with glanders.—Whoever shall trade or sell or offer to trade or sell any animal of the horse or ass species known or suspected to be affected with glanders shall be fined not less than five nor more than one hundred dollars or imprisoned in jail not less than ten nor more than ninety days. [Acts 1897, p. 216.]

Art. 1525. [1264] [811] Using or permitting animal with glanders to run at large.—Any person who may drive, lead or ride any animal infected with said diseases of glanders or farcy, knowing them to be so infected, on, along or across any public highway, or allow any such animal so diseased to run at large on the open range of any county shall be fined not less than ten nor more than two hundred dollars. [Acts 1892, p. 11.]

Art. 1525a. Regulations as to scabies, quarantine, dipping, and penalties.

Failure to dip infected sheep or cattle a misdemeanor

Section 1. Any person, company or corporation owning, controlling or caring for any sheep which are infected with sheep scabies, or cattle which are infected with cattle scabies, or that have been ex-

posed to the said sheep or cattle scabies infection within six months next preceding the issuance of the written direction to dip hereinafter provided, who shall fail or refuse to dip any of said sheep or cattle at such time and in such manner as directed in writing by the Live Stock Sanitary Commission or its Chairman as provided for in this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $5.00 nor more than $200.00, and each day of such failure to refusal shall constitute a separate offense.

Direction to dip; intervals

Sec. 2. The Live Stock Sanitary Commission or its Chairman is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling, or caring for any sheep or cattle which are subject to being dipped under the provisions of this Act, to dip any or all of said sheep or cattle under the supervision of an authorized inspector of such Commission in the dip or dipping solutions hereinafter provided for the dipping of sheep and cattle respectively for the purpose of destroying, eradicating, curing, and removing such scabies or exposure thereto. Said dipping or dippings shall, when administered for psoroptic scabies infection or exposure among sheep or cattle, be at regular intervals of from ten to fourteen days, but when said dipping or dippings shall be administered for sarcoptic scabies infection or exposure among cattle the same shall not be required at more frequent intervals than every six days.

Solution for dipping sheep

Sec. 3. All dippings of sheep for scabies infection or exposure under the provisions of this Act shall be done in a solution of lime and sulphur made in the following proportions: Eight pounds of unslaked lime or eleven pounds of commercial hydrated lime (not air slaked lime) and twenty-four pounds of Flowers of Sulphur to each one hundred gallons of water, said solution to be boiled for a period of at least two hours before using, which shall at all times be maintained at a strength of not less than one and one-half per cent sulphide sulphur or in such other dip or dipping solutions as may be approved by the Live Stock Sanitary Commission of this State and designated by it in the written instructions and notice to dip served upon such person or persons, company or corporation owning, controlling, or caring for said sheep. The dipping solution shall at all times be maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit. No dipping solution shall be used which has been mixed and in the vat more than ten days.

Solution for dipping cattle for psoroptic scabies infection

Sec. 4. All dipping or dippings of cattle for psoroptic scabies infection or exposure thereto shall be done in the same solution or dip as above provided for dipping sheep except that the solution or dip shall be maintained at a strength of not less than 2 per cent sulphide sulphur and the same shall be at all times maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit.

Solution for dipping cattle for sarcoptic scabies infection

Sec. 5. All dipping or dippings of cattle for sarcoptic scabies infection or exposure thereto shall be done in the same solution or dip as herein provided for dipping cattle infected with or exposed to psoroptic scabies infection, except the dippings shall not be required at more frequent intervals than six days, and further provided that one dipping in crude oil shall be considered effective and sufficient for eradication of sarcoptic scabies infection among cattle.

Supervision; definitions

Sec. 6. All dippings, inspections, and certifications for scabies among sheep and cattle, and all disinfection of cars, sheds, boats, chutes, alleys, platforms, pens, and yards required by the provisions of this law shall be done under the supervision of an authorized inspector of the Live Stock Sanitary Commission of Texas.

(a) All sheep infected with scabies and all sheep in a herd where scabies infection is present shall be classed as scabies infected sheep.

(b) All cattle infected with scabies and all cattle in a herd where scabies infection is present shall be classed as scabies infected cattle.

(c) All sheep and cattle that enter or have access to any corrals, sheds, cars, roads, pastures, premises, or other places that scabies infected sheep or cattle, as the case may be, have entered or had access to at any time within the next preceding ninety days shall be classed as exposed to scabies infection, and all sheep shorn by a shearing plant that has shorn infected sheep within the next preceding ninety days shall be classed as scabies exposed sheep, provided the above named places or premises have not been disinfected since the infected sheep have moved or been removed therefrom, provided that cattle and sheep shall be subject to dipping as provided for in Section 1 of this Act at any time within the period of time prescribed in said Section 1, and in accordance with the provisions of said Section 1.

Guarantined sheep or cattle; moving prohibited

Sec. 7. No sheep or cattle that are under quarantine for scabies infection or exposure by written order of the Live Stock Sanitary Commission or its Chairman, or that are on any premises within this State which are quarantined by said Commission for scabies infection or exposure thereto shall be moved or allowed to move therefrom unless and until certified to by an authorized inspector of the Live Stock Sanitary Commission. Any person, firm or corporation violating the provisions of this Section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00.

Appropriations to employ inspectors; blanket quarantine otherwise

Sec. 8. When the fact has been determined by inspection or investigation that sheep or cattle scabies infection exists in any County within this State, then the County Commissioners' Court of such County shall appropriate a sufficient sum of money to employ County inspectors to cooperate with and under the direction of the Live Stock Sanitary Commission of Texas in scabies eradication.

(a) If for any reason the County Commissioners' Court does not cooperate by appropriating the said money to pay said inspector or inspectors, then it shall be the duty of the Live Stock Sanitary Commission to place the County under blanket quarantine, and no sheep or cattle shall be moved therefrom until and unless certified to by an authorized inspector of the Live Stock Sanitary Commission.

Goats, dipping of

Sec. 9. All goats ranging with infected sheep shall be dipped at least once in the same solution and in the same manner as infected sheep except they shall not be held in the dipping vat for a longer period than is necessary to thoroughly wet them.

Directions, requisites of

Sec. 10. The written direction issued by the Live Stock Sanitary Commission or its Chairman requiring the dipping of sheep or cattle for sheep or cattle scabies under the provisions of this Act shall be dated showing the date of its issuance, the name of the person or persons, company or corporation to whom the said directions are given, the approximate location of the premises on which the said live stock are located, the name of the County in which said premises

are located, and it shall state in clear and intelligible language that the said sheep or cattle which the said person or persons, company or corporation is therein directed to dip, are infected with scabies or that they are exposed thereto, and it shall direct said person or persons, company or corporation to dip the said livestock under the supervision of an authorized inspector of the Live Stock Sanitary Commission in the dipping solutions provided in this Act, or such other dipping solutions as the Live Stock Sanitary Commission may approve for such purpose, designating the same, and it shall designate the date, place and time that the said dipping is to be done, and it shall be signed by the Live Stock Sanitary Commission or its Chairman.

Delivery of directions; rescission; hearing

Sec. 11. The said dipping direction shall be delivered to the person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. The person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped under the provisions of this Act may file with the Live Stock Sanitary Commission or its Chairman at any time within five days after receiving said dipping directions to dip, a written affidavit denying the said sheep or cattle are subject to being dipped under the provisions of Law or that for good and sufficient reason set out in said affidavit the said person, company or corporation is entitled to have said dipping direction rescinded or to have said dipping postponed, and requesting that the Live Stock Sanitary Commission or its Chairman withhold enforcement of said dipping direction and grant a hearing on said matter or make necessary investigation to determine the correctness of the statement contained in such affidavit, Upon receipt of said affidavit the Live Stock Sanitary Commission or its Chairman shall within five days thereafter grant said affiant a hearing in the office of the Chairman of the Live Stock Sanitary Commission, if the affiant so desires, and give such affiant notice of such hearing by telegram or registered mail, which hearing shall be had not less than four days after the giving of such notice and that said Live Stock Sanitary Commission or its Chairman shall consider such ex-parte affidavits as such person, company or corporation may file with said Commission in said hearing and said Commission or its Chairman shall make such investigation in person or through its authorized representative in reference to said affidavit as the Commission or its Chairman deem necessary, and if the statements in said affidavit are found to be correct the said dipping direction shall be rescinded by the said Commission or its Chairman, or said dipping postponed to such time as said Commission or its Chairman may consider proper. Otherwise, the said dipping direction shall be enforced on the date and at the time specified in said written direction. The said Commission or its Chairman, after having granted said hearing or said investigation, shall notify said person, company or corporation in writing of its or his findings, which notice shall be delivered to the said person, company, or corporation at least four full days before the day and time he or they are required to dip said sheep or cattle by virtue of said written direction. If the said person, company or corporation shall be dissatisfied with the findings of said Commission or its Chairman, he or they may apply to a court of proper venue and jurisdiction for injunction or other relief.

Inspection of animals for infection

Sec. 12. The ascertaining of the presence of scabies infection on any premises, place, sheep, or cattle or the ascertaining of exposure of premises, places, sheep or cattle to scabies infection shall be done by an authorized representative or inspector of the Live Stock Sanitary Commission and for such purpose said representatives and inspectors are hereby authorized to enter upon any private or public premises of this State where sheep or cattle are kept or ranged, and it shall be the duty of the person or persons, company or corporation owning or controlling such premises or range or the sheep or cattle thereon, when requested by such representative or inspector or member of said Commission, to gather the sheep or cattle on said range for inspection, and a failure or refusal to do so shall be prima facie evidence that the said premises and the sheep or cattle thereon are infected with scabies, and authorize the quarantining of such premises and the sheep and cattle thereon under the provisions of Law, authorizing such quarantine by order of the Live Stock Sanitary Commission. Any person who shall refuse to gather any sheep or cattle of which he is the owner or caretaker from the range when requested by an inspector of the Live Stock Sanitary Commission for the purpose of inspection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00, and on each day on which said refusal is made shall constitute a separate offense.

Itinerant shearing plant and crew; disinfecting

Sec. 13. When sheep infected with scabies are located upon premises which are under quarantine for sheep scabies under the Laws of this State are shorn by an itinerant shearing plant or shearing crew it shall be unlawful for the person, company or corporation owning, controlling or having charge of such shearing plant or crew or the laborers engaged in the shearing of said sheep or packing the wool shorn therefrom to move from the premises where said sheep are shorn until the said shearing plant and wearing apparel of said shearers in use during said shearing shall have been disinfected as hereinafter provided.

Method of disinfecting shearing equipment and wearing apparel

Sec. 14. All utensils, machinery, floors, ground coverings, or other portions of said shearing plant which come in contact with the body of said sheep shall be thoroughly cleaned with pure gasoline. The wearing apparel of the laborers engaged in shearing said sheep and handling and packing the wool shorn from said sheep shall be disinfected by being submerged in boiling water for a period of five minutes.

Failure to disinfect shearing equipment or wearing apparel

Sec. 15. Any person, company or corporation owning, controlling or having charge of any itinerant shearing plant or crew or person shearing sheep or handling or packing the wool therefrom which are infected with scabies or located upon premises under quarantine for sheep scabies who fails or refuses to disinfect the said shearing plant or any portion thereof or the wearing apparel as herein required shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one nor more than one hundred dollars.

Corrals, pens, etc., disinfecting after quarantine

Sec. 16. When any premises are placed under quarantine for sheep scabies infection it shall be the duty of the owner, lessee, or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep have been closely confined in the following manner:

Manner of disinfecting corrals, pens, etc.

Sec. 17. All manure and litter shall first be removed or burned or buried, then the surface of such corrals, water lots, pens, sheds, or other places where sheep have been closely confined shall be sprayed with

a solution made of six ounces of 95 per cent carbolic acid to each gallon of water, or a solution containing four ounces of cresol compound U. S. P. to each gallon of water under the supervision of an authorized inspector of the Live Stock Sanitary Commission before any sheep which are not infected with scabies or exposed thereto shall be permitted to enter such corrals, water lots, pens, sheds, or other places where infected sheep have been closely confined. Any person, company or corporation violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five nor more than fifty dollars.

Dipping where owner refuses to dip; expense

Sec. 18. When any person, company or corporation owning, or having charge of any sheep or cattle required to be dipped under the provisions of this Act for infection or exposure to sheep or cattle scabies shall for any reason fail or refuse to dip said sheep or cattle it shall be the duty of the County Commissioners' Court of said County under the direction and supervision of an authorized inspector of the Live Stock Sanitary Commission to have said sheep or cattle dipped in accordance with the provisions of this Act, and to pay the expense of such dipping by warrant drawn upon the general funds of the said County. It shall be the duty of the County Commissioners' Court of any and all Counties within the State of Texas to cooperate with the Live Stock Sanitary Commission in eradication and control of cattle and sheep scabies within their respective Counties whenever the said disease exists in said Counties or whenever the Live Stock Sanitary Commission has reason to believe that the infection exists therein; Counties shall pay the salaries and necessary traveling expenses of County inspectors for the purpose of inspecting, dipping, and certifying to live stock in said Counties, said inspectors to be appointed by the Live Stock Sanitary Commission and to work under the direction of the Live Stock Sanitary Commission, and said inspectors are hereby required to perform all duties necessary to the inspection, dipping, and certification of said live stock. In case the owner or caretaker fails or refuses to dip his livestock in compliance with any of the provisions of this Act, the County Commissioners' Courts shall provide necessary dipping vats, facilities, and pens, together with dipping fluids and material for dipping said live stock, the same to be furnished at the expense of the respective counties, to be paid for out of their general funds.

Inspectors right to enter premises; penalty for refusal to permit entry

Sec. 19. Inspectors of the Live Stock Sanitary Commission are hereby authorized and directed to enter upon the premises of any person, firm or corporation for the purpose of inspecting, classifying, or dipping cattle or sheep for scabies or exposure thereto whenever in the opinion of the Live Stock Sanitary Commission such inspection, classification, or dipping is deemed necessary. Any person who shall refuse to permit an inspector of the Live Stock Sanitary Commission to enter upon any premises of which he is the owner or tenant or caretaker for the purpose of making said inspection, classification, or dipping, shall be deemed guilty of a misdemeanor and upon conviction shall be fined any sum not less than $10.00 and not more than $200.00, and each separate day on which said refusal is made shall constitute a separate offense.

Chief Cattle and Sheep Scabies Inspector; District and Local Inspectors

Sec. 20. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Cattle and Sheep Scabies Inspector, whose duties shall be to supervise the inspectors engaged in sheep and cattle scabies eradication, and the said Commission shall employ District Supervising Inspectors and Local Inspectors for the purpose of eradicating cattle and sheep scabies. Salaries of local County Inspectors to be paid by the Counties, but salaries of the said Chief Inspector and District Supervising Inspectors to be paid by the State.

Hauling or driving infected sheep or cattle

Sec. 21. It shall be unlawful for any person, company or corporation to drive, drift, ship, or haul by common carrier or private conveyance, or in any other manner transport or move or permit the movement along or across any public road or railroad or on or across the land or premises of another, any sheep or cattle which are infected with or exposed to scabies or that are under quarantine for scabies infection or exposure, and any person violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00. Provided that each public road, railway, and premise of another along, across, or onto which said person, company or corporation shall drive, drift, haul or transport any of said live stock shall constitute a separate offense. Provided that the venue for the prosecution of persons, firms, or corporations violating any quarantine provision of any section of this Act shall be in the County from which said illegal movement was made and in any and all counties into or through which said live stock moved.

Importations

Sec. 22. From and after the passage of this Act importation of sheep into this State by rail or other mode of movement shall not be made except under the following restrictions:

(a) The importer must apply to and receive from the Live Stock Sanitary Commission of this State, permission to import any sheep (except sheep billed to market centers for slaughter purposes) into the State.

(b) Such importations shall be accompanied by a certificate of a regularly employed and duly authorized sheep scabies inspector of the State of origin or a duly appointed and acting sheep scabies inspector of the United States Bureau of Animal Industry certifying that said sheep are free from scabies infection and exposure thereto, and that said sheep have been dipped in a dipping fluid recognized by the United States Bureau of Animal Industry for the eradication of sheep scabies and in a manner calculated to have eradicated infection or exposure as the case may be within ten days next preceding the date of such importation, provided, however, that sheep dipped for infection at point of origin shall be held under quarantine at point of destination for a period of one hundred and eighty days. By "point of destination" as used herein is meant the range upon which the said sheep are placed in this State, provided further that in the event the sheep are accompanied by the proper certification and permit they may be moved into the State without first having been dipped when arrangements are made with the Live Stock Sanitary Commission at Fort Worth, Texas, prior to movement, to dip on arrival in the State.

(c) All importations of sheep by rail shall be billed to recognized sheep dipping center where the Live Stock Sanitary Commission of this State maintains an inspector to supervise the dipping of sheep except sheep imported for show purposes only or for immediate slaughter, and upon arrival thereat shall be dipped in accordance with the provisions contained in Sections Two and Three of this Act, unless the same are accompanied by a certificate of dipping at point of origin as provided in Section 22(b) of these requirements.

(d) The importer of show sheep shall be given a reasonable length of time to display his sheep at County Fairs or Live Stock Exhibits, but in no instance shall

this time be extended for a longer period than sixty days from date of importation and all such sheep shall be kept separate from all other than show sheep, and shall be dipped at least once before being distributed to the range.

(e) Any person, company or corporation importing any sheep into this State in violation of this section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $1.00 nor more than $5.00 for each head of sheep so unlawfully imported, and the venue of such prosecution shall be in any County through or into which such importation is carried. Provided that each County into or through which said sheep are moved shall constitute a separate offense.

Carriers; imported sheep; permit

Sec. 23. No common carrier by rail in this State shall receive from any shipper or connecting carrier for importation into this State any shipment of sheep (except sheep billed for slaughter purposes) unless the bill of lading covering said shipment is accompanied by a written permit from the Live Stock Sanitary Commission of this State or its Chairman, permitting such sheep to be imported into this State.

Violations by carriers; suits

Sec. 24. Any common carrier violating the provisions of this Section of this Act shall forfeit to the State the sum of not less than $1.00 nor more than $5.00 per head for each sheep so unlawfully transported by it, which may be recovered by suit instituted on behalf of the State in any Court of this State having jurisdiction of the amount involved in any County through which said common carrier by rail transported such shipment. Provided that such suits may be maintained in all Counties into or through which said movement of sheep is transported, said suits shall be instituted by the County attorney of the respective Counties into or through which said movements are made and further provided that if any corporation or company shall violate any of the penal provisions of this Act, it shall be the duty of the County Attorneys in each County in which said offense occurs to file a civil suit in the Court of proper jurisdiction in the name and on behalf of the State of Texas for the collection of said penalties.

Quarantine; authority of Live Stock Sanitary Commission

Sec. 25. The Live Stock Sanitary Commission is hereby authorized to quarantine any County or district or premises, places, roads, pastures, lots, yards, stockyards, enclosures, cattle or sheep whenever it has determined by inspection through an authorized inspector that scabies infection or exposure thereto exists therein or thereon, and notice of said quarantine shall be given by posting a written notice thereof at the County Court House door of the County in which said quarantine is established and two other notices in conspicuous places within the area or place quarantined, or by publication in a newspaper in said County, or if there be no newspaper therein, by publication in some newspaper in an adjoining County or by delivering a written or printed notice thereof to the owner or caretaker of the live stock or territory or place to be quarantined, said delivery to be made in person by an inspector or other employé of the Live Stock Sanitary Commission, or by a member of said Commission to deliver the same, or by sending by United States mail. Any one of the foregoing methods of giving notice shall be sufficient, but it shall not be necessary to give notice in more than one way. Whenever a territory, County, or district is quarantined under the provisions of this Act, all local premises, cattle and sheep therein shall thereby become quarantined without designating them separately.

Chairman's authority

Sec. 26. The Chairman of the Live Stock Sanitary Commission is hereby authorized to perform any and all acts and duties which the Live Stock Sanitary Commission is authorized by this Act to do. [Acts 1927, 40th Leg., 1st C. S., p. 174, ch. 63.]

Section 27 of Acts 1927, 40th Leg., 1st C. S., p. 174, ch. 63, provides that the act shall be cumulative of all existing statutes relating to the quarantining of sheep and cattle and shall not be construed as repealing the same unless in direct conflict therewith, and section 28 provides that the act shall be liberally construed and if any section be declared invalid such holding shall not affect the remaining parts.

Art. 1525b. Eradicating diseases among live stock and domestic fowls.

Duties of Live Stock Sanitary Commission

Section 1. It shall be the duty of the Live Stock Sanitary Commission provided in Article 7009 Revised Civil Statutes of 1925 to protect all cattle, horses, mules, asses, sheep, goats, hogs, and other live stock, and all domestic animals and domestic fowls of this State from infection, contagion or exposure to the infectious, contagious and communicable diseases enumerated in this Section, to-wit: Tuberculosis, anthrax, glanders, infectious abortion, hemorrhagic septicemia, hog cholera, malta fever, foot and mouth disease, rabies and other similar and dissimilar contagious and infectious diseases of live stock recognized by the veterinary profession as infectious or contagious; also rabies among canines, and Bacillary White Diarrhea among fowls. Said Commission may at its discretion whenever it is deemed necessary or advisable also to engage in the eradication and control of any disease of any kind or character that affects animals, live stock, fowls or canines regardless of whether said diseases are infectious, contagious or communicable and may establish necessary quarantines for said purpose. It shall be the duty of the Commission to establish quarantines against other States, territories and foreign countries and portions thereof whenever said Commission acertains or is informed that any of said diseases exist therein, and to establish quarantines within the State of Texas on cattle, horses, mules, asses, sheep, goats, hogs and other live stock, domestic animals and domestic fowls, also counties, districts, areas, premises, lands, pastures, lots, ranches farms, fields, ranges, thoroughfares, buildings, barns, stables, stock yards pens and other places whenever said Commission ascertains that any of said diseases or the agency of transmission thereof exist in any of said places or among any of said live stock, domestic animals or domestic fowls, or that any of said places, live stock, domestic animals or domestic fowls are exposed to any of said diseases or to the germs or agency of transmission of any of said diseases. Said Commission shall adopt rules and regulations to be proclaimed by the Governor of the State of Texas for the purpose of carrying out and enforcing the provisions of this Act. The said Commission is hereby authorized to control the sale and distribution of veterinary biologics. No provision of this Act shall relate to tick eradication; nor shall any provision hereof relate to scabies except those provisions in which scabies is expressly mentioned. When reference is made in any Section of this Act to infectious, contagious and communicable diseases, the same shall not be construed as having reference to scabies, unless said Section specifically states that scabies is included. It is hereby specifically provided that scabies eradication and tick eradication shall be conducted only by Inspectors of the Live Stock Sanitary Commission appointed and recognized by said Commission for said purposes, and all permits and certificates for certifying that cattle or sheep are free of scabies infection and exposure shall be issued only by Inspectors appointed for said purpose, and permits and certificates for certifying that live stock are free

of ticks and exposure shall be issued only by Inspectors appointed for said purpose. Provisions of this with reference to issuing search warrants shall also apply to scabies inspectors for the purpose of dipping sheep or cattle under any law for eradicating scabies. Where cattle are quarantined on account of being tubercular reactors prosecutions for violations thereof shall be only under the penal clause for violating quarantines on tubercular reactors and no other penal clause of this Act shall apply. Wherever the word "person" is used in this Act the same shall also include firm and corporations.

Exposure or infection considered as continuing; proof of treatment by other than authorized person inadmissible

Sec. 2. Whenever it is determined by Veterinarians in the employ of the Live Stock Sanitary Commission that any contagious, infectious or communicable disease exists among any live stock or domestic animals or domestic fowls, in the State of Texas, or on any land or premises or other places, or that any live stock, domestic animals or domestic fowls, premises or other places have been exposed or are exposed to the agency of transmission of any infectious, contagious or communicable disease, such exposure or infection shall be considered as continuing until the Live Stock Sanitary Commission has eradicated the same through its prescribed methods under authority of law and of the rules and regulations of the Live Stock Sanitary Commission. In the trial of any case involving the compliance or non-compliance of any owner or caretaker with any provision of law requiring the treatment, vaccination, dipping, disinfecting or other methods to be applied to live stock it shall not be permissible to prove that the same was done by any one except an authorized representative of said Commission. The provisions of this Section shall apply to any and all contagious, infectious and communicable diseases of live stock, domestic animals and domestic fowls, whether said diseases are mentioned in this Act or not, and said provisions shall also include scabies infection and exposure among cattle, sheep, and goats, when a scabies inspector of said Commission determines the existence of scabies infection or exposure thereto.

Notice of quarantines

Sec. 3. Notice of quarantines established by the Live Stock Sanitary Commission shall be given in the following manner: Notice of quarantines against other states, territories and foreign countries, or any part thereof, shall be given by publishing a brief statement thereof in a newspaper published in the State of Texas and said quarantine shall become and be in effect on and after the time of said publication. The expense of said publication shall be paid out of any appropriation made for office and stationery expenses of the Live Stock Sanitary Commission. Notice of quarantines established within the State of Texas shall be given either by publishing a brief statement thereof in a newspaper published in the County in which said quarantine is established or by posting said brief statement giving notice of said quarantine at the Court House door of said county or by delivering a written notice of said quarantine to the owner or established on any lands, premises or other place the same shall also quarantine all live stock, domestic animals or domestic fowls of the kind mentioned in said caretaker or person in charge of the live stock, domestic animals, domestic fowls, or the lands, premises or other place to be quarantined. When a quarantine is quarantine notice whether or not said live stock, animals or fowls are owned or controlled by the person who owns and has control of the land or other place, and said quarantine shall include all such live stock, domestic animals or domestic fowls owned by any person, if the said live stock, domestic animals or domestic fowls shall be upon or enter upon said quarantined premises, lands or other quarantined places during the existence of said quarantine. The expense of publishing or posting notice of any quarantine established within the State of Texas may be paid out of any appropriation made by the Legislature for office and stationery expenses of the Live Stock Sanitary Commission or out of any appropriation made by the Legislature for the eradication or control of contagious, infectious or communicable diseases of live stock; or the County Commissioners' Court in counties in which said quarantines are established may provide funds for publishing or posting said notices out of the general funds of said counties or out of any other available funds of said counties. All quarantine notices shall state the requirements and restrictions under which live stock may be permitted to enter the State of Texas or to be moved from any quarantined places; or if the seriousness of the disease is such that movements of such live stock shall not be permitted, then and in that event said quarantine shall state this fact.

Removal or transportation of animals from quarantine area unlawful

Sec. 4. Any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry, or in any manner move or transport any cattle, horses, mules, asses, sheep, goats, hogs or other live stock, domestic animals or domestic fowls from any county, district, area, premises, pasture, lot, pen, yard, stockyard, field, barn, stable, building, enclosure, or other place which is under quarantine under any provision of this Act, or any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry or in any manner transport or move any of said live stock, domestic animals, or domestic fowls which are under quarantine under any provision of this Act, from any county, district, area, premise, pasture, lot, pen, yard, stockyard, field, barn, stable, enclosure, building, or other place in which or upon which said live stock, animals or fowls are quarantined; or any person, firm or corporation that shall ship, drive, drift, lead, haul, truck, carry or in any manner transport or move any cattle, horses, mules, asses, sheep, goats, hogs or other live stock, domestic animals or domestic fowls into the State of Texas from any State, territory or foreign country against which a quarantine is established by the Live Stock Sanitary Commission under any provision of this Act, or from any quarantined part of any State, territory, or foreign country against which a quarantine is established by the Live Stock Sanitary Commission under any provision of this Act, shall be fined not less than Twenty-Five Dollars per head nor more than One Hundred Dollars per head for each head of such live stock, domestic animals or domestic fowls which are shipped, driven, drifted, led, hauled, trucked, carried or in any manner transported or moved by said person, firm or corporation in violation of said quarantine, unless said live stock, domestic animals or domestic fowls are accompanied by a written certificate or written permit from the Live Stock Sanitary Commission of Texas or a written certificate or written permit from a veterinarian or other representative authorized by said Commission to issue the same. The said certificate or permit shall be issued in conformity with the requirement stated in the quarantine notice and the same shall be issued by some one of the class of persons authorized for such purpose by said Commission in said quarantine notice. Quarantine notices shall state for what cause said quarantines are established, whether on account of infection or exposure. It shall not be necessary to describe in said notices the land or territory or premises by metes and bounds or other measures, but it will be sufficient if the said quarantine notice makes such reference to the land, territory or premises and the location thereof to reasonably identify the same. The provisions of this Section with reference to the quarantining against other States, and foreign countries

and portions thereof, and assessing a penalty for the violation of same, shall apply to quarantines established on account of the diseases mentioned and referred to in this Act, and also to scabies among cattle, whenever said quarantine is established on account of said scabies, but where a quarantine is established on account of scabies among cattle, the issuance of certificates and permits for the movement of cattle which are subject to said quarantine shall be only by scabies inspectors recognized for such purpose by the Live Stock Sanitary Commission of Texas, in said quarantine notice.

Regulation of movement of commodities or disease carriers

Sec. 5. The Live Stock Sanitary Commission may establish necessary quarantines for prohibiting or regulating the movement of any commodity or article, live stock, animals or fowls that the said Commission may ascertain to be carriers of any of the diseases mentioned in this Act whenever any of said diseases or exposure thereto exist in the Nation, State, territory or area to be quarantined. Any person, firm or corporation who shall violate said quarantine by in any manner moving any of said designated disease carriers into the State of Texas from any state, foreign nation, territory or area, or who shall in any manner move any of said designated disease carriers from any territory, county, district, or place in the State of Texas quarantined by said Commission shall be fined not less than $25.00 nor more than $100.00 for each of said movements or shipments unless said movement or shipment is accompanied by a written permit or certificate provided for in said quarantine notice.

Entry into public or private property in exercise of authority

Sec. 6. The Chief Veterinarian of the Live Stock Sanitary Commission and all other veterinarians employed by said Commission, including members of said Commission, are hereby authorized to enter any public or private property for the exercise of any authority or performance of any duty authorized under this Act. If said person desires to be accompanied by a peace officer the said person may apply to any magistrate in the County wherein said property is located for the issuance of a search warrant, and it shall be the duty of the said magistrate to issue the same, but no such search warrant shall issue without describing as near as may be the premise or other place to be entered; nor without probable cause, supported by oath or affirmation. It shall not be necessary to describe said premises or place by field notes or metes and bounds, or other measures, but it will be sufficient if the search warrant contains such reasonable description as will enable the owner or caretaker of said property to know just what property is referred to therein. When said search warrant is issued it will authorize the person to whom it is issued to be accompanied by peace officers, and said search warrant will authorize the person to whom it is issued to be also accompanied by as many helpers and assistants as he may deem necessary for the performance of said duty or the exercise of said authority. Any person, firm or corporation who shall refuse to permit any person to whom said search warrant is issued to make said entry or to perform any duty or exercise any authority designated in said search warrant under authority of this Act, or who shall refuse to permit any peace officer or any helper or any assistant to said person to whom said search warrant is issued to make said entry or to exercise any authority or perform any duty designated in said search warrant under authority of this Act shall be fined not less than Twenty-five nor more than One Hundred Dollars. Each separate day upon which said refusal is made during the thirty days next succeeding the date of the issuance of said search warrant shall constitute a separate offense. Said search warrant shall permit the entry and re-entry and the performance of said duties and exercise of said authority continuously for a period of thirty days after its issuance, and additional search warrants may be issued thereafter under the provisions of this Act as often as same may be necessary. It is further provided that it shall not be necessary for veterinarians, inspectors or members of said Commission to secure said search warrants, unless they are to be accompanied by peace officers, but they are hereby authorized to make entries upon private and public lands for the performance of any duties authorized under this Act. Search warrants may also be issued to inspectors of the Live Stock Sanitary Commission engaged in the eradication of scabies among sheep, goats and cattle, whenever said inspectors are to be accompanied by peace officers in the performance of any duties in connection with said work.

Persons liable

Sec. 7. For all purposes of this Act, it shall be construed that any person, firm or corporation who is owner, lessee, renter or tenant of premises, pens, pastures or other places is the caretaker of and has control of all cattle, horses, mules, asses, sheep, goats, hogs and other live stock, domestic animals or domestic fowls, located thereon or therein, and subject to prosecution under provisions of this Act, penalizing owners or caretakers, whether he owns such live stock or not; provided that this shall not be construed as limiting the care and control of such mentioned live stock, animals and fowls to said owner, lessee, renter or tenant of said land, but any other person who exercises any care or control over such live stock, animals or fowls and also the actual owner of same shall also be held liable under provisions of this Act penalizing owners and caretakers for violation. Owners of land, pastures, premises and other places shall not be considered caretakers of live stock thereon if some other person has control of said premises by virtue of any lease or rental contract, or by some other authority, unless the owner of said premises is also owner of the said live stock, domestic animals or domestic fowls located thereon, nor shall a tenant of premises be considered a caretaker of live stock, domestic animals or domestic fowls thereon unless said tenant has control of said premises or said live stock, domestic animals or domestic fowls.

Commissioners' Court to cooperate with Commission

Sec. 8. It shall be the duty of the County Commissioners' Courts of this State to cooperate with and assist the Live Stock Sanitary Commission in protecting the live stock, domestic animals and domestic fowls of their respective counties from all contagious, infectious and communicable diseases, whether such diseases exist within or outside of the county, and said Commissioners' Courts are hereby authorized to employ a veterinarian at the expense of the county, said veterinarian to be approved by the Live Stock Sanitary Commission.

Health certificate for foreign shipments into any county

Sec. 9. It shall be unlawful for any person, firm or corporation to ship, drive, drift, haul, lead or otherwise move from any State, territory or foreign country into any county in the State of Texas, or for any railroad company or other common carrier to haul, ship, or transport into any county in the State of Texas from any state, territory or foreign country, any cattle, horses, mules, asses, sheep, goats, hogs, domestic animals or domestic fowls, except as hereinafter provided, unless the same are accompanied by a health certificate issued by a veterinarian authorized by or recognized by the Live Stock Sanitary Commission on a health certificate form prescribed in the rules and regulations of said Commission. The said Commission shall provide in its rules and regulations for authorizing and recognizing veterinarians of this State

and of other states and of Departments of the United States government, and no veterinarian shall be considered as recognized or authorized by said Commission, except as provided therein. The said certificate shall show that said live stock, domestic animals and domestic fowls were inspected by said veterinarian sometime within the preceding 10 days before they entered the State of Texas, and that he found them to be free of all infectious and contagious diseases. Any person, firm or corporation that shall ship, drive, drift, haul, lead or otherwise move into the State of Texas, or any railway or other common carrier that shall haul, ship, or transport into the State of Texas, any cattle, horses, mules, asses, sheep, goats, hogs, domestic animals or domestic fowls, in violation hereof without the same being accompanied by said certificate shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than $25.00 nor more than $100.00 for each head of live stock and for each domestic animal or domestic fowl which said person, firm or corporation, railway or other common carrier ships, hauls, drives, drifts, transports, leads, or otherwise moves into the State of Texas in violation hereof. Stocker or range cattle, and cattle and sheep and hogs billed and shipped for immediate slaughter purposes shall be admitted into the State of Texas without certification, treatment, vaccination or testing.

Rules and regulations for shipment

Sec. 10. Live stock shall not be considered as billed or shipped or intended for immediate slaughter purposes unless they are handled in accordance with the rules and regulations of the Live Stock Sanitary Commission and accompanied by a written statement of this fact shown on the waybill, or bill of lading, express shipping papers, or if hauled by trucks or other vehicles the driver shall have in his possession a written statement of this fact; cattle shall not be considered stocker or range cattle if they are dairy or breeding cattle or purebred cattle, nor if they are intended for milk purposes.

Tuberculin test charts to accompany shipments or other movements

Sec. 11. All cattle shipped, driven, drifted, transported, hauled or otherwise moved into the State of Texas, except range or stocker cattle, or cattle shipped for immediate slaughter in accordance with the rules and regulations of the Live Stock Sanitary Commission, in addition to being accompanied by the health certificate prescribed in this Act, shall also be accompanied by a tuberculin test chart issued by a veterinarian recognized by the Live Stock Sanitary Commission as herein provided, showing said cattle to have been tested for tuberculosis not more than sixty days previous to the date said cattle entered the State of Texas, said test chart showing that said cattle were found to be free from tuberculosis at the time of said test. Cattle from fully accredited herds and from modified accredited areas which have passed one clean test in process of accreditation which shall be accompanied by a tuberculin test chart issued by the Live Stock Sanitary officials of the State of origin or by the United States Bureau of Animal Industry Inspector in charge of tuberculosis eradication in the State of origin, shall not be subject to this requirement. Any person, firm, corporation, railway or other transportation company that shall ship, drive, drift, haul or transport or otherwise move into the State of Texas any cattle, except range or stocker cattle, or cattle shipped for immediate slaughter, in accordance with the rules and regulations of the Live Stock Sanitary Commission, unless said cattle are accompanied by the tuberculin test chart herein prescribed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than $25.00 per head nor more than $100.00 per head for each head of cattle shipped, driven, drifted, hauled, transported or otherwise moved into the State of Texas by said person, firm, corporation, railway or other transportation company in violation hereof.

Regulation of hog shipments

Sec. 12. Any person, firm or corporation that shall ship, drive, drift, haul, truck or otherwise transport into the State of Texas any hogs, except hogs shipped for immediate slaughter in accordance with the rules and regulations of the Live Stock Sanitary Commission, unless the certificate accompanying said hogs as prescribed in this Act, certifies that the veterinarian who issued same vaccinated said hogs and dipped them in a two per cent solution of cresol compound USP, prescribed in the Rules and Regulations of said Commission, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum of not less than $25.00 per head nor more than $100.00 per head for each head of hogs shipped, driven, drifted, hauled, trucked or transported or otherwise moved by said person, firm or corporation into the State of Texas in violation hereof. Any railway company or other common carrier who shall haul, ship or transport into the State of Texas any hogs, except said immediate slaughter hogs, unless the same are accompanied by the said certificate bearing the said certification showing said vaccination and dipping, shall be deemed guilty of violating the provisions of this Section and shall be punished as herein prescribed. Provided that a certificate certifying that hogs have been vaccinated by the use of serum alone, shall become void at the expiration of thirty days after such treatment; and where hogs are accompanied by a certificate showing said hogs to have been vaccinated with the use of virus any time within the preceding thirty days or to have been vaccinated with serum alone more than thirty days previous to the said entry into Texas, the said hogs shall for all purposes of this Act be considered as not being accompanied by a certificate certifying vaccination, and the person, railway company or other common carrier who shall ship, drive, haul or otherwise transport such hogs accompanied by said invalid or void certificate, shall be considered as having violated the provisions of this Section.

Shipments into State subject to tuberculosis testing

Sec. 13. All cattle except range and stocker cattle, and cattle shipped for immediate slaughter in accordance with the provisions of this Act, which enter the State of Texas, are subject to testing for tuberculosis by a veterinarian authorized in writing by the Live Stock Sanitary Commission, after their arrival in Texas, irrespective of whether said cattle were accompanied by the test chart prescribed in this Act, which test shall be made at the discretion of the Live Stock Sanitary Commission at any time within ninety days after the said cattle enter the State of Texas. For the purpose of carrying out the provisions of this Section the said Commission or its Chairman may establish such restrictions or quarantines on said cattle as may be necessary, to insure their being retested as herein prescribed.

Cattle showing positive reaction to tuberculosis test as public nuisance

Sec. 14. All cattle that show a positive reaction when tested for tuberculosis by a veterinarian recognized by the Live Stock Sanitary Commission for the performance of such testing are hereby declared to be a public nuisance and a menace to the health of other live stock with consequent and serious danger to human life and health. It shall be the duty of said veterinarian to brand or have branded all of said positive reactors "T" on the left jaw with a hot iron, which letter "T" shall be not less than three inches high. Said veterinarian shall immediately notify the Live Stock Sanitary Commission of the location, description

and number of said reactors and it shall be the duty of said Commission to immediately quarantine the said reactors and the premises upon which they are located. Any person, firm, or corporation who shall sell, trade, barter, give away, or loan, or drive, drift, ship, haul, lead, truck, or in any manner move, before the Live Stock Sanitary Commission has established a quarantine on said positive reactors, any of said positive reactors from the enclosure wherein they were located at the time they were so tested, or that shall so move any of said reactors from the place or enclosure where they are under quarantine by said Commission or that shall so move any cattle located in said quarantined place or enclosure during the existence of said quarantine without first securing a written permit from the said Commission shall be fined not less than $100.00 per head nor more than $500.00 per head for each head of said positive reactors which the said person, firm or corporation shall sell, trade, barter, give or loan, or shall drive, ship, haul, lead, truck, or in any manner move in violation of any provision of this Section without first receiving said permit as aforesaid.

Veterinarians' records filed with Commission

Sec. 15. It shall be the duty of all veterinarians in the State of Texas to file for record with the Live Stock Sanitary Commission a test certificate upon the form prescribed by the Live Stock Sanitary Commission on all tuberculin tests on cattle, hogs or fowls, showing name of owner, post office address, location of premises and animals or fowls, date of test, identification of animals or fowls, kind of test conducted, result of test, and whether interstate, accredited herd, municipal, or private test, which test certificate shall be transmitted to said Commission for record with the said Commission within two days after date of finishing such test; said veterinarians shall also file with said Commission for record a certificate of vaccination upon forms prescribed by said Commission of all hogs vaccinated by them, showing name of owner, post office address, location of premises, number of hogs, amount and serial number of the serum and virus used or other biologics used, the same to be transmitted for recording within forty-eight hours after the performance of said vaccination; veterinarians shall upon pronouncing any animal as infected with tuberculosis as evidenced by tuberculin test conducted by him or by clinical examination or by the results of laboratory examination, brand such animal as prescribed in this Act, and shall also affix on the left ear a metal ear tag bearing a number for identification of said animal and shall transmit notice of said tagging and branding to the Live Stock Sanitary Commission within forty-eight hours of the performance thereof. Any veterinarian violating any provision of this Section shall be fined not less than $25.00 nor more than $200.00 for each violation.

Regulations as to entry in exhibitions and movements from stockyards

Sec. 16. The Live Stock Sanitary Commission is hereby authorized, whenever said Commission deems it necessary, to regulate the entry into exhibitions, shows and fairs, of all live stock, domestic animals or domestic fowls and to require such treatment and certification as may be reasonably necessary as protection against infectious, contagious and communicable diseases; also to regulate the movement of live stock out of stock yards or railway shipping pens when necessary, and require such treatment and certification as may be reasonably necessary as a protection against contagious, infectious and communicable diseases. Any person, firm or corporation who shall enter any live stock, domestic animals, or domestic fowls into any show, fair, or exhibition, or upon the grounds thereof for said purpose, or who shall remove any live stock from any stock yards or railway shipping pens without a certificate as required in any regulation adopted by said Commission under authority of this Section, shall be fined not less than $25.00 per head nor more than $100.00 per head for each head of said live stock, or for each domestic animal or domestic fowl which is entered in said show, fair, or exhibition, or said grounds for said purpose, or from said stock yards or railway shipping pens. Owners and persons in charge of fairs, shows and exhibitions, stock yards and railway shipping pens shall also be liable under this Act for such movement and fined as herein provided whenever they permit or allow the same.

Definitions

Sec. 17. The words "accompany" and "accompanied" as used in this Act with reference to certificates and permits shall be construed to mean that said certificates or permits are in the possession of the conductor of the train and attached to the waybill of the shipment of the live stock which are shipped by rail, or in possession of the person in charge of the said live stock, if the movement is made otherwise than by rail.

Penalty

Sec. 18. Any person who is the owner or caretaker of any live stock, canines or fowls or of any disease carrier designated in this Act or designated by the Live Stock Sanitary Commission under authority of this Act who permits any other person to ship, drive, drift, lead, haul or otherwise move any of said live stock, canines or fowls, or disease carrier in violation of any quarantine established under provisions of this Act by the Live Stock Sanitary Commission or in violation of any provision of this Act shall be deemed guilty of a misdemeanor for permitting such movement, and upon conviction thereof shall be fined in any sum that is prescribed for punishing the person who ships, drives, drifts, leads, hauls, or otherwise moves said canines, fowls or live stock, or disease carrier.

County attorney to prosecute carriers or corporations for violations

Sec. 19. Whenever any railroad company or other common carrier or corporation violates any provision of this Act, it shall be the duty of the County Attorney of the county in which said violation occurs to file and prosecute a civil suit on behalf of the State of Texas in the Civil Court of proper jurisdiction against said railway company or other common carrier or corporation.

County judge to appoint appraisers of affected animals; destruction

Sec. 20. It shall be the duty of the County Judge of any county in this State whenever any horse, mule, or ass in their respective county is found affected with glanders and has been quarantined by the Live Stock Sanitary Commission to appoint three disinterested parties to act as appraisers and fix the value of said animal, and report said appraisement to the said County Judge; whereupon the Commissioners' Court of said County shall pass upon said written report and pay to the owner of said animal the appraised value. The County Judge upon receipt of the report from the appraisers shall issue an order to the sheriff, deputy sheriff or constable of said county commanding him to seize said diseased animal and take it to some secluded spot or place and kill it and burn the carcass until thoroughly consumed. The said appraisers and officers shall be paid reasonable compensation for their services, out of funds provided by the County Commissioners' Court under the same provisions authorized by this Act for other expenditures by County Commissioners' Courts.

Disposition of animals dying of infection

Sec. 21. It shall be the duty of any person owning, controlling or caring for any live stock which die with any of the contagious or infectious diseases mentioned in this Act or that own or control the land upon which

said live stock die, or upon which its carcass is found, to bury the carcass of said animal, by digging a grave not less than five (5) feet deep, placing the carcass therein, covering it with lime and then filling the grave with dirt; or to burn said carcass with fire, until it is thoroughly consumed. Any person owning, controlling or caring for any live stock which die with any of the said contagious or infectious diseases or who owns or controls the land upon which said live stock dies or upon which its carcass is found who shall fail to bury or burn within twenty-four hours after the said animals die, the said carcass as herein prescribed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum of not less than $25.00 nor more than $100.00, for each of said animals.

Coöperation of Commission with Bureau of Animal Industry of United States and Commissioners' Court with Bureau and Commission

Sec. 22. The Live Stock Sanitary Commission is hereby authorized to cooperate with the Bureau of Animal Industry, United States Department of Agriculture and with County Commissioners' Courts of this State, and it is hereby made the duty of County Commissioners' Courts to cooperate with said Commission and Bureau as hereinafter provided for the eradication of tuberculosis among cattle, under the provisions of this Act and of the rules and regulations of said Commission as herein provided for the purpose of the establishment of modified accredited areas in the State of Texas. The said County Commissioners' Courts may at their discretion cooperate with said Commission and Bureau, but it shall be the mandatory duty of said County Commissioners' Courts to so cooperate upon the filing with said County Commissioners' Courts of a petition signed by at least 75% of the owners of cattle in the county as shown by the tax rolls of said county. The Live Stock Sanitary Commission shall provide in its rules and regulations the manner, method and system of testing cattle for tuberculosis in said cooperative tuberculosis eradication work. The owners of cattle which have shown a positive reaction to the tuberculin test in said cooperative tuberculosis eradication work shall sell such reactors under the direction of said Commission for immediate slaughter at public slaughtering establishments where Federal post mortem inspection is maintained; or said Commission may authorize said slaughter upon the owners' property or other place under the direction of said Commission. After such sale and slaughter the Live Stock Sanitary Commission is authorized to pay such owners out of funds appropriated by the Legislature for that purpose an amount not to exceed one-third of the appraised value of such reactors after deducting the amount of salvage received for same. In no case shall any compensation be made by the State for more than $35.00 for any grade animal or more than $70.00 for any purebred animal; nor shall any of such payment be made until said owner complies with the rules and regulations of said Commission; nor shall any compensation be made in excess of the amount of compensation paid said owner for said reactors by the United States Bureau of Animal Industry. The value of said animal shall be appraised by a representative of said Commission or of said Bureau and a representative of the owner of said live stock, and if they cannot agree, then a third appraiser shall be appointed by these two appraisers and then the value shall be appraised by the agreement of any two of said three appraisers. It shall be unlawful for any positive reactors to the tuberculin test, regardless of whether said animals were tested in said cooperative tuberculosis eradication work to be slaughtered or otherwise disposed of except under the direction of the Live Stock Sanitary Commission, and any person who kills or destroys or removes the carcass of any positive reactor from the place where the same is under quarantine or the place whereon said animal was tested, shall be fined the same as if he had violated the quarantine of said positive reactors under this Act.

Chief veterinarian, assistant and other employes

Sec. 23. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Veterinarian, a first assistant and as many Assistant Veterinarians as may be necessary; also, such other persons as may be necessary for the enforcement of the provisions of this Act, and other Live Stock Sanitary Acts; also, clerks, stenographers, chief clerk and all necessary clerical help.

Signatures of Commission or Chairman

Sec. 24. All quarantines, written notices and other written instruments signed under the authority of the Chairman of the Live Stock Sanitary Commission shall have the same force and effect as if signed by the Commission. The signature of said Commission or Chairman shall be written or stamped under authority of said Commission or Chairman on all quarantine notices, and other instruments issued by said Commission or Chairman. Any written instrument issued by said Commission or Chairman shall be admissible as evidence in any Court of this State when certified by the Chairman of said Commission.

County attorney to institute civil actions against non-residents for fines

Sec. 25. Whenever any person who is a nonresident of the State of Texas violates any penal provision of this Act and is absent from the State at the time of the said violation or whenever any foreign corporation which does not have a permit under the law to do business in the State of Texas violates any provision of this Act it shall be the duty of the County Attorney in any and all counties in the State of Texas wherein said violation occurs to institute a civil suit against said non-resident person or foreign corporation for the collection of the fine provided in said penal clause, and to run an attachment upon any property which said non-resident person or foreign corporation may at any time have in the State of Texas and after final judgment to have said attached property sold under execution, for the purpose of paying said fine and cost of suit. Said suit shall be instituted in the name of the State of Texas and no cost bond or attachment bond shall be required. Service of citation in such cases may be had by having notice of the pendency of said suit served upon said non-resident person or foreign corporation in the State of their domicile by some person over the age of 21 years. The said citation shall be served upon the defendant ten days before the beginning of the term of court the same as is now required on citations from the County Court. If the suit should be filed in a district court in a county which has two or more district courts of exclusive civil jurisdiction said notice shall be issued and served under the same requirements as is now provided for the service of citations from such courts upon defendants residing in another county in this State outside the county in which said Court is located. In lieu of the above service, citation may be had by publication under the same requirements that are now provided for citation by publication upon non-resident defendants.

Quarantine of foreign shipments in violation of act

Sec. 26. Whenever any live stock, canines or fowls are moved or permitted to move into the State of Texas in violation of any quarantine established under any provision of this Act or of any other Live Stock Sanitary Law or in violation of any provision of this Act or of any Live Stock Sanitary Law or are moved from any place in the State of Texas in violation of any quarantine established under this Act, it shall be the duty of the Live Stock Sanitary Commission to quarantine said live stock, canines or fowls wherever found

and enforce said quarantine until said live stock have been properly treated or vaccinated or tested, dipped or otherwise disposed of as may be provided for in the rules and regulations of the Live Stock Sanitary Commission. The provisions of this Section shall apply to all live stock, canines and fowls and to all diseases mentioned in this Act, including also scabies among cattle, sheep and goats.

Injunction by private citizen to enforce act

Sec. 27. Any citizen of this State may bring an injunction suit to enforce any of the provisions of this Act or to restrain the threatened violation of any of the provisions of this Act; and the courts may hear and determine said injunction either in vacation or term time, and fully dispose of all issues involved in said injunction suit either in vacation or term time whether or not the same is a restraining or mandatory injunction. Provided reasonable notice is given the defendant under directions of the Court, where mandatory injunction is sought.

Shipments into each county as separate offense

Sec. 28. Every county in the State of Texas into which any live stock, domestic animals, domestic fowls, or designated disease carriers under provisions of this Act are moved by any person, firm or corporation at any time within six months after said live stock, domestic animals, domestic fowls, or said designated disease carriers have been unlawfully moved or permitted to move from any county or part of county in the State of Texas in violation of any provision of this Act, or after having entered the state of Texas in violation of any quarantine established under authority of this Act, or in violation of any provisions of this Act, shall constitute a separate offense against said person, firm or corporation who so moves same into such other counties and against owners and caretakers thereof who permit the same to be done. [Acts 1929, 41st Leg., 1st C.S., p. 114, ch. 52.]

Section 29 of this Act repeals Rev.Civ.St. Arts. 6900–6902. Section 30 provides that the act shall be liberally construed and if any section is declared invalid, such holding shall not affect the remainder.

Art. 1525c. Tick Eradication Law.

Duties of Live Stock Sanitary Commission

Section 1. It shall be the duty of the Live Stock Sanitary Commission, provided in Article 7009, Revised Civil Statutes of 1925, to eradicate the fever-carrying tick (Margaropus Annulatus) in the State of Texas and to protect all lands, territory, premises, cattle, horses, mules, jacks and jennets in the State of Texas from said tick and exposure thereto, under the provisions of this Act. Said Commission 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. One of the members of said Commission shall be Chairman thereof, and he is hereby authorized to perform any and all acts which may be performed by said Commission.

Definitions

Sec. 2. The word "Tick" as used in this Act shall be construed to mean the cattle fever-carrying tick known as Margaropus Annulatus. The "Free Area" is hereby defined as being composed of those counties and parts of counties in Texas which the Live Stock Sanitary Commission may designate as the Free Area and is so proclaimed by the Governor; the "Tick Eradication Area" is composed of those counties and parts of counties designated for tick eradication by the Live Stock Commission and proclaimed by the Governor of the State of Texas as provided in this Act; the "Inactive Quarantined Area" is composed of those counties and parts of counties which are designated as such in Section 3 of this Act, or that may hereafter be designated as such by the Live Stock Sanitary Commission and proclaimed by the Governor of Texas under provisions of this Act. The term "Exposed" or "Exposure" shall be construed to mean that cattle, horses, mules, jacks and jennets shall be considered as exposed to the tick if they have been in any pasture or territory or upon any premises or place which was not at said time classed by the Live Stock Sanitary Commission as being free of said tick, or if said live stock have singled or come in contact with other live stock which were not classed by said Commission at said time as being free from said ticks and exposure thereto. All premises, pastures, lots, pens, ranches and other places which are not classed by the Live Stock Sanitary Commission as being free of ticks and exposure shall be considered as being exposed to said tick. Exposure shall be considered as continuing until the said premises and live stock have been declared free of exposure by the Live Stock Sanitary Commission. Whenever a tick is found upon any cattle, horses, mules, jacks, and jennets, every head of such live stock in said herd or which are located in the same pasture, pen, lot or in the same enclosure or upon the same range or that shall thereafter be located therein or thereupon, shall be classed as tick infested and said pasture, pen, lot, enclosure or open range in which and upon which they were located shall be classed as tick infested. Said classifications to continue until changed by said Commission under the provisions of this Act. No premises, place or live stock shall be considered as free from exposure in the Tick Eradication Area unless the Live Stock Sanitary Commission has officially classed the same as free from exposure and filed in the office of the supervising inspector of the county wherein the same are located a copy of the order of said Commission making said classification, or unless the said supervising inspector under authority of said commission has made said classification in writing and filed the same in the office of said supervising inspector in said county.

Inactive Quarantined Area, proclamation for tick eradication

Sec. 3. The following counties and parts of counties in the State of Texas are hereby declared to be the Inactive Quarantined Area and are hereby quarantined because of tick infestation therein: Anderson, Angelina, Atascosa, all of Brazoria east of the Brazos River, Burleson, Cameron, Chambers, Cherokee, Duval, Fort Bend, Frio, Galveston, Grimes, Hardin, Harris, Hidalgo, Houston, Jasper, Jefferson, LaSalle, Lee, Leon, Liberty, Madison, Milam, Montgomery, McMullen, Nacogdoches, Newton, Orange, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Starr, Trinity, Tyler, Walker, Waller, Webb, Willacy and Zapata. It is hereby specially provided that the Live Stock Sanitary Commission shall designate for tick eradication, to be proclaimed by the Governor immediately upon the taking effect of this Act, that part of Live Oak County which was heretofore designated for tick eradication by proclamation of the Governor under Chapter 122, Acts of the Regular Session of the Thirty-Ninth Legislature, and all of Live Oak County not included in said designation is hereby declared to be a part of the Inactive Quarantined Area subject to designation for tick eradication by said Commission under provisions of this Act, at any time after the taking effect of this Act. It shall be unlawful, after the taking effect of this Act, for any cattle, horses, mules, jacks, or jennets to be moved or permitted to move from or within said Inactive Quarantined Area except in accordance with the provisions of this Act, and particularly as contained in Section 27 hereof. The Live Stock Sanitary Commission is hereby authorized to designate for tick eradication any of the aforesaid counties and parts of counties and any county or part of county that may have ticks therein without an election being held for said purpose, or said Commission may designate any part

of any of said counties for said purpose. Whenever the Live Stock Sanitary Commission designates any of the aforesaid counties or parts of counties for tick eradication, the same shall be proclaimed by the Governor of the State of Texas, which proclamation shall become and be in effect on and after date prescribed in said proclamation. A brief notice of said proclamation shall either be published in a newspaper in the county wherein tick eradication is to be conducted or posted at the court house door thereof. If only a part of a county is designated for tick eradication, said notice may be published in any newspaper in any part of said county, or posted at the court house door, whether or not said court house is located in said part of county. Said notice shall be either published or posted at least ten full days before the date the proclamation is to become effective. In the event the same is not published or posted ten full days before the date prescribed for said proclamation to become effective, or in the event said prescribed date has already passed, then the proclamation shall become effective upon the expiration of ten full days from the date of said publishing or posting. The expense of the publishing or posting of such notices shall be paid by the county in which said proclamation is effective. The quarantine herein established on said Inactive Quarantined counties and parts of counties shall remain and continue in full force and effect after the taking effect of the proclamation of the Governor designating any of said counties or parts of counties for tick eradication, and in addition thereto the further effect of said proclamation with reference to quarantine shall be as provided in Section 4 of this Act. The Live Stock Sanitary Commission is hereby authorized to transfer, by proclamation of the Governor, counties and parts of counties from any area to another area whenever the same is deemed advisable or necessary and to establish necessary quarantines on lands, premises and live stock. The re-establishment of quarantine on any portion of a county in the Free Area need not be proclaimed by the Governor.

Proclamation for tick eradication to declare quarantine; operation and effect

Sec. 4. Whenever any county, part of county, district or territory is designated for tick eradication by the Live Stock Sanitary Commission 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 lands, pastures, pens, lots, premises, and all cattle, horses, mules, jacks and jennets of each individual owner, lessee, renter, tenant and occupant in the designated county, part of county, district or territory without specifically designating said land, pasture, pen, lot and premises, and after said quarantine becomes effective it shall be unlawful for any cattle, horses, mules, jacks or jennets located therein or which may thereafter be located therein during the existence of said quarantine, to be moved or permitted to move from the land, pastures, pen, lot or premises of an owner, lessee, renter, tenant or occupant, whether enclosed or not, onto or into or through any other land owned or leased or rented, tenanted or occupied or controlled by any other person, firm or corporation or onto any open range, public street, public road or any thoroughfare, without a permit or certificate from an authorized inspector of the Live Stock Sanitary Commission. It shall be unlawful for any owner or caretaker of cattle, horses, mules, jacks or jennets located in said quarantined territory to move or permit or allow the movement of said live stock without said permit or certificate from any pasture, pen, lot, or other enclosure of which he is the owner, lessee, renter, tenant or occupant, or from any open range or street, road or thoroughfare or from land which he does not own or control into any other pasture, pen, lot, enclosure or other land of which he is the owner or caretaker, or of which he is in control, if said live stock are subject to dipping under the provisions of this Act, and the pen, lot pasture, enclosure or land into which he moves or allows or permits said movement is classed in the records of the supervising inspector of said county as free of ticks or has been released from quarantine by said Commission or if said live stock are subject to dipping but are not being dipped under the provisions of this Act in the conduct of regular systematic tick eradication by said Commission, and are so moved or allowed or permitted to so move into a pasture, pen, lot, enclosure or other land owned or controlled by said owner or caretaker of said live stock where tick eradication is being conducted, under the provisions of this Act, or into a pasture or other enclosure owned or controlled by said owner or caretaker of said live stock, which said pasture or enclosure is vacated for the purpose of tick eradication by vacation methods under the direction of said Commission. Owners and caretakers are hereby permitted to move and allow the movement of cattle, horses, mules, jacks and jennets to and from dipping vats for the purpose of dipping said live stock on any regular dipping date at said vat to which they are to be moved, or on any other dipping date designated by the inspector in charge of said dipping vat, provided they are moved in accordance with the rules and regulations of the Live Stock Sanitary Commission. If they are moved otherwise than [1] prescribed in said rules and regulations the same will constitute a violation of the quarantine. The term "other land" means land which is separated from the land from which the movement is made by a fence or other dividing line or by land of another person, firm or corporation.

[1] So in enrolled bill. The word "as" should probably be inserted after "than".

Commissioners' Court to coöperate with Commission; maintenance of vats at county expense

Sec. 5. It shall be the duty of the County Commissioners' Court of every County in the State of Texas in which the Live Stock Sanitary Commission is authorized to conduct tick eradication under the provisions of this Act, to cooperate with said Commission in the eradication of said tick in their respective counties, and it shall be mandatory upon said Commissioners' Courts to furnish at the expense of the county, in localities designated by the Live Stock Sanitary Commission, a sufficient number of dipping vats, pens, chutes and all necessary facilities of the kind and description designated by said Commission, for the purpose of dipping cattle, horses, mules, jacks and jennets under the supervision of inspectors of the Live Stock Sanitary Commission, the said vats, pens, chutes and other facilities to be owned or leased by the county, and said Commissioners' Court are hereby authorized, empowered and directed, and it is hereby made their duty to appropriate moneys out of the general funds of their counties, to incur indebtedness by the issuance of warrants, and to levy taxes to pay the interest thereon, and to provide a sinking fund for the payment thereof for the purpose of constructing, purchasing or leasing necessary public dipping vats in their counties, including all necessary land, property, material and labor for said purpose; provided said warrants shall draw interest at a rate not exceeding six per cent per annum and shall not run exceeding twenty years from the date hereof. It shall also be the duty of said County Commissioners' Courts to maintain said vats at the expense of the county, including all necessary repairs, changes, alterations or remodeling of any of said vats, pens, chutes or other facilities connected therewith; also to furnish at the expense of the county water for filling and refilling said vats and to bear all expense necessary in cleaning out and refilling said vats. The provisions of this

Section shall apply to the County Commissioners' Court of any county in which the Live Stock Sanitary Commission is authorized by this Act to conduct tick eradication, whether all of said county or only a part thereof is designated for tick eradication. The provisions of this Section shall also apply to counties and parts of counties in the Free Area whenever it is necessary for said Commission to conduct tick eradication in any part of any county in the Free Area. County Commissioners' Courts in all counties are hereby authorized, at their discretion, to pay out of the general funds or any available funds of their county, the salaries and necessary traveling expenses of a sufficient number of inspectors for tick eradication purposes, and purchase dipping material, but in such event such inspectors shall be appointed and directed by the Live Stock Sanitary Commission, regardless of the fact that their salaries and expenses may be paid by the county. The provisions of this Section with reference to said County Commissioners' Courts furnishing, at the county's expense, said inspectors and dipping material, are only for the purpose of authorizing same at the discretion of Commissioners' Court, but are not to be construed as mandatory upon said Commissioners' Courts.

Inspectors nominated by Commissioner's court; appointment by Commission

Sec. 6. The Commissioners' Court of every county in this State where tick eradication is authorized to be conducted under any provision of this Act, may nominate for appointment by the Live Stock Sanitary Commission the number of local inspectors found by the Live Stock Sanitary Commission to be necessary to carry on the work of tick eradication in such county, and when so nominated said Live Stock Sanitary Commission shall appoint them. In the event of failure or refusal of the Commissioners' Court to nominate said local inspectors the Live Stock Sanitary Commission is hereby authorized to appoint the number of local inspectors deemed by them to be necessary. Said local inspectors shall work under the direction and orders of the Live Stock Sanitary Commission and shall be subject to discharge by said Commission and shall be paid their salaries out of the State Treasury of the State of Texas, their compensation to be fixed by said Commission. In the event the Commissioners' Court should nominate any persons who are thereafter appointed as local inspectors and the Live Stock Sanitary Commission finds or concludes that the Commissioners' Court of said county are trying to retard tick eradication or that they are nominating men who are incompetent or negligent in the performance of their duty, then and in that event the Live Stock Sanitary Commission is hereby authorized to ignore in the future nominations or recommendations by said Commissioners' Court of such inspectors. County and district supervising inspectors shall not be nominated by Commissioners' Courts, but shall be appointed by said Commission on its own initiative.

Exercise of eminent domain by Commissioners' Court

Sec. 7. There is hereby conferred upon the County Commissioners' Court of every county in the State of Texas the right of Eminent Domain for the purpose of acquiring necessary lands, and ingress thereto and egress therefrom, for the purpose of establishing, constructing and maintaining dipping vats, pens, chutes and other facilities connected therewith, and for the purpose of acquiring dipping vats, pens, chutes and facilities that have already been constructed, with ingress thereto and egress therefrom. The right of Eminent Domain is to be exercised by said Commissioners' Court under the same provisions of law now in effect for the acquiring of land or lands for the building and maintenance of courthouses, jails and other public buildings, except that it shall be mandatory upon the County Commissioners' Court of any county in which tick eradication is authorized to be conducted under the provisions of this Act, whether in the Free Area or in the Tick Eradication Area, to institute and prosecute condemnation proceedings in the name of the county upon written application of the Chairman of the Live Stock Sanitary Commission, designating the land to be condemned and its location and the name of the owner, and also designating the easement to be acquired for the purpose of ingress thereto and egress therefrom. In acquiring said vats, pens, chutes, facilities and lands, the said Commissioners' Court may either retain the same for permanent use by making said compensation, or the said Court may acquire the temporary use of same, together with said easement, for the purpose of ingress thereto and egress therefrom by making proper compensation to the owner thereof for such period of time as said Court may find it necessary to use same.

Commission to prescribe dipping materials; method of testing by inspectors

Sec. 8. The Live Stock Sanitary Commission shall prescribe in its rules and regulations the dipping materials to be used in the dipping of cattle, horses, mules, jacks and jennets, under the provisions of this Act, and the same shall be the recognized official dipping materials for the dipping of such live stock, under the provisions of this Act, and no other dipping materials shall be used for such purposes. The same to be dipping materials of the kind that are ordinarily known as arsenical dipping material used for the dipping livestock for the eradication of the fever-carrying tick. The said Commission shall also prescribe in its rules and regulations the manner and method by which its inspectors shall test such dipping solution after the same has been mixed with water in the dipping vat for the purpose of determining the arsenical contents of said solution. The testing of said dipping solution shall be by the use of testing outfits, testing materials and testing fluids furnished to inspectors by the Live Stock Sanitary Commission or by the United States Bureau of Animal Industry, in cooperation with said Commission, for the purpose of ascertaining said arsenical contents. When a test is made of said dipping solution by the use of the testing outfit, testing material and testing fluid furnished by said Commission or Bureau, as herein provided, the same shall be accepted as the official test of said dipping solution. In the dippings of cattle, horses, mules, jacks and jennets in regular tick eradication, other than for official movement of said live stock, the test of said dipping solution after being mixed with water in the vat ready for dipping shall be not less than eighteen cubic centimeters or not more than twenty cubic centimeters, as shown by the test made with said testing outfits, testing material and testing fluid. By the terms "not less than eighteen cubic centimeters and not more than twenty cubic centimeters" is meant that in making said test with said testing outfit, testing material and testing fluid in accordance with the directions contained in the rules and regulations of the Live Stock Sanitary Commission, the inspector who makes said test secures the results described in said rules and regulations, to-wit, a decided change of color of said dipping material to a light purple, as showing the completion of said test, by mixing not less than eighteen cubic centimeters nor more than twenty cubic centimeters of testing fluid with twenty five cubic centimeters of said dipping solution into which has been dissolved a test tablet furnished with said testing outfit by said Commissioner or Bureau. In the trial of any case in connection with the dipping or failure to dip live stock under any provision of this Act, it shall be presumed that the dipping vat in question contained a sufficient amount of said dipping solution for dipping said live stock and that said dipping solution had been properly tested and that it showed the above test, or that said dipping solution could have

and would have been put into said vat and tested to show the above test if the owner or caretaker had brought his live stock to said dipping vat for the purpose of dipping; and it shall not be necessary for the State to allege and prove in any criminal prosecution for failure to dip live stock under any provision of this Act, that said vat contained said dipping solution showing said test. If it becomes necessary in any court proceeding to prove the test of said dipping solution, it shall only be necessary to prove that the dipping material used was one of the official dipping materials prescribed in the rules and regulations of the Live Stock Sanitary Commission, and that the inspector tested said dipping solution in accordance with the provisions of this Section and of the rules and regulations of the Live Stock Sanitary Commission and that the test showed not less than eighteen cubic centimeters or not more than twenty cubic centimeters, as defined and explained in this Section and in said rules and regulations. When said dipping material is mixed with water in the dipping vat and is tested by an inspector of said Commission and shows a test at any strength of not less than eighteen cubic centimeters or not more than twenty cubic centimeters, it shall be the duty of all owners and caretakers of live stock which are subject to dipping to dip said live stock in said dipping solution at said strength, as shown by said test. The twenty two cubic centimeter test elsewhere referred to in this Act shall be made in the same manner herein described by securing said change in color by mixing twenty two cubic centimeters of said testing fluid in said dipping solution in which has been dissolved said test tablet.

Penalty for damaging or destroying public dipping facilities

Sec. 9. The dipping vats, pens, chutes and other facilities as provided for in this Act, are hereby designated as "Public Dipping Facilities." Any person who shall without lawful authority damage or destroy any public dipping facilities or any part thereof by cutting, burning, tearing down, dynamiting or the use of any other explosives or means for said purpose, or who shall attempt to damage or destroy such public dipping facilities or any part thereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than Two Hundred Dollars nor more than One Thousand Dollars or be imprisoned in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment.

Dipping material furnished by State; directions for dipping

Sec. 10. The official dipping material prescribed in the rules and regulations of the Live Stock Sanitary Commission shall be furnished at the expense of the State by appropriation for that purpose. The said Commission and its Chairman are hereby authorized to direct owners, part owners and caretakers of live stock which are subject to dipping under the provisions of this Act, to dip said live stock in said official dipping material. Said direction to be in writing and signed either by said Commission or said Chairman, which signature may be written or stamped thereon, under authority of either the Commission or its Chairman, and the same shall be dated and shall direct said person, firm or corporation to dip said live stock under the supervision of an inspector of said Commission at a designated dipping vat, and stating the dates on which said live stock are to be dipped, and the said direction may contain as many dipping dates as, in the discretion of said Commission, may be necessary for eradicating said infection or exposure from said live stock and the premises upon which they are located. Said direction shall further direct said person, firm or corporation to dip all other cattle, horses, mules, jacks and jennets of which he at any time may be the owner, part owner or caretaker, which may at any time be located upon the premises described in said written dipping direction, during the period of time covered by said written dipping direction. Said dipping direction shall further state that unless said person dips said live stock on the dipping dates therein prescribed the same will be done at said person, firm or corporation's expense, under the provisions of this Act authorizing peace officers to deputize helpers and dip said live stock under the supervision of an inspector. All cattle, horses, mules, jacks and jennets located in the Tick Eradication Area or in the Free Area shall be subject to dipping under the provision of this Act if they are infested with the tick, as the term "infested" is defined in this Act, or if they are exposed or have been exposed to said tick at any time within nine months next preceding the date of the issuance of said dipping direction. When such live stock have been in or upon any pasture, pen, lot, enclosure, land or other place and it should be ascertained by said Commission either before or after said live stock are moved therefrom that said land, pasture, pen, place or enclosure is tick infested or exposed, the said Commission shall class said live stock as exposed and said Commission is authorized to direct the dipping of said live stock which have moved therefrom, unless said Commission definitely ascertains that said infection and exposure occurred after said live stock moved therefrom and that they did not become infested or exposed while thereon or therein. Provided that where a dipping direction is issued before the expiration of nine months, as provided herein, additional dipping directions may be issued at any time thereafter if said live stock and the said premises are not freed of all ticks and exposure thereto before the expiration of the dates prescribed in said first dipping directions. The dipping directions provided in this Act shall be delivered to said person at least twelve days before the first dipping date prescribed therein and shall direct said person, firm or corporation to dip said live stock at intervals of every fourteen days,—allowing thirteen full days to intervene between dipping days, and no part of any dipping day shall be included as a part of the said thirteen days interval. Provided further that the Live Stock Sanitary Commission may, at its discretion, direct the dipping of live stock with a longer interval than said thirteen days between dipping days. Provided that the date of delivery of said dipping direction and the date of first dipping prescribed therein shall not be included as a part of said twelve days notice, but there shall be at least twelve full days exclusive of said date of delivery and said first dipping date; and provided further that in the event said twelve days do not intervene between said date of delivery and said first dipping date or if said first dipping date or other dipping dates contained in said dipping direction have passed at the time of the delivery of said written dipping direction, it shall be the duty of said owner, part owner, or caretaker to begin dipping on the first dipping date after the expiration of said twelve full days, and to thereafter dip said live stock on all succeeding dipping dates prescribed in said written dipping direction. It shall not be necessary for written dipping directions to describe the premises or land by field notes or metes and bounds or other measures, but it will be sufficient if the same contains such reasonable description as will inform the person, firm or corporation to whom the same are directed what premises or land are covered thereby.

Compliance with dipping directions

Sec. 11. Whenever the Live Stock Sanitary Commission or its Chairman shall issue dipping directions in writing to any owner, part owner or caretaker of any cattle, horses, mules, jacks or jennets which are located in the Tick Eradication Area or in the Free Area, and which said live stock are infested with the

tick (Margaropus Annulatus) or are exposed to said tick or have been exposed to said tick at any time during the nine months next preceding the date of the issuance of the said written dipping directions and said written dipping directions are served upon said owner, part owner or caretaker, as provided in this Act, shall be the duty of said owner, part owner or caretaker to dip said live stock as directed in said written dipping direction and also in addition thereto it shall be the duty of said owner, part owner, or caretaker to dip all other cattle, horses, mules, jacks, and jennets of which he may at any time be owner, part owner, or caretaker which may be located upon the premises referred to in said written dipping direction during any of the period of time covered by said written dipping direction. All of said dippings to be administered as directed in said written dipping direction. Any owner, part owner, or caretaker of any cattle, horses, mules, jacks or jennets who fails or refuses, after the expiration of the twelve days period of notice provided in this Act, to dip said livestock as prescribed in said dipping directions, on any date prescribed therein during the hours prescribed therein under the supervision of an inspector of the Live Stock Sanitary Commission in an official dipping solution prescribed in the rules and regulations of the Live Stock Sanitary Commission under the provisions of this Act, in the dipping vat designated in said written dipping direction shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. The terms "caretaker," "exposed," and "infested" shall be construed as elsewhere defined or explained in this Act.

Hearing on protest of dipping directions; notice and compliance with decision of Commission

Sec. 12. Any person, firm or corporation that desires a hearing for the purpose of protesting against the enforcement of any dipping direction issued under the provisions of this Act, may file with the supervising inspector in the county in which said live stock are located, at least ten full days before the dipping date or dates on which he seeks to be excused from dipping said live stock, a sworn application for said hearing, which application shall be forwarded by the supervising inspector to the Live Stock Sanitary Commission. The date of the filing of said application and the first succeeding dipping date following the filing of said application shall not be included as a part of said ten days, but these shall be ten full days independent of said dates. The Commission shall set a hearing in the office of the Chairman of said Commission, and the applicant may appear at said hearing either in person or by attorney or both, and may submit such ex parte affidavits as he desires. The Commission shall also consider controverting affidavits and statements. The Commission shall render its decision in writing and transmit the same to the supervision inspector in said county, who shall thereupon either deliver the same in person to the applicant or transmit the same to him by registered mail to the address shown in said application. If the Commission overrules said application, it shall be the duty of said person to thereafter dip said live stock on all the dipping dates prescribed in said dipping direction, but he shall not be required to dip said live stock on the first dipping date following the delivery to him of copy of the decision rendered by said Commission, unless two full days intervene between the date of said service and the said next dipping date, provided that where service is by registered mail the time of depositing same in the mail without regard to whether it is received, shall be regarded as the time of said service, but he shall not be required to dip said live stock on the first dipping date following said service, unless four full days intervene between the date of depositing the same in said registered mail and the first dipping date thereafter. Supervising inspectors of counties may for good cause excuse the dipping of live stock after the issuance and service of written directions from said Commission requiring the dipping of said live stock; but such supervising inspectors shall be held responsible for excusing same without good and sufficient reason.

Owners and caretakers to pay expenses; persons liable

Sec. 13. Owners and caretakers of live stock subject to dipping under provisions of this Act shall furnish all necessary labor at their own expense for gathering live stock and driving them to the dipping vat, dipping them and returning them to their premises after said dipping. Any owner, part owner, lessee, renter, tenant, occupant or caretaker of any land, ranch, pasture, farm or premises of which he has control, who is not the owner or caretaker of cattle, horses, mules, jacks and jennets that may be located upon any part of said land, ranch, pasture, farm or premises, of which he has control, who is not the owner or caretaker of cattle, horses, mules and jennets that may be located upon any part of said land, ranch, pasture, farm or premises, shall, for all purposes of this Act, be considered the caretaker of said live stock and shall be held liable and responsible for the dipping of said live stock under the provisions of this Act and subject to prosecution for failure to dip the same as if he were the owner of said live stock. The owner of said live stock and all persons who own any interest therein and all other caretakers thereof, shall also be held liable and responsible for said dipping and subject to prosecution for failure to dip. Parents are hereby declared to be the caretakers and shall be held responsible for the dipping of cattle, horses, mules, jacks and jennets owned in whole or in part by their minor children, unless some person other than a parent of said minor is the legal guardian of the estate of said minor. Administrators and executors and guardians are hereby declared to be the caretakers and shall be held responsible for the dipping of live stock belonging in whole or in part to the estate under their control by reason of said administration or guardianship, or any live stock that may be found upon any land or premises belonging in whole or in part to said estate. Husband and wife shall be held jointly and severally liable for the dipping of such cattle, horses, mules, jacks and jennets as belong to their community estate, and the husband shall be held liable for the dipping of live stock belonging to his separate estate and the wife shall be held liable for the dipping of live stock belonging to her separate estate, provided that the husband shall be held liable for the dipping of live stock belonging to the separate estate of the wife and the wife shall be held liable for the dipping of live stock belonging to the separate estate of the husband, if either is the caretaker of such live stock belonging to the separate estate of the other, as the term caretaker is defined in this Act.

Ownership at time of service of dipping order presumed to continue until time of failure to dip

Sec. 14. When an inspector ascertains that a person, firm or corporation is the owner, part owner or caretaker of any cattle, horses, mules, jacks or jennets which are subject to dipping under the provisions of this Act, and a dipping order is issued and served, as herein prescribed, it shall be presumed that at the time of said failure to dip any of said live stock said person, firm or corporation was still the owner or part owner or caretaker, as the case may be, of live stock subject to dipping located upon the premises described in said written dipping direction, and it shall only be necessary for the State to allege and prove that at the time of the service of said written dipping direction said person, firm or corporation was the owner or part owner or caretaker of live stock subject to dipping located upon said premises. If for any reason, after the service of a dipping direction, it should occur

that by legal means there are no longer any live stock on said premises subject to dipping, the defendant may avail himself of said defense only by filing, at the beginning of the trial, a sworn statement of this fact, but in the absence of the filing of said sworn statement it shall be presumed that the defendant's status as owner, part owner or caretaker had remained unchanged since the service of said written dipping direction.

Dipping by peace officers on refusal of owner to dip; fees as lien

Sec. 15. Upon the failure of any owner, part owner or caretaker to dip any live stock on any date, as directed in writing by the Live Stock Sanitary Commission under the provisions of this Act, at any time and place required of said owner or caretaker in any written dipping direction issued by the Live Stock Sanitary Commission and served upon him, or where such owner, part owner or caretaker, prior to any dipping date specified in said dipping direction, states that he does not intend to dip his said live stock, it shall be the duty of the inspector in charge of tick eradication in said county to notify the sheriff or any constable in said county of said fact, and it shall thereupon be the duty of said officer to deputize a sufficient number of helpers to be designated by the supervising inspector in charge of said county to go upon the premises where said live stock are located and gather said live stock and dip them under the supervision of an inspector of the Live Stock Sanitary Commission, in accordance with said written direction, and to continue dipping them on all the succeeding dipping dates therein prescribed, unless and until said owner, part owner or caretaker begins and continues said dipping according to said directions. Said peace officers are hereby allowed the sum of Two Dollars per head for all said live stock dipped as herein provided; out of which sum the said officers shall pay reasonable wages to said helpers and retain as their fees a reasonable portion thereof. A lien is hereby given said peace officers upon all such live stock as may be dipped under these provisions for the purpose of securing the payment of the aforesaid sum, and also for the payment of an additional sum to cover expenses of holding, feeding and watering said live stock during the time said officers held them in their possession, 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 within sixty days after said dipping, a sufficient number of said live stock for paying the said sum of Two Dollars per head for each head of such live stock dipped and said expense of holding, feeding and watering said live stock, by posting a written notice at the courthouse door at least five days in advance of said sale. The residue, if any, to be paid to owner of said live stock or paid to the County Treasurer, subject to the order of the owner. Each date on which said live stock are dipped under the provisions of this Section shall authorize the collection of said sum of Two Dollars per head and said other sum for said expenses.

Officer fixing lien for dipping by filing statement; foreclosure

Sec. 16. In lieu of retaining possession of said live stock, as provided in the preceding Section, said officer may fix said lien by filing with the County Clerk of the county in which said live stock are located a sworn statement of said indebtedness and describing said live stock upon which said lien is to be placed, which shall be filed within six months after said dipping, and suit shall be filed in a court of competent jurisdiction against the owner of said live stock within twenty-four 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 number of said live stock as the court may deem necessary for defraying said expenses and paying said fees to said officer and court costs. The provisions of this Section, and also of the preceding Section, with reference to fixing of liens, foreclosures and sales, shall apply in all other Sections of this Act in which peace officers are given liens on live stock for any purpose of this Act, and said officer may proceed under provisions of the preceding Section or of this Section. Said officer may file a separate statement and separate suit covering each dipping date 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 dippings within six months after the last dipping and suit filed on all of them in the aggregate within twenty-four months after filing of said statement.

Peace officers authorized to perform duties of sheriff

Sec. 17. Where by any provision of this Act a sheriff 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.

Injunction by resident to compel compliance with dipping directions; hearing

Sec. 18. Any resident or residents of any county or part of county in which tick eradication is being conducted may bring Mandatory Injunction to compel owners, part owners or caretakers to dip their cattle, horses, mules, jacks and jennets under the provisions of this Act after said owner, part owner or caretaker has failed or refused to dip them or is threatening or has threatened to refuse or fail to dip them, and the court may, in term time or vacation upon notice to defendant, hear and determine same and if the court finds that said owner, part owner or caretaker has been served with a written dipping direction from the Live Stock Sanitary Commission to dip said live stock and that said live stock are subject to dipping, and that the material allegations in plaintiff's petition are true, the court shall enter its order commanding said owner or caretaker to dip said live stock, designating the time and place of said dippings, as specified in the written dipping direction of the Live Stock Sanitary Commission, and upon failure of said person to dip said live stock at any time or place so ordered in accordance with said written dipping direction or in accordance with said order of said court, he shall be held liable for contempt of court and punished accordingly, and the court shall order the sheriff or a deputy sheriff to deputize a sufficient number of helpers to dip said live stock in accordance with the court's order, and the expense of said dipping and employment of said sheriff or deputies and helpers shall be taxed as cost against the defendant in said suit, and lien is hereby provided in favor of sheriffs and their deputies and helpers on all such live stock dipped in accordance with said court order, for the purpose of securing the payment of said expenses and costs. After the dipping of live stock under said court order, the sheriff or deputy shall file a sworn statement with the Clerk of the District Court showing the number and description of the said live stock dipped, and the court shall order a foreclosure of the lien upon said live stock or upon such number of head as may be necessary for the payment of said expenses and costs, which live stock shall be sold as under execution. The said sworn statement may be filed after each dipping and said foreclosure made after each respective dipping, or the said sheriff or deputy may wait until a number of dippings have been administered and file a sworn statement covering each dipping and secure a foreclosure on all of them in the aggregate. The said right to file

said written sworn statement and secure foreclosure of said lien shall exist for a period of twelve months after each dipping. The residue, if any, after the payment of said expenses and costs, shall be paid to the Clerk of the Court in which said suit is pending, subject to the order of the owner of said live stock. In any court proceeding under this Act, for the foreclosure of any lien authorized by this Act, the residue, if any, after the payment of said expenses and costs, shall likewise be paid to the clerk of the Court, subject to the order of the owner of said live stock.

Dipping by officers of animals running at large without known owner; compensation

Sec. 19. Whenever any inspector ascertains that there are any cattle, horses, mules, jacks or jennets in any county or part of county in which tick eradication is being conducted, under the provisions of this Act, running at large or upon the open range, for which he can locate no owner or caretaker, said inspector shall call upon the sheriff or any constable in said county to deputize helpers and to seize said live stock and dip them under supervision of an inspector of the Live Stock Sanitary Commission and make such other disposition of said live stock as may be necessary for the purpose of tick eradication, including impounding them at such place as may be designated by said inspector, and the said officer is hereby given a lien on said live stock to defray the expenses of said gathering, dipping and impounding, feeding, watering and caring for said live stock, and to pay such helpers as may be necessary in carrying out the provisions of this Act. The amount allowed said officer for his services and the services of helpers, exclusive of said feeding, impounding and caring for said live stock, shall be Two Dollars per head for each head of such live stock seized by said officer or impounded or otherwise disposed of, under the provisions of this Section, out of which sum said officer shall pay reasonable wages to helpers and retain as compensation for his services a reasonable portion thereof.

Owner's statement as to origin and destination of animals being moved; seizure for violation of quarantine

Sec. 20. Owners, part owners and caretakers of cattle, horses, mules, jacks and jennets, and persons accompanying and connected with or who had accompanied and been connected with the movement of any cattle, horses, mules, jacks or jennets which are being or have been shipped or driven or drifted or led or hauled or trucked or otherwise moved, in any part of the State of Texas, at any time during the preceding sixty days, shall be required, when requested by an inspector of the Live Stock Sanitary Commission, to make a written statement of the county and name of the owner or party in control of the land where said movement originated and also the county and the particular place in said county to which they are destined, also the name and address of the person from whom said live stock were bought or obtained, if he has acquired possession of them in the preceding thirty days, and if they were not bought or obtained during said preceding thirty days, said fact shall be stated. He shall also state the territory which said live stock have traversed since leaving said point of origin, and the territory which it is expected they will traverse in reaching destination. Any owner or caretaker or person accompanying and connected with such movement or who has accompanied and been connected with such movement of said live stock who shall fail or refuse to make said written statement in compliance with this provision, or who shall make any false written statement of said matters, shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars. Where an inspector discovers live stock that are being moved or have been moved in violation of any quarantine under provisions of this Act, he may call upon any peace officer to seize and impound said live stock at the expense of the owner, or if practicable return them to place of origin at the owner's expense. A lien is hereby given said peace officer upon said live stock, subject to other provisions of this Act, for the enforcement thereof to cover the expense of said peace officer and helpers for the performing of said duties, and the sum of Two Dollars is hereby allowed said peace officer for the purpose of paying his fee and said helpers, also the expense of feeding watering and holding said live stock shall be chargeable to the owner, for which a lien is also given herein.

Movement of animals from quarantine territory; penalty

Sec. 21. Any person, firm or corporation or transportation company who shall ship or drive or drift or lead or haul or truck or otherwise move any cattle, horses, mules, jacks, or jennets from any premises, pasture, pen, lot, yard, stock yard farm, ranch, land or enclosure, or from any county or part of county or territory which is under quarantine by virtue of this Act or by any order of the Live Stock Sanitary Commission or by a proclamation of the Governor of the State of Texas because of tick infestation or exposure as provided for in this Act, in violation of said quarantine, without a written permit or certificate of an inspector of the Live Stock Sanitary Commission of Texas or an inspector of the Bureau of Animal Industry, 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 tick infestation or exposure by the said Commission, or by the United States Bureau of Animal Industry or by the Live Stock Sanitary authorities of the state or nation or territory from which they are moved, without a certificate from an inspector of said United States Bureau of Animal Industry, or that having such permit or certificate from an inspector of said Commission shall ship or drive or drift or lead or haul or truck or otherwise move said live stock from said quarantined premises, pasture, pen, lot, yard, stock yard, farm, ranch, land or enclosure, territory, county or part of county to any other place than the place designated by said inspector in said written certificates or permit shall be fined not less than Five Dollars per head nor more than Ten Dollars per head for each head of such live stock so shipped or drifted or driven or hauled or led or otherwise moved in violation of said quarantine. Any owner, part owner or caretaker of such live stock who shall permit or allow such live stock to drift or to be drifted, shipped, led, hauled or otherwise moved in violation hereof without said permit or certificate shall be deemed guilty of violating this provision the same as if he had personally drifted or driven or shipped or led or hauled or trucked or otherwise moved said live stock. Any person in charge of any movement of live stock upon which said certificate or permit is required, or who is in charge of the vehicle, truck, boat or other conveyance which hauls said live stock, who fails to have in his possession said certificate or permit from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, or any railroad company, express company or other transportation company that fails to attach and keep attached said permit or certificate to the shipping papers accompanying said movement from point of origin to destination, or to exhibit to an inspector of said Commission, when demanded, a certificate or permit from an inspector, as provided herein, shall be punished as herein provided for violating the quarantine. Railroads and other transportation companies shall also be deemed as having violated this provision, subject to said penalty for each head of cattle, horses, mules, jacks or jennets which they permit to enter any stock pens under their control in the Tick Eradication Area without a written certificate or permit from

an inspector of the Live Stock Sanitary Commission or of the Bureau of Animal Industry, United States Department of Agriculture.

Disinfecting cars by carriers after shipment; penalty

Sec. 22. It shall be the duty of all railroad and transportation companies to clean and disinfect all cars into which any cattle, horses, mules, jacks or jennets have been loaded after the removal of said live stock, unless said live stock are clean and tick-free and are not and have not been subjected to exposure to said tick. After said live stock have been unloaded from said cars the said cars shall be removed at once to some place designated in the orders of the Live Stock Sanitary Commission for cleaning and disinfecting, and it shall be at some point where the right-of-way of said railroad is fenced. Any railroad or transportation company which shall fail or refuse to clean and disinfect cars in accordance with this provision within seventy-two hours after said unloading, Sundays and legal holidays excepted, shall be fined not less than Fifty Dollars nor more than One Hundred Dollars for each car which they shall fail or refuse to clean and disinfect. Each day, except Sundays and legal holidays, upon which said failure or refusal shall occur, after the expiration of said seventy-two hours, shall constitute a separate offense.

Maintenance of tick-free stockyards; notice and hearing on refusal

Sec. 23. All owners or operators in control of any stock yards in the Tick Eradication Area or in the Free Area, which stock yards are open to the public for yarding, marketing and selling cattle, horses, mules, jacks and jennets, shall maintain clean tick-free pens, alleys, chutes and facilities where such live stock, accompanied by a certificate issued by an inspector of the Live Stock Sanitary Commission showing such live stock to be free of ticks and exposure thereto, may be received, yarded, weighed and sold for intrastate purposes without being subject to exposure to tick infestation, and such live stock shall be afforded all necessary facilities for such purposes, including in addition to tick-free scales for weighing, also tick-free entrances and tick-free exits into and from tick-free pens to the immediate territory surrounding same, and there shall be no discrimination by any stock yards company or owners or operators and persons in control of stock yards between interstate and intrastate handling of live stock in said stock yards, and the Live Stock Sanitary Commission is hereby authorized to enforce the provisions of this Act by written notice to any stock yards company, owners operators and persons in control of stock yards, designating such facilities as may be necessary for the proper handling in said stock yards of intrastate movements of live stock accompanied by said certificate of inspectors of said Commission. Any stock yards company, owners, operators or persons in charge of stock yards, that fail or refuse to provide and complete such facilities as may be directed by said Commission under authority of this Act within sixty days after the service of said written notice, shall be fined not less than Two Hundred Dollars nor more than Five Hundred Dollars, and each thirty days of such failure or refusal after the expiration of said sixty days shall constitute a separate offense for a period of twenty-four months after the service of said written notice. Additional notices may be issued after the expiration of each twenty-four months, and the penalty herein provided shall apply for failure to comply with the requirements contained in said notices. Hearings may be granted by said Commission upon application, the same as is now provided by law for granting hearings to owners and caretakers who are directed to dip live stock, and owners and operators and persons in control of stock yards are hereby granted sixty days in which to provide and complete said work after the Commission has overruled said application, in case it should be overruled. Any interested person or said Commission may bring Mandatory Injunction to compel a compliance with this provision which may be heard and determined in vacation or term time upon notice to the defendant under direction of the Court.

Entry on public or private property; search warrant on being accompanied by peace officer

Sec. 24. All inspectors appointed by the Live Stock Sanitary Commission and helpers and assistants and all members of said Commission and the Chief Inspector thereof, are hereby authorized to enter upon any private or public property for the performance of any duty or exercise of any authority provided in this Act, and said entry shall be made and said duties performed and authority exercised without a search warrant; but if any of said persons desire to be accompanied by any peace officer in making said entry or performing said duty or exercising said authority, it shall be necessary to secure a search warrant from a magistrate of the county in which the said property is located, and it shall be the duty of all magistrates to issue said search warrants upon application of said person, but no warrant shall issue to enter any place or to search for or to seize and dip any live stock thereon without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation. It shall not be necessary to describe said premises by field notes or metes and bounds or other measures, but it will be sufficient if such reasonable description is contained in said search warrant as will inform the owner or person in charge of said property just what premises are covered thereby. The description of such live stock shall consist of reference to the approximate number of head of live stock, stating whether they are cattle, horses, mules, jacks or jennets, and if these facts are not known to affiant he shall state this in said application and said search warrant shall contain said statement. If it is not known to affiant whether there are any live stock thereon and he desires to be accompanied by said peace officers in making a search to ascertain whether there are any live stock thereon, he shall state the same in said application. The said search warrant shall be issued to the applicant and shall authorize him to enter said premises and to be assisted by or accompanied by peace officers and helpers for the purpose of the performance of any duty or exercise of any authority provided for in this Act, and said peace officers and said helpers shall be authorized to perform or discharge any duty authorized under this Act. After the issuance of said search warrant, any person, firm or corporation that shall refuse to permit said person or any peace officer assisting him or accompanying him or any helpers assisting him or accompanying him, to make said entry or perform any of said duties shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars. Said search warrant shall permit the entry and reentry of all said persons in the performance of said duties for a period of sixty days after the issuance thereof, and additional search warrants may be issued at any time after the expiration of the time covered by any search warrant. Each day upon which a refusal is made shall be a separate offense.

Establishing quarantine and dipping animals in free area

Sec. 25. The Live Stock Sanitary Commission is authorized and directed to establish quarantines in the Free Area on account of tick infestation or exposure therein whenever it becomes necessary for the purpose of regulating the handling of live stock and eradicating the tick and exposure thereto in said Free Area or to prevent the spread of tick infestation in said Area, and said Commission is authorized and di-

rected to require the dipping of cattle, horses, mules, jacks and jennets in said Free Area whenever in the discretion of said Commission such becomes necessary for the purpose of insuring that any live stock therein are entirely free from tick infestation, and said Commission shall designate by written order the premises or territory, county or part of county in said Free Area to be quarantined or in which tick eradication is to be conducted. Tick eradication shall be conducted in said Free Area under the same provisions and penalties as provided in this Act for conducting the same in the Tick Eradication Area, and it shall be the duty of County Commissioners Courts and owners and caretakers of cattle, horses, mules, jacks and jennets located in said Free Area to cooperate with said Commission in tick eradication under the provisions of this Act the same as relate to the Tick Eradication Area whenever tick eradication is required to be conducted in the Free Area. Tick infested and exposed cattle, horses, mules, jacks and jennets and premises in the Free Area are subject to the dipping provision of this Act whether quarantined or not. All quarantines heretofore established by the Live Stock Sanitary Commission in the Free Area under authority of law shall remain in full force and effect after the taking effect of this Act subject to the penalties and provisions of this Act until released by said Commission. Notice of quarantines established in the Free Area shall be given either by delivering written notice to the owner or caretaker of the live stock or to the owner or caretaker of the premises upon which the live stock are located or by posting a written notice of said quarantine at the courthouse door of the county in which said live stock are located or by publishing said notice in a newspaper published in said county.

Certificate for removal of animals from quarantine pastures; owners' cöoperation with Commission

Sec. 26. It shall be unlawful for any inspector to issue a certificate or permit for the movement of any cattle, horses, mules, jacks or jennets from any quarantined pastures in the Tick Eradication Area or from any quarantined pasture in the Free Area unless the owner or caretaker of said live stock is cooperating with the Live Stock Sanitary Commission under the direction of said Commission in accordance with the provisions of this Act, in the regular systematic dipping of all cattle, horses, mules, jacks and jennets of which he is owner or caretaker which may be located in the pasture from which said movement is to be made, and is also cooperating in like manner with said Commission in the regular systematic dipping of all other cattle, horses, mules, jacks or jennets of which he is owner or caretaker which may be located in all quarantined pastures in the Tick Eradication Area or Free Area which connect with the pasture from which said movement is to be made, and has dipped all of said live stock in all of said pastures on the last two regular dipping dates in the territory in which said live stock are located next preceding the time said live stock are to be moved. If there are more than one quarantined pastures, connecting with each other, they shall all be considered as connecting with the pasture, from which said live stock are to be moved, if any one of said pastures connects with the pasture from which said movement is to be made. Pastures on opposite sides of lanes and roads shall be considered as connecting, the same as if they were separated only by a fence. If ticks are found upon any of the live stock which are submitted for movement, every head of live stock in said herd which had been so submitted shall be subjected to further dipping at intervals of not less than seven nor more than fourteen days and found free of ticks at the last dipping before said permit or certificate shall be issued. Provision of this Section with reference to "pastures" shall also apply to lots, pens, and other enclosures. Said live stock upon the quarantined open ranges in said Tick Eradication Area or Free Area shall also be subject to these provisions, if the said open range connects with any of said quarantined pastures. The Live Stock Sanitary Commission may, for good cause, waive in writing the enforcement of the provisions of this Section.

Rules and regulations as to movement of animals

Sec. 27. The Live Stock Sanitary Commission is hereby directed to adopt rules and regulations providing the conditions and manner and method of handling and moving live stock into, within and from the Tick Eradication Area and local premises and territory therein and the movement and handling of live stock into and from quarantined premises and territory in the Free Area and the handling and movement of live stock into the released part of the Free Area from other areas. Certificates and permits shall be issued by inspectors only as provided in said rules and regulations showing said live stock to be free of ticks; and when destined to the Free Area or other counties in the Tick Eradication Area or to premises or territory in the same county, which premises or territory are classed by the supervising inspector of the county in his official records as being free from ticks and exposure, said live stock shall also be certified to as being free from exposure and shall move to said destination without exposure. It shall be unlawful for any cattle, horses, mules, jacks, or jennets to be moved from any county or part of county which is designated in this Act as being in the Inactive Quarantined Area or which is designated by the Live Stock Sanitary Commission as being in the Inactive Quarantine Area, unless said live stock have been dipped in an official dipping solution showing a test of twenty two cubic centimeters, as defined and explained in this Act, at least twice at intervals of from seven to fourteen days apart, and said live stock must be found to be free of the tick at the last dipping before making said movement, unless said live stock are to be shipped to a market center where pens for handling tick infested or tick exposed live stock are maintained in accordance with the rules and regulations of the Live Stock Sanitary Commission or to Inactive Quarantined territory or to some official dipping station for official dipping, in accordance with the rules and regulations of the Live Stock Sanitary Commission. If ticks should be found at either of said dippings when the stock is destined to the Free Area or Tick Eradication Area said live stock shall be dipped a sufficient number of times thereafter at said intervals to eradicate said ticks and exposure thereto, and when said live stock are destined to the Free Area or Tick Eradication Area, said live stock must be moved to destination without exposure. Any owner or person in charge of any cattle located in the Inactive Quarantined Area in this State may ship said live stock by rail to any part of the Inactive Quarantined Area in this State, or ship same by rail for immediate slaughter to market centers where the aforesaid pens are maintained, upon one dipping in an official dipping solution showing a test of twenty two cubic centimeters under the supervision of an authorized inspector of the Live Stock Sanitary Commission, said live stock to be loaded and shipped within ten days after said dipping. Where cattle are being shipped to market centers for immediate slaughter or to Inactive Quarantined territory on the said one dipping under provision of this Act, it shall be unlawful to unload any of said live stock en route at any point in the Tick Eradication Area or in the Free Area, except into pens maintained for the purpose of unloading such one-dipped live stock; or if they are trailed or transported otherwise than by rail, they shall not traverse or enter any territory in the Free Area or Tick Eradication Area. Where a county, part of county, district or

territory is in the Inactive Quarantine Area, the movement of cattle other than by rail from premises and lands therein onto other premises and lands in any Inactive Quarantined territory shall be permitted without the necessity of inspection or certification, provided said movement is not made through any territory in the Tick Eradication Area or Free Area. Owners of live stock moving from Inactive Quarantined territory shall furnish all dipping material for dipping said live stock and paint for paint branding them, at their own expense, unless otherwise provided and said Commission shall provide in its rules and regulations for its inspectors to paint brand said live stock for identifying same.

Civil action by County Attorney against corporation violating Act

Sec. 28. Where any corporation violates any provision of this Act, or where any agent of any corporation, acting within the scope of his authority as said agent, shall violate any provision of this Act, it shall be the duty of the County Attorney in the county in which said violation occurs to institute a civil suit on behalf of the State of Texas in a court of competent jurisdiction for the collection of said fine.

Injunction by private resident

Sec. 29. Any resident of this State may bring injunction suit to compel the compliance with any provision of this Act or restrain any threatened violation of same; and any resident of any county in this State may bring Mandamus proceedings against the County Commissioners Court of said county to compel a compliance with any duty of Commissioners' Courts prescribed in this Act. Said injunctions and Mandamus proceedings may be heard in vacation or term time, and if heard in vacation the same may be as fully disposed of and all issues determined in vacation the same as in term time. 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 a notice.

Illegal movement in each county as separate offense

Sec. 30. When any live stock are moved or permitted to move in violation of any quarantine established under provisions of this Act, every county which any of them enter after leaving the county of origin, without the quarantine provisions of this Act having been complied with, shall constitute a separate offense against the person, firm or corporation who moves or allows or permits such movement into other counties; and the person who illegally removed or permitted or allowed the illegal movement of said live stock from the quarantined place or territory in the county of origin shall also be held liable and punishable hereunder for each county which is entered by any of said live stock during the succeeding thirty days after leaving the county of origin, unless before entering such other county or counties the person in charge of said live stock complied with the provisions of this Act with reference to said live stock. All other persons who move or permit said illegal movement into other counties shall also be held liable.

Chief veterinarian and assistants; penalty for violating quarantine

Sec. 31. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Veterinarian and as many assistant veterinarians as it may deem necessary for the eradication and control of contagious, infectious and communicable diseases of live stock, and said Commission may establish quarantines on account of said diseases and any person, firm or corporation who shall violate any quarantines established by said Commission on account of said diseases, except tick fever and scabies, shall be fined not less than Twenty Five Dollars per head nor more than One Hundred Dollars per head, for each head of such live stock moved in violation of said quarantine.

Restrictions on removal of materials from quarantined areas

Sec. 32. The Live Stock Sanitary Commission may establish necessary quarantines and restrictions on the movement of hay, hides and carcasses from quarantined areas and premises and restrict the use of sand for bedding stock cars except from known tick-free sand pits and regulating the removal and handling of all refuse matter from quarantined stock yards, stock pens and other quarantined places and regulating the handling or removal of dead or injured live stock in transit. Any person, firm or corporation who shall move any hay, hides or carcasses in violation thereof or who shall use any sand for bedding any cars in violation hereof or who shall remove or handle any refuse matter from any quarantined stock yards, stock pens or other quarantined place, or who shall remove from any car or other place or handle any dead or injured live stock in violation of said quarantine or restrictions shall be fined not less than Fifty Dollars nor more than Two Hundred Dollars.

Written instruments issued by Commission and proclamations; evidence; identification in complaint or indictment without setting out copies

Sec. 33. Copies of written instruments issued by the Live Stock Sanitary Commission or its Chairman shall be admissible as evidence in any court of this State when said copies are certified by the Chairman of said Commission. Copies of proclamations of the Governor shall be admissible in evidence when certified by the Secretary of State. In prosecutions for violating any provisions of this Act, it shall not be necessary for the State to include in complaints or informations or indictments verbatim copies of any written instruments or proclamations, but it shall only be necessary to allege the issuance thereof with necessary allegation of dates to identify same. In the trial of any case, civil or criminal, in which any of the aforesaid written instruments or proclamations are to be introduced in evidence, it shall not be necessary to file the same with the papers of the cause, nor to give notice to the opposite party. Provided further that proclamations shall become effective as provided in Section three of this Act, with reference to publishing or posting notice thereof, but if the Live Stock Sanitary Commission has maintained in the conduct of tick eradication under the provisions of this Act, for a period of sixty days or more, one or more inspectors in a county or part of county covered by proclamation of the Governor, after the date stated in said proclamation for the same to become effective, in the dipping of cattle, horses, mules, jacks or jennets in any dipping vat or vats furnished by the county, as herein provided, all quarantines promulgated in said proclamation and also said tick eradication shall become and be in full force and effect in said county or part of county upon the expiration of said sixty days, regardless of whether said proclamation was published or posted. In prosecutions for violations which occur after the expiration of said sixty days, in cases of failure or refusal to dip or for violating any quarantine whether by illegally moving live stock from one point in said county or from other quarantined counties or parts of counties into said county or part of county, it shall not be necessary for the State to allege and prove that said proclamation was published or posted; nor shall it be necessary, after the expiration of said sixty days, in cases where said live stock are moved or permitted or allowed to move from other quarantined counties or parts of counties into said county or part of county, for the State to allege and prove that notice of the Governor's proclamation quarantining said other county or part of county was published or posted. The quarantining of all those counties and parts of counties which are designated in

Section 3 of this Act as being in the Inactive Quarantined Area shall become effective upon the taking effect of this Act without the issuance of any proclamation. All proclamations heretofore issued by the Governor under provisions of any former law designating counties and parts of counties for tick eradication, and also such proclamations quarantining counties and parts of counties because of tick infestation, which are still in effect at the time of the taking effect of this Act, shall continue in full force and effect, unless otherwise provided in this Act, subject to the provisions and penalties of this Act without the issuance of proclamations after the passage of this Act. It is hereby expressly provided that all quarantines heretofore established on counties and parts of counties listed in Section 3 of this Act are hereby released, and in lieu thereof said counties and parts of counties are hereby declared to be quarantined upon the taking effect of this Act as provided in Section 3 hereof. In counties and parts of counties in which quarantines are established or continued and tick eradication designed or continued without the issuance of a proclamation or quarantine notice, as provided in this Act, it shall only be necessary to allege and prove in prosecution that prior to the passage of this Act a proclamation was issued by the Governor for the purpose of tick eradication therein or for establishing said quarantine, and it shall not be necessary to allege and prove the publishing or posting of a notice of said proclamation. All quarantines established by this Act or by the Live Stock Sanitary Commission under the provisions of this Act may be released by the said Commission in writing whenever the same is deemed necessary or advisable.

Venue of prosecutions

Sec. 34. Owners, part owners and caretakers are subject to prosecution in the county in which the live stock and premises are located with reference to which prosecution is instituted, regardless of whether the defendant was in said county at the time of the said issuance and service of said dipping direction or at the time of the said failure or refusal to dip said live stock or at the time of the violation of a quarantine. Wherever the term "Live Stock" occurs in this Act the same shall be construed to mean cattle, horses, mules, jacks and jennets, unless otherwise stated in the Section in which said term is used.

Chief Inspector and other employees of Commission

Sec. 35. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Inspector, Chief Clerk, stenographers and all necessary clerical help, and such other persons as it may deem necessary for the performance of any duty under this Act or the enforcement of any provision of this Act, and may detail its inspectors and supervisors and other persons for any duty authorized under this Act or incidental thereto or for the purpose of gathering data with reference to violations of this Act and assisting and cooperating with county officials in the enforcement of any and all provisions hereof.

Methods of dipping

Sec. 36. The Live Stock Sanitary Commission may provide in its rules and regulations the manner and method of dipping gentle work and saddle stock and handling and certifying the same for movement, but in the absence of such provisions such stock shall be dipped and handled as is provided in this Act for the dipping and handling of all said live stock.

Penalty for failure to gather live stock at place for inspection

Sec. 37. Owners, part owners and caretakers who fail to gather their live stock for inspection at the place and time directed in writing by the Live Stock Sanitary Commission shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars. Such written notice shall be served upon the said person at least twelve days in advance of the date of said inspection and said person is entitled to a hearing before the Live Stock Sanitary Commission under the same provision contained in this Act where dipping directions are served. [Acts 1929, 41st Leg., 1st C.S., p. 128, ch. 53.]

Section 38, of this Act repeals all conflicting laws and parts of laws and expressly repeals Rev.Civ.St. Arts. 7010–7014, 7015–7040, and Articles 1504a, 1506a, 1507a, 1507b, 1508a, 1509a, 1510a, 1511a–1511c, 1517a, 1522a, ante. Section 39 directs that the act shall be liberally construed and if any section shall be declared invalid the remainder shall not be affected.

Art. 1525d. Bang's disease; branding and tagging infected cattle; refusal to permit branding; penalty.—Section 1. 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 he shall furnish to the owner of such cattle in writing data showing that certain identified animal or animals have reacted to the test and are affected by the disease, it shall be the duty of the said authorized veterinarian or accredited representative of the Livestock Sanitary Commission within forty-eight (48) hours 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 such animal with numbers thereon and report in writing to the Livestock Sanitary Commission of Texas the numbers on such tags.

Sec. 2. Any person, firm or corporation who shall fail or refuse to allow the said authorized veterinarian or accredited representative of the Livestock Sanitary Commission to brand the letter "B" on the left jaw of a cow showing a positive reaction to the agglutination test for Bang's Disease shall be deemed guilty of a misdemeanor and upon conviction shall be fined as herein provided.

Sec. 3. If any person shall violate any of the provisions of the preceding Sections 1 and 2 of this Act, he shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not to exceed Two Hundred Dollars ($200) for each offense. [Acts 1937, 45th Leg., p. 875, ch. 431; Acts 1947, 50th Leg., p. 461, ch. 262, § 1.]

Art. 1525e. Bang's disease; sale of infected cattle unlawful; prima facie evidence of knowledge; 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. If any person shall sell or otherwise dispose of any cattle having the brand of the letter "B" on the left jaw, the same shall be taken as prima-facie evidence in any Court of competent jurisdiction, that such person knew that said cattle was infected with Bang's Disease.

Sec. 2. If any person shall violate any of the provisions of this Act, he 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 One Hundred Dollars ($100). The sale of each particular cow shall be considered a separate offense. [Acts 1939, 46th Leg., p. 250; Acts 1947, 50th Leg., p. 461, ch. 262, § 2.]

Art. 1525f. Foot and mouth disease; quarantines.—Section 1. It shall be the duty of the Livestock Sanitary Commission to establish quarantines against other States, territories and foreign countries and portions thereof, and against certain areas of the territory of the State or subdivisions thereof whenever, in the judgment of the Commission, such quarantines may be necessary or advisable to pre-

vent an outbreak of Foot and Mouth Disease in Texas, and to otherwise establish quarantines within the State of Texas in such form and manner as to said Commission may appear to be necessary or advisable, in order to prevent an outbreak of Foot and Mouth Disease, or to prevent a spread of said disease. The Livestock Sanitary Commission may in such quarantines, establish in relationship to Foot and Mouth Disease, forbid and prohibit all movement of livestock of any character or description and commodities and other goods and articles as shall in the order establishing such quarantine be specified. Notice of such quarantine, when so established, shall be given as now provided by law for other quarantine established by the Livestock Sanitary Commission.

Sec. 2. The Livestock Sanitary Commission shall establish all necessary rules and regulations pertaining to quarantines against Foot and Mouth Disease to the same extent and in the same manner now provided by law for quarantines against other infectious, contagious and communicable livestock diseases.

Sec. 3. Any person, firm or corporation who shall violate any quarantines established by the Livestock Sanitary Commission in relation to Foot and Mouth Disease, by any movement moving in violation of the quarantine, or by any movement moving any of the livestock or other commodities or goods and articles forbidden to be moved out of said quarantined area, shall upon conviction thereof be punished by a fine of not exceeding Five Thousand Dollars ($5,000) nor less than Five Hundred Dollars ($500), or by imprisonment in the County Jail for any length of time not exceeding six (6) months, or by both such fine and imprisonment. And in the event of a second conviction for violation of such quarantine by the same person, firm or corporation such person, firm or corporation shall be deemed guilty of a felony and shall be confined in the penitentiary for any term of not less than two (2) years nor more than five (5) years, and by a fine of any amount not more than Ten Thousand Dollars ($10,000).

Sec. 5. It is not the intention by this Act to abridge the authority of the Federal Government or to violate the provisions of any treaty, pact, or agreement between the United States and any foreign country, and it is hereby especially provided that this Act shall be limited and subordinated to any treaty, pact or agreement between the United States and any other Government and to any rights between Texas and States bordering thereon.

Sec. 6. Should any section, sentence, clause, phrase or word of this Act be held invalid by a Court of competent jurisdiction, it is hereby declared to be the legislative intent that the remaining portions of the Act shall not be affected thereby but shall remain in full force and effect after omitting such invalid section, sentence, clause, phrase or word. [Acts 1947, 50th Leg., p. 3, ch. 3, §§ 1–3, 5, 6.]

Section 4 of the Act of 1947 made an appropriation to carry out the provisions of the Act.

VETERINARIANS

Art. 1526. Practicing without registering.—No person shall practice veterinary medicine in any of its branches upon animals within the limits of this State, who has not registered in the district clerk's office of the county in which he resides, his authority for so practicing, together with his age, post-office address, place of birth and name of school of veterinary medicine from which he graduated. [Acts 2nd C. S. 1919, p. 144.]

Art. 1527. Exceptions.—Nothing in this law shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the regular session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only, by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act of the regular session of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has practiced veterinary medicine or veterinary surgery for five consecutive years immediately prior to 1911, together with his place of residence during said period. Upon the face of such license shall be printed the word, nongraduate. Hereafter it shall be unlawful for any person to register under the five year practicing clause of this article. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this law before he shall be allowed to practice. Nothing in this law shall apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but [1] shall not engage in private practice, nor to legally qualified veterinarians of other states called in consultation but who do not open offices. Nothing in this law shall prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. [Id.]

[1] So in enrolled bill. The word "they" should probably be inserted between the words "but" and "shall".

Art. 1528. Who are veterinarians.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publicly to be a veterinary physician, surgeon or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration agent or farm demonstration agent while in the employment of any county, state or Federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this law shall apply to persons not so employed gratuitously treating animals. The operations known as "Dehorning," "Castrating," or "Spraying" shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this chapter shall be construed as synonymous. [Id.]

Art. 1529. Offenses by Board.—Any member of the State Board of Veterinary Medical Examiners who shall issue any certificate under the law providing for such board other than as therein provided, or who shall give any applicant for license to practice veterinary medicine or veterinary surgery prior to examination a list of questions to be propounded at any examination shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1530. License to be recorded.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the County in which he makes his residence, and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred; and in case said license is not recorded within ninety days

from its date of issuance, it shall become invalid. [Id.]

Art. 1531. To record license on removal.—Any veterinarian or veterinary surgeon who has successfully passed examination and who has been granted license by said Board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for by law, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Provided that any veterinarian or veterinary surgeon who has successfully passed the said examination and duly recorded his license, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the same manner as the same was recorded in the county from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has recorded said license as herein provided. [Id.]

Art. 1532. Unlawfully practicing.—Any person who practices or attempts to practice veterinary medicine, surgery or dentistry in this State, without first having complied with the provisions of the six preceding articles shall be fined not less than twenty-five nor more than two hundred dollars. Each day of such practice or attempt to practice is a separate offense. [Id.]

Art. 1533. Honey bees.—1. Common carriers accepting shipment.—No common carrier shall accept for intrastate shipment any honey bees, used honeycombs, used beehives or fixtures, except under such regulations as the State Entomologist shall prescribe.

2. Protective quarantine.—Said Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this law, said quarantine to prohibit the movement or shipment into said area, of any bees, honey, appliances or other things capable of transmitting the infection, except under such regulations as he shall prescribe.

3. Restrictive quarantine.—Said Entomologist may, when in his opinion public welfare and necessity require it, place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe.

4. Sale and shipment.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped has been inspected within the preceding twelve months and found apparently free from contagious and infectious diseases, or by an affidavit made by the beekeeper that the bees are not diseased to the best belief of affiant and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel.

5. To report diseased bees.—If any owner of, or any person having control or possession of, any honey bees in this State, knows that such bees are affected with Americal foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be his duty to at once report such fact to said Entomologist at College Station, setting out in said report all the facts known with reference to said infection.

6. Sale, etc. of infected bees, etc.—No owner or keeper of any diseased colonies of bees shall barter, give away, sell, ship or move any infected bees, honey or appliances, or shall expose any other bees to the danger of infection of the disease.

7. Exposing infected honey, etc.—No person, firm or corporation shall expose, on their own premises or elsewhere, any honey, hives, frames, combs, brood or appliances known to be infected by foul brood or other dangerous disease of bees, in such a manner that honey bees may have access to same; nor sell, offer for sale, barter, give away, ship or distribute any honey taken from a colony or colonies of bees infected with foul brood or other infectious or contagious disease.

8. Interfering with inspection.—No person shall seek to prevent any inspection of bees, honey or appliances under the direction of the State Entomologist in accordance with this law, or shall seek or attempt to prevent the discovery or treatment of diseased honey bees, or shall attempt to intimidate the State Entomologist, his assistants or inspectors, or otherwise interfere with them in the lawful discharge of their duties as herein defined.

Whoever violates any provision of this article, or violates any rule, quarantine, order or regulation of the State Entomologist issued in accordance with the provisions of this law shall be fined not less than twenty-five nor more than two hundred dollars. All fines collected under this article shall be paid into the State Treasury. [Acts 1913, p. 97.]

CHAPTER 15.—EMBEZZLEMENT AND CONVERSION

Article 1534. [1416] [938] [786] Embezzlement.—If any officer, agent, clerk, employé, or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employé of any private person, copartnership or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply or convert to his own use, without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property. [Acts 1858, p. 182, Acts 1876, p. 9.]

Art. 1535. [1417] [939] [787] By factor or commission merchant.—If any factor or commission merchant shall embezzle or fraudulently misapply or convert to his own use any money or other property, which shall have come into his possession or shall be under his care by virtue of his agency or

employment, he shall be punished as if he had stolen such property. [Acts 1858, p. 182.]

Art. 1536. [1418] [940] [788] Embezzlement by carrier.—If any carrier to whom any money, goods, or other property, shall have been delivered, to be carried by him; or if any other person, who shall be intrusted with such property shall embezzle or fraudulently convert to his own use any such money, goods, or property, either in the mass, as the same were delivered or otherwise shall be punished as prescribed for theft. [Acts 1858, p. 182.]

Art. 1537. [1576] [1011] Secreting or concealing property from assignee.—If any assignor shall secrete or conceal from his assignee any portion of the property belonging to his estate other than that which is exempt from execution or shall previous to and in contemplation of the assignment transfer any property with the intent or design to defraud his creditors, such assignor shall be imprisoned in the penitentiary for not less than two nor more than five years. [Acts 1879, p. 59.]

Art. 1538. [1426] [948] [795] Conversion of estate.—If any executor, administrator or guardian having charge of any estate, real, personal or mixed, shall unlawfully and with intent to defraud any creditor, heir, legatee, ward or distributee interested in such estate, convert the same or any part thereof to his own use, he shall be punished as is provided in cases of theft. [Acts 1858, p. 184; Act April 10, 1883, p. 66.]

Art. 1539. [366] [258] [242] Conversion by sheriff, etc.—If any sheriff or other officer having collected money for any party to a suit shall without the consent of such party, unlawfully convert the same or any part thereof to his own use, he shall be punished in the same manner as if he had stolen such money. [Acts 1858, p. 164.]

Art. 1540. [367] [259] [243] Appropriation of trust funds.—If any officer of any court who has the legal custody of any money, evidence of debt, script, instrument of writing or other article that may have been deposited in court to abide the result of legal proceedings shall appropriate the same to his own use, he shall be punished as if he had stolen the same. [Acts 1876, p. 7.]

Art. 1541. [1611] Misapplication of money of prisoners.—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the Prison Commissioner and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employé of the prison system having charge of a prisoner's money who misappropriates the same or any part thereof, shall be confined in the penitentiary not more than five years. [Act Sept. 17, 1910, sec. 47.]

Art. 1542. [1615] Conversion of prison property.—Any officer or employé of the prison system who shall fraudulently convert to his own use and benefit any food, clothing, or other property, belonging to or under control of the prison system, shall be punished as if he had stolen the same. [Id. Sec. 55.]

Art. 1543. [1420] [942] [789a] Receiving or concealing embezzled property.—If any person shall fraudulently receive or conceal any property which has been converted by another in such manner as that the conversion comes within the meaning of embezzlement, knowing the same to have been so converted, he shall be punished in the same manner as the person embezzling the same would be liable to be punished. [Acts 1883, p. 24.]

Art. 1544. [1419] [941] [789] "Money" and "Property" defined.—The term "money", as used in this chapter, includes, besides gold, silver, copper or other coin, bank bills, government notes or other circulating medium current as money; and the term "property" includes any article commonly known as personal property, and all writings of every description that possess any ascertainable value.

Art. 1544a. Conversion of oil and gas.—Any lessee, assignee, owner or holder, or any agent, employee or representative of any lessee, assignee, owner or holder of any oil and/or gas lease, or interest therein, or any person or persons or any agents, employee or representative of such person or persons, producing any oil and/or gas under any oil and gas lease, who shall, without the consent of any person or persons or any agents, employee or representative of such person or persons, entitled to any part of the oil produced from said lease or the proceeds realized from the sale thereof, fraudulently convert any part of the oil and/or gas or the proceeds realized from the sale thereof, to his own use and benefit with intent to deprive the owner of the value of same, shall be guilty of a criminal offense and shall be punished as prescribed in the penal code for theft. [Acts 1932, 42nd Leg., 3rd C.S., p. 60, ch. 25, § 1.]

Art. 1544b. Misapplication by official of funds received from another than employer in official capacity.—Sec. 1. If any director, officer, agent or attorney at law or in fact, of any incorporated company or institution, joint stock company, or voluntary association, shall fraudulently misapply or convert to his own use, without the consent of the owner thereof, any money or property belonging to any person, firm or corporation, other than his principal or employer, which said money or property has come into his possession or is in his care or under his control by virtue of his being such director, officer, agent, attorney at law or in fact, of such incorporated company or institution, joint stock company or voluntary association, and which said money or property has come into the possession or is in the care or in the custody of such incorporated company or institution, joint stock company or voluntary association, as agent for any purpose of the owner thereof, shall be guilty of embezzlement, and upon conviction shall be punished in the same manner as if he had committed a theft of such money or property. "Convert to his own use", as used in this Act, shall mean the application or use of such money or property in any manner or for any purpose not authorized by the owner thereof, and proof that such director, officer, agent or attorney at law or in fact, applied or used such money or property in any manner or for any purpose not authorized by the owner thereof, or that he advised, authorized, directed, aided or knowingly consented to such use or application, shall be prima facie evidence that such money or property was fraudulently misapplied and converted to the use of such director, officer, agent or attorney at law or in fact.

Sec. 2. This Act shall not be construed to repeal any existing laws defining or relating to the offense of embezzlement or of conversion of bailee, but shall be cumulative thereof. [Acts 1933, 43rd Leg., p. 771, ch. 229.]

CHAPTER 16.—SWINDLING AND CHEATING

Art.
1545. "Swindling" defined.
1546. Specific acts; certain wrongful acts included.
1546a. False written statement of financial condition.
1547. "Money" defined.
1548. No benefit need accrue to defendant.
1549. If the act constitutes any other defense.
1550. Punishment for swindling.
1551. Obtaining board or lodging by trick, etc.

Article 1545. [1421] [943] [790] "Swindling" defined.—"Swindling" is the acquisition of any personal or movable property, money or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the right of the party justly entitled to the same. [Acts 1858, p. 183.]

Art. 1546. Specific acts; certain wrongful acts included.—Within the meaning of the term "swindling" are included the following wrongful acts:

1. The exchange of property upon the false pretense that the party is the owner or has the right to dispose of the property given in exchange.

2. The purchase of property upon the faith and credit of some other person upon the false pretense that such other has given the accused the right to use his name in making the acquisition.

3. The obtaining by false pretense the possession of any instrument of writing, certificate, field notes or other paper relating to lands, the property of another, with the intent that thereby the property owner shall be defeated of a valuable right in such lands.

4. Repealed. Acts 1939, 46th Leg., p. 246, § 7.

5. The special enumeration of cases of swindling above set forth shall not be understood to exclude any case which by fair construction of language comes within the meaning of the preceding article.

6. This Act shall be cumulative of all other laws on this subject and should any section or provision be declared unconstitutional such decision shall not effect[1] any of the remaining provisions of this Act. [Acts 1925, 39th Leg., p. 38, ch. 14.]

[1] So in enrolled bill. Should probably read "affect".

Art. 1546a. False written statement of financial condition.—Any person who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any materially false statement in writing with intent that it shall be relied upon, representing the financial condition, or means, or ability to pay, of himself, or any other person or firm, or corporation, in which he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever either the delivery of personal property, the payment of cash, the making a loan or credit, the extension of a credit, the discount of any account receivable, or the making, acceptance, discount, sale, or endorsement of a bill of exchange or promissory note, amounting to more than fifty dollars for the benefit of either himself, or of any such person, firm, or corporation; or

Who, knowing that a false statement in writing has been made respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures upon the faith thereof, for the benefit of either himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in the first subdivision of this section; or

Who, knowing that a false statement in writing has been made, respecting the financial condition or means, or ability to pay of himself, or the person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later day, in writing that such statements theretofore made, if then again made on said day would be true, when same would be false, and procures upon faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in the first subdivision of this section,

Shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two hundred ($200.00) dollars or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 168, p. 383, § 1.]

Art. 1547. [1423] [945] [792] "Money" defined.—Within the meaning of "money", as used in this chapter, are included also bank bills or other circulating medium current as money.

Art. 1548. [1424] [946] [793] No benefit need accrue to defendant.—It is not necessary in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud or deceit, nor that any injury shall result to the person intended to be defrauded, if it is sufficiently apparent that there was a wilful design to receive benefit or cause an injury. [Acts 1858, p. 183.]

Art. 1549. [1425] [947] [794] If the act constitutes any other offense.—Where property, money, or other articles of value enumerated in the definition of swindling, are obtained in such manner that the acquisition thereof constitutes both swindling and some other offense, the party thus offending shall be amenable to prosecution at the state's election for swindling or for such other offense committed by him by the unlawful acquisition of said property in such manner. [Acts 1858, p. 184; Acts 1943, 48th Leg., p. 362, ch. 240, § 1.]

Art. 1550. [1427] [948] [796] Punishment for swindling.—Every person guilty of swindling shall be punished in the same manner as is provided for the punishment of theft, according to the amount of the money or the value of the property or instrument of writing so fraudulently acquired.

Art. 1551. [1428] Obtaining board or lodging by trick, etc.—Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representations, or statement or pretense, and shall fail or refuse to pay therefor, shall be held to have obtained the same with the intent to cheat and defraud such hotel or boarding house keeper, and shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding one month or both. [Act May 10, 1899, Acts 1899, p. 173.]

Art. 1552. To post price in hotel rooms.—The owner or keeper of each hotel within this State shall post in a conspicuous place in each room thereof a card or sign, stating the price per day of each room and bearing date when posted; and no advance in the price list so posted shall be made within thirty days from the time said card or sign was last posted.

Any hotel owner or keeper who shall fail or refuse to post the rates of his rooms as above required, or any hotel owner, keeper or employé who shall knowingly charge any guest a rate in excess of the rate posted shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in jail not exceeding thirty days or both, and each day that such excessive rate is charged is a separate offense. [Acts 1923, p. 95.]

Art. 1553. Hotel to furnish rate card.—When a room is assigned to a guest by any hotel having twenty rooms or more, such hotel shall give said guest a ticket showing the rate per day he is being charged for such room, which shall conform with the rates posted, and any owner, keeper or employé of said hotel who shall neglect to furnish said guest with such ticket shall be fined not exceeding one hundred dollars. [Id.]

Art. 1554. Untrue advertisement.—Whoever with intent to sell or in any way dispose of merchandise, securities, service, or anything offered by such person, or by any firm, corporation or association which he owns or of which he has control directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public or causes to be made, published, disseminated, circulated or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, window display card or price tag, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, as to its character or cost, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is known by said person or could have been known by use of reasonable diligence or inquiry to be untrue, deceptive or misleading in any material particular as to such matters or things so advertised, shall be fined not less than ten nor more than two hundred dollars. In prosecutions under this article such statement, trade name or trade mark, with the name, signature, mark or identification of the person, firm, corporation, partnership, association, shall be considered prima facie evidence of the publication of such statement, trade name or trade mark by the person, firm, corporation, partnership, association, referred to therein. [Acts 1921, p. 86.]

Part of statute penalizing one who, by reasonable diligence or inquiry, could have known that advertisement regarding character or cost of merchandise offered for sale was deceptive or misleading held invalid but separable from that part penalizing materially untrue advertisement regarding such merchandise. Pincus v. State, 126 Cr.R. 188, 70 S.W.2d 417.

Art. 1555. [425] Unlawfully using or wearing emblem.—Whoever shall wilfully and without due authority use or wear the badge, label or button or other emblem of the United Confederate Veterans, United Sons of Confederate Veterans, United Daughters of the Confederacy, Grand Army of the Republic, Woman's Relief Corps, the Benevolent and Protective Order of Elks of the United States of America, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in this State, or who shall use or wear the same to obtain aid, assistance or patronage thereby, unless he shall be entitled to use or wear the same under the rules and regulations of any such order, society or organization whose badge, label or button or other emblem was so used or worn, shall be fined not exceeding fifty dollars, or imprisoned in jail not exceeding sixty days. [Acts 1909, p. 134.]

Art. 1555a. Registered seed growers, swindling.—When any person falsely advertises or proclaims himself a Registered Plant Breeder or Certified Seed Grower, or advertises for sale State Registered Seed or State Certified Seed without first complying with the provisions of this Act,[1] or uses any emblem or wording so as to mislead the purchaser into believing he is buying State Registered Planting Seed or State Certified Seed, or who tells a purchaser that the seed sold are Registered Planting Seed or Certified Planting Seed, when they are not; or in anywise leads the purchaser to believe that the seed sold are Registered Planting Seed or Certified Planting Seed, when they are not, he shall be deemed guilty of swindling. [Acts 1929, 41st Leg., 1st C.S., p. 229, ch. 93, § 6.]

[1] This article and Rev.Civ.St. Art. 67a.
Sections 1–5 of this Act are published as Rev.Civ.St. Art. 67a.

CHAPTER 17.—PROPERTY UNDER LIEN

Art.
1556. Removing property under lien.
1557. Concealing mortgaged property.
1558. Fraudulent disposition of mortgaged property.

Article 1556. Removing property under lien.—If any person shall remove any personal property or any part thereof covered by the lien created by chapter 17, Acts of the 35th Legislature, Regular Session, from the place where it was located when the lien therein provided for shall have been filed of record, without the written consent of the owner and holder of said lien, with intent to defraud the person having such lien, either originally or by transfer, he shall be fined not less than five nor more than five hundred dollars. [Acts 1917, p. 28.]

Art. 1557. Concealing mortgaged property.—If any person shall give a mortgage or other lien, in writing, upon any personal property purchased by him, to secure the purchase price or any portion of same, and while such mortgage or lien remains unsatisfied, shall conceal the same or absents himself from the county or otherwise conceals himself so that notice cannot be given him, or shall wilfully, upon demand, fail or refuse to notify the holder of such mortgage or lien, of the location of such property, he shall be fined not less than ten dollars, nor more than one hundred dollars, or be confined in jail for not more than sixty days, or both. [Acts 1919, p. 320; Acts 1929, 41st Leg., p. 237, ch. 102, § 1.]

Art. 1558. [1430] [950] [797] Fraudulent disposition of mortgaged property.—If any person has given or shall hereafter give any mortgage, deed of trust or other lien, in writing, upon any person or movable property or growing crop of farm produce, and shall remove the same or any part thereof out of the State, or out of the county in which it was located at the time the mortgage or lien was created, or shall sell or otherwise dispose of the same with intent to defraud the person having such lien, either originally or by transfer, he shall be confined in the penitentiary for not less than two nor more than five years. Proof that the mortgagor removed such property out of the county in which it was located at the time the mortgage or lien was created or that he sold or otherwise disposed of the same either originally or by transfer and that the mortgagor failed to pay the debt or any part thereof when due for which the mortgage or lien was given, or shall fail to deliver possession of said property upon demand of the mortgagee, shall be prima facie evidence that such property was removed or disposed of with intent to defraud as provided in this Act. [Acts 1885, p. 85; Acts 1929, 41st Leg., 2nd C.S., p. 85, ch. 48, § 1.]

CHAPTER 18.—OFFENSES COMMITTED IN ANOTHER COUNTY OR STATE

Art.
1559. Bringing stolen property into this state.
1560. Requisites of guilt.

Article 1559. [1431] [951] [798] Bringing stolen property into this State.—If any person having committed an offense in any foreign country, State or territory, which if committed in this State would have been swindling, robbery, theft, embezzlement or receiving of stolen property, knowing the same to have been stolen, or fraudulently receiving or concealing property acquired by another by embezzlement, knowing the same to have been so acquired by another, shall bring into this State any property so acquired or received he shall be deemed guilty of swindling, robbery, theft, embezzlement, or receiving of goods or property stolen or embezzled, and shall be punished as if the offense had been committed in this State. In cases here-

in mentioned the offense may be charged to have been committed in any county into or through which the property may be brought in the same manner as if the act constituting such offense had taken place wholly within this State. [O. C. 774, Acts 1895, p. 116.]

Art. 1560. [1432] [952] [799] Requisites of guilt.—To render a person guilty under the preceding article it must appear that by the law of the foreign country, State or territory from which the property was taken and brought to this State the act committed would also have been swindling, robbery, embezzlement, theft or receiving stolen goods or property embezzled. [O. C. 775, Id.]

TITLE 18—LABOR

CHAPTER 1.—LABOR COMMISSIONER

Article 1561. [1585] Commissioner of Labor Statistics.—The Commissioner of Labor Statistics shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, and especially as bearing upon the commercial, social, educational and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of women and children and the hours of labor exacted of them, and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein. [Sec. 3, Act Feb. 26, 1909, Acts 1909, p. 59.]

Art. 1562. [1586] Failure to testify before Commissioner.—The Commissioner of the Bureau of Labor Statistics shall have power to issue subpœnas, and take testimony in all matters related to the duties required of the said bureau, but said testimony must be taken in the vicinity of the residence or office of the person testifying. Any person duly subpœnaed under any provision of this chapter who shall wilfully neglect or fail to attend or testify at the time and place mentioned in the subpœna shall be fined not exceeding fifty dollars or be imprisoned in jail not to exceed thirty days. No witness shall be compelled to go outside of the county in which he resides in order to testify. [Sec. 5, Id.]

Art. 1563. [1587] Duty of owner of factory, etc.—Every owner, manager and superintendent of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment or place, where five or more persons are employed at work, shall make to the Bureau of Labor Statistics upon blanks to be furnished by such bureau, such reports and returns as said bureau may require for the purpose of securing such labor statistics as are contemplated by this chapter. Such reports and returns shall be made under oath within not to exceed sixty days from the receipt of the blanks furnished by the Commissioner or bureau. Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall neglect or refuse to make such reports and returns as are required by any provision of this chapter shall be fined not to exceed one hundred dollars, or be imprisoned in jail not to exceed thirty days. [Sec. 6, Id.]

Art. 1564. [1588] Disclosing name of informant.—In the reports made by the Commissioner to the Governor the names of persons, firms or corporations supplying information under any provision of this chapter shall not be disclosed, nor shall any such name be communicated to any person not employed in the Bureau of Labor Statistics. Any officer or employé of such bureau violating any provision of this article, shall be fined not to exceed five hundred dollars, or be imprisoned in jail not to exceed ninety days. [Sec. 7, Id.]

Art. 1565. [1589] Commissioner may enter factory, etc.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with any provision of this chapter, the Commissioner of Labor Statistics shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment, or place where five or more persons are employed at work, when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employés from danger and the sanitary conditions in and around such building or place. [Sec. 9, Id.]

Art. 1566. [1591] Interfering with Labor Bureau.—Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall refuse to allow any officer or employé of the said Bureau of Labor Statistics to enter the same or to remain therein for such time as is reasonably necessary, or who shall hinder any such officer or employé, or in any way prevent or deter him from collecting information, as to any matter consistent with any duty imposed on him by law, shall be fined not to exceed one hundred dollars, or imprisoned in jail not to exceed sixty days. [Sec. 11, Id.]

CHAPTER 2.—SANITARY AND HEALTH CONDITIONS

Article 1567. Permitting immoral conditions.—Any person in control of any factory, mill, workshop, laundry, mercantile establishment or other establishment where five or more persons are employed, all or part of whom are females, who shall permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employés, shall be find [1] not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not exceeding sixty days, or both. [Acts 4th C. S. 1918, p. 134.]

[1] So in enrolled bill. Should probably read "fined".

Art. 1568. Refusal to correct condition.—Any person in control or management of any establishment included in the preceding article who shall fail or refuse to comply with any written order issued to such person by the Commissioner of Labor Statistics, or any of his deputies or inspectors, for the correction of any

condition caused or permitted therein which endangers the health of the employés therein or which do not comply with the law governing such establishments, shall be punished as provided in the preceding article. [Id.]

CHAPTER 3.—FEMALE EMPLOYÉS

Art.
1569–1572. [Repealed.]

Arts. 1569–1572. [Repealed by Acts 1943, 48th Leg., p. 94, ch. 68, § 14.]

The articles repealed were amended by Acts 1929, 41st Leg., 1st C.S., p. 218, ch. 87, § 1; Acts 1933, 43rd Leg., p. 285, ch. 114.

CHAPTER 4.—EMPLOYMENT OF CHILDREN

Art.
1573. Children under fifteen.
1574. Under age of seventeen.
1575. Messengers.
1576. Limitation of hours.
1577. Exemptions.
1578. Inspectors to have access.
1578a. Exceptions.

Article 1573. Children under fifteen.—Any person, or any agent or employee of any person, firm or corporation who shall hereafter employ any child under the age of fifteen years to labor in or about any factory, mill, workshop, laundry, or in messenger service in towns and cities of more than fifteen thousand population, according to the preceding Federal census, shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars, or be imprisoned in jail for not more than sixty days. [Acts 1925, p. 175, § 1; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

Section 8 of Acts 1925, repeals all conflicting laws and parts of laws. Section 9 provides that if any section is held invalid, such decision shall not affect the remaining sections.

Art. 1574. Under age of seventeen.—Any person, or agent, or employee of any person, firm or corporation who shall hereafter employ any child under the age of seventeen years to labor in any mine, quarry or place where explosives are used, or who, having control or employment of such child, shall send or cause to be sent, or who shall permit any person, firm or corporation, their agents or employees to send any such child under the age of seventeen years to any disorderly house, bawdy house, assignation house, or place of amusement conducted for immoral purposes; the character or reputation of which could have been ascertained upon reasonable inquiry on the part of such person, firm or corporation having the control of such child, shall be fined not less than Fifty Dollars nor more than Five Hundred Dollars, or be imprisoned in jail not to exceed sixty days. [Acts 1925, p. 175, § 2; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

Section 1 of Acts 1929, 41st Leg., p. 391, ch. 180 included, without change, section 8 of Acts 1925, 39th Leg., p. 175, ch. 42, which repealed all conflicting laws and parts of laws and section 9 which provided that if any section was held invalid such decision should not affect the remainder of the Act.

Art. 1575. Messengers.—It shall be the duty of every person, firm, or corporation, their agents or employees, doing a messenger or delivery business, or whose employees may be required to deliver any message, package, merchandise or other thing, having in their employ or under their control, any child under the age of seventeen years, before sending any such child on such errand, to first ascertain if such child is being sent or is to be sent to any place prohibited in Section 2 of this Act.[1] Failure or refusal to comply with this Section shall subject any person, or the agents or employees of any person, firm or corporation, having the control of such child or children, to the penalties provided in Section 2 of this Act. [Acts 1925, p. 175, § 3; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

[1] Article 1574, ante.

Art. 1576. Limitation of hours.—Any person, firm or corporation, their agents or employees, having in their employ or under their control any child under the age of fifteen years, who shall require or permit any such child to work or be on duty for more than eight hours in any one calendar day, or for more than forty-eight hours in any one week, or who shall cause or permit such child to work between the hours of ten P. M. and five A. M. shall be fined not less than Twenty-five Dollars nor more than Two Hundred Dollars, or be imprisoned in jail not to exceed sixty days. [Acts 1925, p. 175, § 4; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

Art. 1577. Exemptions.—Upon application being made to the County Judge of any county in which any child over the age of twelve years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed or in needy circumstances, invalid father, or of other children younger than the child for whom the permit is sought, the said County Judge may upon the affidavit of such child or its parents or guardian, that the child for whom the permit is sought is over twelve years of age, that the said child has completed the fifth grade in a public school, or its equivalent, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of such child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy circumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which affidavit shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve years and fifteen years shall post in a conspicuous place where such child is employed, the permit issued by the County Judge; provided that no permit shall be issued for a longer period than twelve months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exists, and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve years and fifteen years, the parent, guardian or other person in charge or control of such child shall appear before the County Judge in person with such child for whom a permit is sought before such permit shall be issued. Nothing in this Act shall prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in factory, mill, workshop, and the places mentioned in Sections 2 and 5 of this Act;[1] nor shall their hours of labor conflict with Section 4 of this Act.[2] [Acts 1925, p. 175, § 5; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

[1] This Article and Articles 1574–1576, ante.
[2] Article 1576, ante.

Art. 1578. Inspectors to have access.—The Commissioner of Labor Statistics, or any of his deputies or inspectors shall have free access during working hours to all places where children or minors are employed, and any owner, manager, superintendent, foreman or other person in authority, who shall refuse to admit, or in any way hinder or deter the said Com-

missioners or any of his deputies or inspectors from entering or remaining in such place, or from collecting information with respect to the employment of children as provided in this Act,[1] shall be fined not less than Twenty-five Dollars nor more than One Hundred Dollars. [Acts 1925, p. 175, § 6; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

[1] This chapter.

Art. 1578a. Exceptions.—Provided that nothing in this Act[1] shall be construed as prohibiting the employment by any person of nurses, maids, yard-servants, or others for private homes and families, regardless of their ages, nor apply to those engaged in agricultural pursuits. Nothing in this Act shall apply to the employment of children for farm labor, or to hours which children may work on farms, nor shall anything in this Act be construed as affecting the employment of children on farms, ranches, dairies, or other agricultural or stock-raising pursuits, nor shall any person be guilty under this Act where the child employed is permitted to work under the provisions of this Act. [Acts 1925, p. 175, § 7; Acts 1929, 41st Leg., p. 391, ch. 180, § 1.]

[1] This chapter.

CHAPTER 5.—HOURS OF LABOR ON PUBLIC WORKS

Art.
1579. Eight hours a day work.
1580. Violating eight hour law.
1581. Punishment.
1581a. Public works; failure to comply with regulations as to wages and records.

Article 1579. Eight hours a day work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. [Acts 1913, p. 127.]

Art. 1580. Violating eight hour law.—All contracts made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, person or association of persons for performance of any work, shall be deemed and considered as made upon the basis of eight (8) hours constituting a day's work. The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work. It shall be unlawful for any corporation, person or association of persons having a contract with the State or any political subdivision thereof, to require or permit any such laborers, workmen, or mechanics to work more than eight (8) hours per calendar day in doing such work, except in cases of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight (8) hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements or in cases where the total number of hours per week required or permitted of any such laborer, workman or mechanic, engaged on work financed in whole or in part by the Federal Government or any agency thereof, does not exceed the number of hours per week allowed by any regulation of the Federal Government or any agency thereof. In such emergencies the laborers, workmen, or mechanics so employed and working to exceed eight (8) hours per calendar day shall be paid on the basis of eight (8) hours constituting a day's work. Not less than the current rate of per hour wages for like work in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the State, or for any county, municipality or other legal or political subdivision of the State, county or municipality, and every contract hereafter made for the performance of work for the State, or for any county, municipality or other legal or political subdivision of the State, county or municipality, must comply with the requirements of this Chapter. [Acts 1913, p. 127; Acts 1921, p. 229; Acts 1935, 44th Leg., p. 644, ch. 259, § 1.]

Art. 1581. Punishment.—Any person, or any officer, agent or employé of any person, corporation or association of persons, or any officer, agent or employé of the State, county, municipality, or any legal or political subdivision of the State, county or municipality, who shall fail or refuse to comply with any provision of this chapter or who shall violate any of its provisions shall be fined not less than fifty nor more than one thousand dollars, or be imprisoned in jail not to exceed six months or both. Each day of such violation shall be a separate offense. [Acts 1913, p. 127.]

Art. 1581a. Public works; failure to comply with regulations as to wages and records.—Sec. 5. Any officer, agent or representative of the State, or any political subdivision, district or municipality thereof, who wilfully shall violate, or omit to comply with, any of the provisions of this Act, and any contractor or subcontractor, or agent or representative thereof, doing public work as aforesaid, who shall neglect to keep, or cause to be kept, an accurate record of the names, occupation and actual wages paid to each laborer, workman and mechanic employed by him in connection with the said public work, or who shall refuse to allow access to same at any reasonable hour to any person authorized to inspect same under this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment for not exceeding six (6) months, or by both such fine and imprisonment, in the discretion of the Court.

Sec. 6. If any section, sentence, clause or part of this Act is for any reason held to be unconstitutional such decision shall not affect the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, sentence, clause or part thereof, irrespective of the fact that one or more sections, sentences, clauses or parts thereof be declared unconstitutional. [Acts 1933, 43rd Leg., p. 91, ch. 45.]

Sections 1–4 of this Act are published as Rev.Civ.St. Art. 5159a.

CHAPTER 6.—WORKMEN AND FIREMEN

Art.
1582. Protection of workmen on buildings.
1583. Work and vacation of firemen or policemen.
1583a. Fire department.
Sec.
1. Two platoon system in certain cities and counties; hours of labor.
2. Chief of fire department—Duty of.
3. Penalty.
1583b. Vacations for jailers, jail guards, and jail matrons.
1583—1. Hours of work of firemen and policemen.
1583—2. Compensation of firemen and policemen in certain cities; adoption of law in cities of 10,000 to 40,001.

Article 1582. Protection of workmen on buildings.—1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repairs, shall have the joists, beams

or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two feet centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is to be taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such building as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out.

Any owner or agent of the owner, or any general contractor or sub-contractor, of any building described in the first subdivision of this article who shall fail to comply with any provision of this article shall be fined not less than fifty nor more than two hundred dollars. Each day of such violation is a separate offense. [Acts 1919, p. 281.]

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 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 (1) 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 sixty thousand (60,000) inhabitants to require or permit any such fireman and policeman 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 and 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 and forty-four (144) hours in any two (2) consecutive calendar weeks for the protection of property or human life; said fireman and policeman shall draw additional compensation for the number of hours worked in addition to the regular twelve-hour calendar day, or more than the regular seventy-two (72) hours in any one calendar week or more than the regular one hundred and 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 overtime 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 sixty thousand (60,000) inhabitants each member of any such department shall receive a sum of One Hundred and Fifty Dollars ($150) 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 Dollars ($10) nor more than One Hundred Dollars ($100), 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. [Acts 1915, 1st C.S., p. 22; Acts 1917, 1st C.S., p. 19; Acts 1935, 44th Leg., p. 377, ch. 139, § 1; Acts 1937, 45th Leg., p. 358, ch. 173, § 1; Acts 1943, 48th Leg., p. 309, ch. 201, § 1.]

This article not amended, altered or changed in any manner by Acts 1945, 49th Leg., p. 55, c. 38, see Art. 1583—1, § 9.

Art. 1583a. Fire department.

Two platoon system in certain cities and counties; hours of labor

Section 1. In all cities containing more than One Hundred Thousand (100,000) inhabitants and less than One Hundred Twenty Thousand (120,000) inhabitants, in this State, according to the last preceding Federal Census, in counties containing more than Nine Hundred (900) square miles, and in all cities of Two Hundred Sixty-five Thousand (265,000) inhabitants, or more, in this State, according to the last preceding Federal Census, in counties containing more than Fifteen Hundred (1500) square miles, which maintain an organized, paid fire department, there shall be established and maintained two platoon fire system, and no employee of such department shall be compelled to be on duty more than ten (10) consecutive hours during the day time, nor more than fourteen (14) consecutive hours during the night time; provided, that in no event shall employees of such fire departments be required to be on duty more than fourteen (14) hours in any period of twenty-four (24) consecutive hours, except as provided in Section 2 of this Act.

Chief of fire department—Duty of

Sec. 2. The head or chief officer of such fire department or companies in such cities shall so arrange the working hours of the employees of such fire department or companies so that each employee shall work, as near as practicable, an equal number of hours per month; provided the two platoons may be so ar-

ranged as to work twenty-four (24) hours each on duty and twenty-four (24) hours off duty; provided, that the head or chief officer of such department, his aids or assistants may, in their discretion, in cases of emergency or great conflagrations require such employee, or employees to continue on duty during such conflagration or emergency, for a greater period than specified in Section 1 hereof.

Penalty

Sec. 3. That any chief of such fire department or companies or any other officer or person who violates or causes to be violated any provision of this Act shall be guilty of a misdemeanor, and shall upon conviction be punished by a fine of not less than ten and No/100 ($10.00) Dollars, nor more than One Hundred and No/100 ($100.00) Dollars; each employee required or permitted to work in violation of the provisions hereof and each and every day of such violation shall constitute a separate offense. [Acts 1933, 43rd Leg., p. 526, ch. 170.]

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). [Added Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Art. 1583—1. Hours of work of firemen and policemen.—Section 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 more than six (6) days in any one week.

Sec. 2. The preceding subdivision shall not apply to cases of emergency.

Sec. 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 provisions of this Section of this Act shall not be applied to any member of any such department 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 (1) year.

Sec. 4. Each preceding Federal Census shall determine the population.

Sec. 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.

Sec. 6. It shall be unlawful for any city of more than forty thousand (40,000) inhabitants to require or permit any such fireman and policeman 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 and 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 and forty-four (144) hours in any two (2) consecutive calendar weeks for the protection of property or human life; said fireman and policeman shall draw additional compensation for the number of hours worked in addition to the regular twelve-hour calendar day, or more than the regular seventy-two (72) hours in any one calendar week, or more than the regular one hundred and 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 overtime computed upon the basis of their monthly salary shall be paid to them for such additional time as they are required to work.

Sec. 7. It is further provided that in any city of more than forty thousand (40,000) inhabitants each member of any such department shall receive the sum of One Hundred and Fifty ($150.00) Dollars per month as a minimum wage for said services so rendered.

Sec. 8. The city official having charge of the fire department or police department in any such city who violates any provision of this Act 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.

Sec. 9. Nothing in this Act shall be construed as amending, altering or changing in any manner whatsoever the provisions of Article 1583, Penal Code of Texas, as amended, Acts 1935, 44th Legislature, page 377, Chapter 139, Section 1; Acts 1937, 45th Legislature, page 358, Chapter 173, Section 1; Acts 1943, 48th Legislature, page 309, Chapter 201, Section 1. This Act is cumulative and in addition to said laws set out in this Section. [Acts 1945, 49th Leg., p. 55, c. 38.]

Art. 1583—2. Compensation of firemen and policemen in certain cities; adoption of law in cities of 10,000 to 40,001.—Section 1. It is hereby provided that in any city of this state of not less than one hundred seventy-five thousand (175,000) inhabitants according to the last preceding Federal Census, or any succeeding Federal Census, each member of the Fire Department and of the Police Department shall receive and be paid the sum of not less than Two Hundred ($200.00) Dollars per month, and the additional sum of Ten ($10.00) Dollars per month for each five (5) years of service in such Police or Fire Department up to and including twenty-five (25) years of service in such Department, as a minimum wage for the services so rendered.

It is provided further, that in all cities in this state with inhabitants thereof between ten thousand (10,000) and one hundred seventy-five thousand (175,000) according to the last preceding Federal Census, each member of the Fire Department and of the Police Department shall receive and be paid the following sums per month according to the population of each such city of ten thousand (10,000) or more and up to forty thousand and one (40,001), such salary shall be One Hundred Fifty ($150.00) Dollars per month minimum; in all such cities with inhabitants of forty thousand and one (40,001) to one hundred thousand and one (100,001) inhabitants, such minimum salaries shall be One Hundred Eighty ($180.00) Dollars per month; and in all such cities from one hundred

thousand and one (100,001) to one hundred seventy-five thousand (175,000) inhabitants, such minimum salaries shall be One Hundred Ninety ($190.00) Dollars per month; and in all such cities the additional sum of Ten ($10.00) Dollars per month for each five (5) years of service in such Fire or Police Department up to and including fifteen (15) years of service in such Department as a minimum wage for the services so rendered; with the further provision that in all cities with ten thousand (10,000) or more inhabitants and up to forty thousand and one (40,001) inhabitants shall only receive the additional sum of Five ($5.00) Dollars per month for each five (5) years of service in such Fire or Police Department up to and including fifteen (15) years of service in such Department, as a minimum wage for the services so rendered; provided, however, that the provisions of this Act shall not apply to cities of ten thousand (10,000) or more inhabitants and up to forty thousand and one (40,001) inhabitants, unless at an election which shall be called within ninety (90) days from the effective date of this Act, to be held in accordance with the state laws and the city charter, at which the adoption or rejection of this Act shall be submitted at such election; if at said election, a majority of the people voting shall favor the adoption of the provisions of the Act, it shall thereafter become the duty of said governing body to put into effect the provisions of this Act. In the event a majority of the voters in any such election reject the adoption of this Act, then such matter shall not be re-submitted to the electors for a period of one (1) year; and thereafter, the same may be re-submitted upon a petition signed by qualified voters in said city in number not less than five (5%) percent of the total number voting in the last preceding city election, upon the filing of which the city governing body shall again re-submit the question of the adoption or rejection of this Act.

Section. 2. Any city official, or officials, who has charge of the Fire Department or Police Department, or who is responsible for the fixing of the wages herein provided in any such city, who violates any provision of this Act, shall be fined not less than Ten ($10.00) Dollars nor more than One Hundred ($100.00) Dollars; and each day on which such city official, or officials, shall cause or permit any violation of this Act shall constitute and be a separate offense. [Added Acts 1947, 50th Leg., p. 246, ch. 143, § 1.]

Section 2 of the Act of 1947 provided:

"Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict, but no further; and nothing herein shall be construed in any manner to amend, modify, or repeal any provision of the statutes of this state relating to the hours of work of firemen and policemen, or any provision of any law other than as to the minimum salaries to be paid firemen and policemen as hereinabove provided in the cities within the provisions of this Act. Section 3 provided that partial invalidity should not affect the remaining portions.

CHAPTER 7.—EMPLOYMENT AGENTS

Art.
1584–1593. [Repealed.]
1593a. Certain acts prohibited; punishment.
Sec.
14. Untruth by Employer or Applicant.
15. To display license and law.
16. Doing business without license.
19. Punishment.

Arts. 1584–1593. [Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22.]

Article 1589 was amended by Acts 1937, 45th Leg., 2nd C.S., p. 1886, ch. 16, § 1.

Art. 1593a. Certain acts prohibited; punishment.

Section 13. No employment or labor agent shall:

(a) Knowingly admit, or allow to remain on the premises of such agent any prostitute, gambler, intoxicated person or any person of bad character.

(b) Advertise his agency by means of cards, circulars, signs or in newspapers or other publications, unless all such advertisements shall set forth the name of the agent and the address of his employment office; nor shall any such licensed person use any letterheads or blanks not containing the name of such employment or labor agent and the address of his employment office.

(c) Publish or cause to be published any false or misleading advertisement or notice relating to his employment agency.

(d) Give any false information or make any false representation concerning employment to any applicant for employment.

(e) Send out an applicant for employment to any prospective employer without first having obtained a bona fide written order from such prospective employer.

(f) Furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill fame, or assignation house, or any house or place of amusement kept for immoral purposes, the character of which such employment agent could have ascertained by reasonable diligence.

(g) Furnish employment to any child in violation of the Statutes regulating the employment of children or the compulsory attendance at school.

(h) Divide or offer to divide, directly or indirectly, any fee charged or received with any person who secures workers through such agent, or to whom workers are referred by such agent.

(i) No employment agent shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees; or whose employees, or a part of them are out on a strike, without first apprising said person of the existence of said "lockout" or strike.

Untruth by employer or applicant

Sec. 14. No employer seeking employees, and no person seeking employment, shall knowingly make any false statement or conceal any material facts for the purpose of obtaining employees, or employment, by or through any employment or labor agent.

To display license and law

Sec. 15. Every employment and labor agent shall keep conspicuously posted in his office the license issued to him under the law, two copies of this Act, one printed in English and the other in Spanish in type not smaller than ten points, which copies shall be conspicuously placed so that they may be easily read by the public, such copies of the Act to be furnished by the Commissioner at the time such license is issued.

Doing business without license

Sec. 16. Whoever acts as an employment or labor agent or conducts an employment office in any county in this State without having first filed with the Commissioner of Labor Statistics of the State of Texas, an application for license as employment or labor agent as provided by this Act, and/or without having first paid all State and county occupation taxes and annual license fee as provided by law or without having first secured a State license as provided, and/or who does not file monthly reports as provided by this Act, and/or who shall engage in the business of an employment or labor agent in any county in this State without first having designated such county as one of the counties in which he proposes to do such business in his original or amended application to the Commissioner of Labor Statistics of Texas, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding Five Hundred Dollars ($500), or by imprison-

ment in the county jail for not exceeding six (6) months, or by both such fine and imprisonment.

Punishment

Sec. 20. Unless otherwise provided for in this Act, any employment or labor agent who violates any provision of this Act shall be fined not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200), except that any employment or labor agent who shall induce or attempt to induce any person to leave his or her employer with a view to having said person obtain employment through his agency, shall be fined not less than Fifty Dollars ($50) nor more than Two Hundred and Fifty Dollars ($250), or be imprisoned in jail not to exceed one (1) year, or both. [Acts 1943, 48th Leg., p. 86, ch. 67.]

Sections 1–12, 17–19, 21 of Acts 1943, 48th Leg., p. 86, ch. 67, are published as Rev.Civ.St., art. 5221a—4.

CHAPTER 8.—MINES AND MINING

Art.
1594. Escapement shaft.
1595. Shafts, cages and passways.
1596. Ventilation.
1597. Notice of fire damp.
1598. Mining cage.
1599. Powder.
1600. Cut-throughs.
1601. Safety lamps.
1602. Endangering life or health.
1603. Posting mine rules.
1604. Coal scales.
1605. Check weighman.
1606. Oil used.
1607. Penalty.
1608. Insulating live wires.
1609. Map of mine.
1610. Animals in mines.
1611. Exceptions.
1612. Bath facilities.

Article 1594. [1592] [1593] Escapement shaft.—No owner, agent, lessee, receiver or operator of any mine in this State shall employ any person or persons in said mine for the purpose of working therein unless there are in connection with every seam or stratum of coal or ore worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets safe and distinct means of ingress and egress shall at all times be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances by which the employés of the mine may readily escape in case of accident. In slopes used as haulage roads where the dip or incline is ten degrees or more there must be provided a separate traveling way which shall be maintained in a safe condition for travel and keep free from dangerous gases. The time which shall be allowed for completing such escapement shaft or opening shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope for sale or use. Any person, owner, agent, lessee, receiver or operator of any mine who shall violate or suffer or permit the violation of any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, and each day such violation continues shall be a separate offense. [Acts 1903, p. 103.]

Art. 1595. [1594] Shafts, cages and passways.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds shall be subjected to the provisions of this and the twelve succeeding articles. At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice can not be distinctly heard there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope in each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. Every mine shall be supplied with props and timbers of suitable length and size, and if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. All openings connected with worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operative portions thereof so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines. [Sec. 1, Act April 30, 1907, Acts 1907, p. 331.]

Art. 1596. [1595] Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder, smoke and deleterious air of any kind.

The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

The main current of air shall be so split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work;

and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and upon his or their refusal or neglect to act promptly the inspector may order the endangered men out of the mine. [Sec. 2, Id.]

Art. 1597. [1596] Notice of fire damp.—Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [Sec. 3, Id.]

Art. 1598. [1597] Mining cage.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or materials with him on a cage in motion, except for use in making repairs, and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Sec. 4, Id.]

Art. 1599. [1598] Powder.—No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition. [Sec. 5, Id.]

Art. 1600. [1599] Cut-throughs.—The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation, and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article he shall order the workmen in such places to cease work at once until the law is complied with. [Sec. 6, Id.]

Art. 1601. [1600] Safety lamps.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Sec. 7, Id.]

Art. 1602. [1601] Endangering life or health.—No miner, workman or other person shall knowingly or carelessly injure any shaft, safety lamp, instrument, air-course or brattice, or obstruct or throw open an air-way, or carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps or within three feet of any open powder, or handle or disturb any part of the hoisting machinery, or enter any part of the mine against caution, or do any wilful act whereby the lives or health of persons working in mines or the security of the mine machinery thereof is endangered. [Sec. 8, Id.]

Art. 1603. [1602] Posting mine rules.—Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employés of the mine can read them, rules not inconsistent with this chapter, plainly printed in the English language, which shall govern all persons working in the mine. [Sec. 9, Id.]

Art. 1604. [1603] Coal scales.—The owner or operator of every mine shall provide adequate and accurate scales for weighing coal. [Id.]

Art. 1605. [1604] Check weighman.—The employés in any mine shall have the right to employ a check weighman at their own option and their own expense. [Sec. 11, Id.]

Art. 1606. [1605] Oil used.—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Sec. 12, Id.]

Art. 1607. [1606] Penalty.—Any person who shall wilfully violate any provision of the twelve preceding articles shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months. [Sec. 13, Id.]

Art. 1608. Insulating live wires.—In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this. But where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. Any person who shall violate any provision of this article shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months. [Act March 23, 1911, Acts 1911, p. 197.]

Art. 1609. Map of mine.—Any operator of a coal mine in this State who shall fail to make a map of the underground workings of any such mine in his charge in the manner and at the times required by the laws of this State governing such mines, or who

shall fail to keep the original of such map on file at his office at or near such mine, shall be fined not less than twenty-five nor more than fifty dollars for each offense. [Id.]

Art. 1610. Animals in mines.—Any person owning, operating or managing any mine who shall permit any work animal under his control to remain in any mine longer than ten consecutive hours, or who shall feed or permit to be fed any work animal in said mine, or who shall store or keep any feed for such animals in said mine, shall be imprisoned in jail for not less than one month nor more than one year. [Acts 1911, p. 205.]

Art. 1611. Exceptions.—The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed except corn, corn chops, bran and shelled oats is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine. [Id.]

Art. 1612. Bath facilities.—The operator, owner, lessee or superintendent of any coal mine employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employés. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. Any operator, owner, lessee or superintendent of any coal mine violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail for not more than sixty days, or both. Every two weeks of such violation shall be a separate offense. [Acts 1915, p. 100.]

CHAPTER 9.—BLACKLISTING

Art.
1613. Discrimination against persons seeking employment.
1614. Penalty.
1615. What is prima facie proof.
1616. "Blacklisting" defined.
1617. Blacklisting prohibited.
1618. Penalty.
1619. Exceptions.
1620. Servants or employés not to be coerced.
1621. Witness must testify.

Article 1613. [1190] Discrimination against persons seeking employment.—The following shall constitute discrimination against persons seeking employment: Where any corporation, or receiver of same, doing business in this State, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike. [Acts 1909, p. 160, Acts 1907, p. 143.]

Art. 1614. [1191] Penalty.—Every person violating any provision of the preceding article shall be imprisoned in jail for not less than one month nor more than one year. [Id.]

Art. 1615. [1192] What is prima facie proof.—Evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id.]

Art. 1616. [1193] "Blacklisting" defined.—He is guilty of "blacklisting" who places, or causes to be placed, the name of any discharged employé, or any employé who has voluntarily left the service of any individual, firm, company or corporation on any book or list, or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employés from securing employment of any kind with any other person, firm, company or corporation, either in a public or private capacity. [Act 1901, p. 264.]

Art. 1617. [1194] Blacklisting prohibited.—No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic, or laborer discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employé, mechanic, or laborer discharged by such corporation, company, or individual, from engaging in or securing similar or other employment from any other corporation, company or individual. [Id.]

Art. 1618. [1195] Penalty.—If any officer or agent of any corporation, company or individual, or other person shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic or laborer, discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employé, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence or otherwise, to prevent such discharged employé from procuring employment, as provided in the two preceding articles he shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. [Id.]

Art. 1619. [1196] Exceptions.—This law shall not be held to prohibit any corporation, company or individual from giving, on application from such discharged employé, or any corporation, company or individual who may desire to employ such discharged employé, a written truthful statement of the reason for such discharge. Said written cause of discharge, when so made by such person, agent, company or corporation, shall never be used as the cause for an action for libel either civil or criminal, against the person, agent, company or corporation so furnishing same. [Id.]

Art. 1620. [1197] Servants or employés not to be coerced.—No person, corporation or firm, or any agent, manager or board of managers, or servants of any corporation or firm shall coerce or require any servant or employé to deal with or purchase any article of food, clothing or merchandise of any kind whatever from any person, association, corporation or company, or at any place or store whatever. No such person, or agent, manager, or board of managers, or servants shall exclude from work, or punish or blacklist any of said employés for failure to deal with any such person or any firm, company or corporation, or for failure to purchase any article of food, clothing or merchandise at any store or any place whatever. Any person violating any provision of this article shall be fined not less than fifty nor more than two hundred dollars. [Acts 1903, p. 89.]

Art. 1621. [1199] Witness must testify.—No witness shall refuse to testify as to any violation of this chapter on the ground that his testimony may

incriminate him, but any witness so examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve. [Acts 1907, p. 143.]

CHAPTER 10.—INTERFERENCE WITH LABOR OR VOCATION

Art.
1621a. [Unconstitutional.]
1621b. Preventing others from engaging in lawful vocation; attempts; labor dispute, unlawful assemblage near place of.

Art. 1621a. [Unconstitutional.]

The article, was Acts 1929, 41st Leg., p. 408, ch. 189, which prohibited any person from going on the premises or plantation of a citizen between sunset and sunrise to assist any laborer or tenant from moving his property or effects therefrom without the consent of the owner of the premises, was held unconstitutional as violating Const.U.S. Amend. 14, Const.Bill of Rights § 3, and Pen.Code 1925, art. 6. See Ex parte Lane, 113 Cr.R. 478, 22 S.W.2d 306.

Art. 1621b. Preventing others from engaging in lawful vocation; attempts; labor dispute, unlawful assemblage near place of.—Section 1. It shall be unlawful for any person by the use of force or violence, or threat of the use of force or violence, to prevent or to attempt to prevent any person from engaging in any lawful vocation within this State. Any person guilty of violating this Section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by confinement in the State Penitentiary for not less than one year nor more than two (2) years.

Sec. 2. It shall be unlawful for any person acting in concert with one or more other persons to assemble at or near any place where a "labor dispute" exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person, acting either by himself, or as a member of any group or organization, or acting in concert with one or more other persons, to promote, encourage, or aid any such unlawful assemblage. Any person guilty of violating this Section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one year, nor more than two (2) years.

Sec. 3. The term "labor dispute" as used in this Act shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

Sec. 4. 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.

Sec. 5. If any section, paragraph, clause, or provision of this Act is declared unconstitutional, inoperative, or invalid by any Court of competent jurisdiction, the same shall not affect nor invalidate the remainder of this Act. [Acts 1941, 47th Leg., p. 128, ch. 100.]

TITLE 19—MISCELLANEOUS OFFENSES

CHAPTER 1.—CONSPIRACY

Art.
1622. Definition.
1623. When conspiracy complete.
1624. Agreement must be positive.
1625. Mere threat not sufficient.
1626. Punishment of conspiracy.
1627. Conspiracy to commit murder defined.
1628. Conspiracy to commit felony in another State.
1629. Conspiracy in another State to commit felony in this.

Article 1622. [1433–1437] Definition.—A conspiracy is an agreement entered into between two or more persons to commit a felony. [O. C. 776, Acts 2nd C. S. 1871, p. 15.]

Art. 1623. [1434] [954] [801] When conspiracy complete.—The offense of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined. [O. C. 777, Act Oct. 26, 1871.]

Art. 1624. [1435] [955] [802] Agreement must be positive.—Before a conviction can be had for the offense of conspiracy, it must appear that there was a positive agreement to commit a felony. It will not be sufficient that such agreement was contemplated by the parties charged. [O. C. 778; Id.]

Art. 1625. [1436] [956] [803] Mere threat not sufficient.—A threat made by two or more persons acting in concert will not be sufficient to constitute conspiracy. [O. C. 779; Id.]

Art. 1626. [1438] [958] [805] Punishment for conspiracy.—Conspiracy to commit murder shall be punished by confinement in the penitentiary not less than two nor more than ten years. Conspiracy to commit any other felony shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 781, Act Oct. 26, 1871.]

Art. 1627. [1439] [959] [806] Conspiracy to commit murder defined.—A conspiracy to kill a human being is a conspiracy to commit murder. [O. C. 782; Id.]

Art. 1628. [1440] [960] [807] Conspiracy to commit offense in another State.—A conspiracy entered into in this State for the purpose of committing a felony in any other of the States or territories of the United States, or in any foreign territory, shall be punished in the same manner as if the conspiracy so entered into was to commit the offense in this State. [O. C. 783; Id.]

Art. 1629. [1441] [961] [808] Conspiracy in another State to commit felony in this.—A conspiracy entered into in another State or territory of the United States to commit a felony in this State, shall be punished in the same manner as if the conspiracy had been entered into in this State.

CHAPTER 2.—PUBLIC GAS UTILITY

Art.
1630. Discrimination.
1631. Violating gas utility law.
1631a. Pipe lines for loading water-craft in Gulf.

Article 1630. Discrimination.—No pipe line public utility, as such utility is defined in the laws of this State governing the production and delivery of natural gas, shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Railroad Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes or to prescribe rates and regulations for service from or to other or different places, as it may determine. [Acts 3rd C. S. 1920, p. 18.]

Art. 1631. Violating gas utility law.—Any owner, officer, director, agent or employé of any person, firm or corporation owning, operating or controlling gas pipe lines of such utility mentioned in the preceding article, who shall wilfully violate any provision of the statutes of this State governing such utility, including the preceding article, shall be fined not less than fifty nor more than one thousand dollars, and may in addition thereto be imprisoned in jail not less than ten days nor more than six months. [Id.]

Art. 1631a. Pipe lines for loading water-craft in Gulf.—Sec. 1. That from and after the passage of this Act, it shall be unlawful for any person, firm, corporation, trust or association of persons to build, construct, extend, operate or maintain any pipe lines leading into the waters of the Gulf of Mexico, which pipe line is used or designed to be used for transporting, handling, loading, unloading, or discharging oil, gas, or any derivative of oil or gas, or any product or commodity susceptible of transportation by pipe line, into tanks, ships, vessels, barges, water-craft, or any agency for loading water-craft, provided, however, that the terms of this Act do not include any inlet, inland water bays, or arm of the Gulf of Mexico, lying between any of the islands and mainlands of the coast of Texas, or on the inside of any pass connecting the waters of the Gulf of Mexico with any bay, inlet, inland waters or arm of the Gulf of Mexico, or connecting any of the bays, inlets or arms with each other, nor shall the terms of this Act apply to the waters of any harbor or port lying within the territorial jurisdiction of the State of Texas; provided that pipe lines, as described in this Section, may be extended into the Gulf of Mexico for loading any of the oil or products as described in this Section into tanks, ships, vessels, water-craft or any agency for loading water-craft whenever an emergency arises, by the destruction, through a storm, of the loading facilities within any harbor. This emergency can only be construed to exist in the event of a storm and after a determination by the Railroad Commission, and shall continue for only three months after the construction of such pipe lines.

Sec. 2. That any person, firm, corporation, trust or association or [1] persons violating the terms of this Act shall be guilty of a misdemeanor, and upon conviction thereof, be fined in the amount of one thousand ($1,000.00) Dollars for each day that such person, firm, corporation, trust or association of persons shall violate or be engaged in violating the terms of this Act, and each day's commission of the act or acts prohibited by the terms of this Law, shall be and constitute a separate offense.

Sec. 3. That it shall be the duty of the Attorney General of the State of Texas to institute timely legal proceedings by injunction or otherwise against any person, firm, corporation, trust or association of persons violating the terms of this Act for the purpose of restraining the commission or continuance of such prohibited act or acts, and the Attorney General of Texas shall institute such proceedings immediately his attention is called to any violation of this Act, provided that jurisdiction and venue of all proceedings instituted by the Attorney General under this Law shall lie in the District Court of Travis County, Texas, and that this provision as to jurisdiction and venue shall be superior to any other law relating to jurisdiction and venue. [Acts 1929, 41st Leg., p. 487, ch. 230.]

[1] So in enrolled bill. Should probably read "of."

CHAPTER 3.—TRUSTS AND CONSPIRACIES AGAINST TRADE

Art.
1632. Defining trusts.
1633. "Monopoly."
1634. "Conspiracy in restraint of trade."
1635. Punishment.
1636. Persons required to testify.
1637. Agreement to form trust, monopoly, etc.
1638. Operating in violation of this law.
1639. Persons outside State liable.
1640. Forming trusts, etc.
1641. Venue.
1642. Agricultural products and live stock exempt.
1643. Trade unions, etc.
1644. Not to apply to combination, etc.

Article 1632. [1454] Defining trusts.—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for any or all of the following purposes:

1. To create, or which may tend to create or carry out, restrictions in trade or commerce or aids to commerce, or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree, in any manner, to keep the price of such article or commodity, or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall, in any manner, affect or maintain the price of any commodity or article, or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance, or charge for the preparation of any product for market or trans-

portation, whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within this State, or any portion thereof. [Acts 1903, p. 119.]

Art. 1633. [1455] "Monopoly."—A "monopoly" is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id.]

Art. 1634. [1456] "Conspiracy in restraint of trade".—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

3. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott, or enter into any agreement or understanding to refuse to transport, deliver, receive, accept, erect, assemble, operate, use or work with any goods, wares, merchandise, articles or products of any other person, firm, corporation or association of persons; provided, however, that this subdivision of this Article shall not be construed to apply to an agreement between employees to terminate their employment, or to refuse to transport, deliver, receive, accept, erect, assemble, operate, use or work with the goods, wares, merchandise, articles or products of their immediate employer unless such refusal is intended or calculated to induce, or shall have the effect of inducing, such employer to refrain from purchasing or from otherwise acquiring goods, wares, merchandise, articles or products from any person, firm, corporation or association of persons. [Acts 1903, p. 119; Acts 1947, 50th Leg., p. 528, ch. 309, § 1.]

Art. 1635. [1466] Punishment.—Whoever violates any provision of this chapter shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 194.]

Art. 1636. [1468] Persons required to testify.—Upon the application of the Attorney General or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General, made to any county judge, or any justice of the peace, in this State, stating that he has reason to believe that a witness, who is to be found in the county in which such judge or justice is an officer, knows of a violation of any provision of this chapter, it shall be the duty of such judge, or justice, before whom such application is made, to have summoned and examined such witness in relation to violations of any provision of this chapter, said witness to be summoned as in criminal cases. The said witness shall be duly sworn; and the judge or justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him; such sworn statement shall be delivered to the attorney upon whose application the witness was summoned. Should the witness so summoned fail to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he makes a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any judge or justice as provided for in this chapter, or who shall testify as a witness for the State in the course of any statutory proceeding to secure testimony for the enforcement of this law, or in the course of any judicial proceeding to enforce the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. [Acts 1907, p. 221.]

Art. 1637. [1470] Agreement to form trust, monopoly, etc.—If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade, as these offenses are defined in this chapter, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to such trust or monopoly or conspiracy in restraint of trade, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 457.]

Art. 1638. [1471] Operating in violation of this law.—If any person, shall, as a member, agent, employé, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of this chapter, or shall operate, in violation of such provisions, any such business, firm, corporation or association formed in violation of this chapter, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of any provision of this chapter, or shall, with the intent or purpose of driving out competition or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way or give away within this State, products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose of the aforesaid, he shall be confined in the penitentiary not less than two nor more than ten years. [Id.]

Art. 1639. [1472] Persons outside State liable.—If any person, shall, outside of this State, do anything which, if done within this State, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade, as defined in this chapter, and shall cause or permit the trust or monopoly so formed by him to do business within this State, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation or

effect within this State, or, if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of said State, any person shall give effect to such trust, monopoly or conspiracy in this State, or he shall do anything to help or aid it doing business in this State, or otherwise violate the anti-trust laws of this State, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of any provision of this chapter, or so formed or operated as would be in violation of the laws of this State, if it had been formed within this State, shall be confined in the penitentiary not less than two nor more than ten years. [Id.]

Art. 1640. [1473] Forming trusts, etc.—If any person, employé, agent, stockholder, or officer of any person, firm, association of persons, or corporation, now doing business in this State, have formed a trust, or monopoly, as defined in this chapter, or have formed a conspiracy in restraint of trade, as defined in this chapter, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employé, agent, stockholder, or officer, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 458.]

Art. 1641. [1474] Venue.—Prosecutions under this chapter may be conducted in Travis County, or in any county wherein a trust, monopoly or conspiracy in restraint of trade is being carried on. [Acts 1907, p. 458.]

Art. 1642. [1477] Agricultural products and live stock exempt.—No provision of this law shall apply to agricultural products or live stock while in the hands of the producer or raiser. It shall be lawful for any person engaged in any kind of work or labor, manual or mental, or both, to associate with other such persons to form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. [Acts 1899, p. 262.]

Art. 1643. [1478] Trade unions, etc.—It shall be lawful for any members of such trades union or other organization or association, or any other person, to induce or attempt to induce, by peaceable and lawful means, any person to accept any particular employment, or quit any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit any pursuit, in which such person may then be engaged. No such member shall have the right to trespass upon the premises of another without the consent of the owner thereof. [Id.]

Art. 1644. [1479] Not to apply to combination, etc.—The foregoing Article shall not be held to apply to any combination or combinations, or to any act by any member of such trades union or other organization or association, or any other person, or to an agreement between two or more persons, formed or taken for the purpose of limiting the production, transportation, use or consumption of labor's products, or which creates a "Trust" or "Conspiracy in Restraint of Trade", as in this Chapter defined. Nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employes. Nothing herein shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. [Acts 1899, p. 262; Acts 1947, 50th Leg., p. 528, ch. 309, § 2.]

CHAPTER 4.—AMUSEMENTS—PUBLIC HOUSES OF

Art.
1645. "Public house of amusement."
1646. Discrimination against reputable productions.
1647. Exceptions.
1648. List of bookings.

Article 1645. [1480] "Public house of amusement."—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, play houses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas and other shows of whatever nature to which admission fees are charged, are declared to be public houses of amusement. [Acts 1907, p. 21.]

Art. 1646. [1481] Discrimination against reputable productions.—No owner or lessee, or any manager, agent, employé or representative of the owner or lessee who may be in charge and having the care and management of any house of public amusement, shall discriminate against reputable theaters, operas, shows or other productions by whatever name known. Any owner or lessee, or any manager, agent, employé, or representative of the owner or lessee in charge of such house who shall fail and refuse to rent, lease and let such house of public amusement for one or more performances upon such terms and conditions as shall not be deemed unreasonable, extortionate or prohibitive to the agent, manager, proprietor or representative, who may in good faith make application therefor, of any reputable theater, opera or show, by whatever name known, shall be fined not less than one hundred nor more than five hundred dollars, one-half of which fine shall be paid to the complainant, the balance to go to the jury fund of the county in which such prosecution is had; and in addition, such person so convicted may be committed to the county jail for not more than ten days. Each violation of any provision of this article is a separate offense. [Acts 1907, p. 21.]

Art. 1647. [1481] Exceptions.—If at the time of the application to lease or rent such house of public amusement for said purposes, it shall be shown by the owner, lessee or other person in charge thereof that said house of public amusement has in good faith been already leased, let or rented to other persons or parties, and that other bookings have in good faith been made for the date or dates so applied for, and not with the intention of evading the provisions of this chapter, then the penalties provided by the preceding article shall not be imposed. [Id.]

Art. 1648. [1482] List of bookings.—Owners, lessees, managers or other persons in charge of such houses of public amusement shall make and keep in convenient form a list of all bookings of shows for such houses, with the dates specifically set out therein, and said list of bookings shall be exhibited upon request, to all persons applying therefor who in good faith desire to lease or rent such house or houses for the purposes indicated in the first article of this chapter. Each owner, lessee or other person in charge of such house who shall fail or refuse to keep and exhibit such list of bookings as required herein, shall be fined not less than ten nor more than twenty dollars. Each such failure or refusal is a separate offense. [Id.]

CHAPTER 5.—RAILROAD CONSOLIDATION

Art.
1649. Consolidation of railroad corporations.
1650. Exceptions.

Article 1649. [646–7–8–9] Consolidation of railroad corporations.—Railroad corporation, or other corporation, as used in this article shall mean any

corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation, or other corporation, or the lessee, purchasers or managers of any railroad corporation shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. Any officer, director, manager, superintendent, agent, purchaser or lessee of any such railroad corporation, or other corporation, who violates or aids in violating any provision of this article shall be fined not less than one thousand dollars nor more than four thousand dollars. Indictments and prosecutions under this article may be found and made in any county through or into which the line of railroad may run. [Acts 1887, p. 137.]

Art. 1650. [647] Exceptions.—The preceding article shall not apply to one who has not by virtue of his office, agency, or position, a voice in the management of the railway company, or who has not, by virtue of his office, agency or position, some power to prevent a violation of such law. [Id.]

CHAPTER 6.—FREE PASSES, TRANSPORTATION AND FRANKS

Art.
1651. Free pass law.
1652. Exceptions.
1653. Using another's pass.
1654. Discrimination by device.
1655. Unlawfully using free pass.
1656. Evading law.
1657. May be compelled to testify.
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SEPARATE COACH LAW

1659. Separate coaches.
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Sec.
1. Separation of races in motor busses.
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4. Penalty.
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Article 1651. [1532] Free pass law.—Any president, director, officer, employé or agent of any steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, who shall sell any transportation for anything except money or knowingly give, grant, issue, or cause to be issued, a free pass, a frank, a privilege, or any substitute for, or in lieu thereof, for the transportation of any person, article or thing, or the sending or transmitting any messages over wire or other means of transmitting messages in this State, shall be fined not less than five hundred nor more than two thousand dollars, and may, in addition thereto, in the discretion of the jury, be confined in the penitentiary not less than six months nor more than two years. [Acts 1907, p. 93.]

Art. 1652. [1533] Exceptions.—The preceding article shall not apply in cases where the laws of this State provide that such companies as are referred to in said article, or the receivers or lessees thereof, or persons operating the same, or the officers, agents or employés thereof, may grant free passes, franks, privileges, or substitutes for pay to or for the persons, articles or things referred to and mentioned in said laws and said article.

Art. 1653. [1534] Using another's pass.—If any person shall present, or offer to use, in his own behalf, any permit or frank whatever, to travel, pass or to convey any person or property or message which has been issued to any other person, or shall, knowing that he is not entitled under the law, apply to any railway, express, telegraph or telephone company, officer, agent, lessee or receiver thereof, for any free pass, frank, privilege or a substitute for pay given or to be used instead of the regular fare or rate for transportation, or for any other consideration, except money, he shall be confined in jail not less than thirty days and not more than twelve months, and be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 95.]

Art. 1654. [1535] Discrimination by device.—No steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, shall directly or indirectly, by any special rate, rebate, draw-back, or other device or exchange, demand, charge or collect or receive from any person, firm, association of persons or corporation a greater or less or different compensation for any service rendered, or to be rendered, in the transportation of passengers, property or messages, than it charges, demands, collects or receives from any other person, firm, association of persons or corporation for doing for him, them or it, a like service, if the transportation or transmission is a like kind of traffic or service under substantially similar circumstances and conditions. [Acts 1907, p. 96.]

Art. 1655. [1537] Unlawfully using free pass.—Any person, other than the persons excepted by law, who uses such free ticket, free pass or free transportation, frank or privilege over any railway or other transportation line or sleeping or express car, telegraph or telephone line mentioned in the preceding articles of this chapter, for any distance under the control and operation of either of said companies or under their authority, or shall knowingly or wilfully by any means or device whatsoever obtain, use or enjoy from any such company a less fare or rate than is charged, demanded, collected or received by any such company from any other person, firm, association of persons or corporations for doing for him, them or it, a like service, if the transportation or service is of a like kind of traffic or service under substantially similar circumstances and conditions, such person or such officer or agent who acts for such corporation or company thus favored, shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 1656. [1538] Evading law.—Any director, officer, agent or any receiver, trustee, lessee or person acting for, or employed by, any company subject to the provisions of the preceding articles of this chapter, who alone, or with any other corporation, company, persons or party, shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing in said articles prohibited, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or wilfully suffer or permit any act, matter or thing so directed, required by said articles to be done, not to be done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of said articles, or shall aid or abet therein, shall be fined not less than one

hundred nor more than one thousand dollars; and, if the offense for which any person shall be convicted under this article shall be unlawful discrimination in rates, fares or charges for the transportation of passengers or property, or the transmission of messages, such person may, in addition to the fines hereinbefore provided for, at the discretion of the jury, be imprisoned in the penitentiary for not less than six months nor more than two years. [Id.]

Art. 1657. [1539] May be compelled to testify.—In any investigation or prosecution under any provision of this chapter, the court or tribunal in which the same is pending may compel any person to attend and give testimony, and to produce such papers, books and documents as may be desired by the State. No person shall be exempt from giving testimony therein, but no criminal action or proceeding shall be brought or prosecuted against such witness on account of any testimony so given or furnished by him. [Act 1907, p. 97.]

Art. 1658. Reduced rate for officers.—Any steam railroad company or any electric interurban railroad company or any person or persons operating the same, or any receiver or receivers, or lessee or lessees thereof, shall be permitted to transport between points wholly within this State at the reduced rate of one cent per mile, while traveling on official business connected with their respective offices, the following named peace officers, to-wit: the Adjutant General; State Rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. Any such peace officer who shall procure transportation over any such railroad between points in this State under the provisions of this article and shall use the same for any other than official business connected with the duties of his office, or any person not entitled to the benefits of this law who shall falsely represent himself as entitled to such privileges and shall purchase or offer to purchase transportation over any such railroad company at the rate provided for herein, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not exceeding six months, or both. [Acts 1921, p. 171.]

Art. 1658a. Prohibiting collecting of fare from state by officer or employee using free pass.—Sec. 1. No officer or employee of the State of Texas, any county, city, town, or village, or of any municipality or political subdivision, using or accepting the benefits of any free pass or franking privilege of any railroad, interurban, motor bus or other transportation line, shall charge, or collect from the State of Texas, or from any county, city, town, village, municipality or political subdivision, the fare or charge which, otherwise, he would have paid to such railroad, interurban, motor bus or other transportation line, by reason of the trip for which such free pass or frank was used.

Sec. 2. Any officer or employee violating any provision of this Act shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding One Thousand ($1,000.00) Dollars. [Acts 1931, 42nd Leg., p. 267, ch. 161.]

SEPARATE COACH LAW

Art. 1659. [1523] [1010] Separate coaches.—1. Every railway company, street car company and interurban railway company, or any person or the agent of any person, firm, or corporation who operates an interurban, commercial motor vehicle in carrying passengers for hire between any cities, towns, or villages of this State, lessee, manager, or receiver thereof doing business in this State as a common carrier of passengers for hire shall provide separate coaches or compartments for the accommodation of white and negro passengers.

2. "Negro" defined. The term negro as used herein includes every person of African descent as defined by the Statutes of this State.

3. (a) "Separate Coach" defined. Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein, shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart.

(b) Separate compartments for street car, interurban car and commercial motor vehicle defined. Each street car, interurban car or commercial motor vehicle having a board or marker placed in a conspicuous place bearing appropriate words in plain letters indicating the race for which space is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Violating separate coach law. If any passenger upon a train or street car, interurban car or commercial motor vehicle provided with separate coaches or compartments as above provided shall ride in any coach or compartment not designated for his race after having been forbidden to do so by the conductor in charge of the train, he shall be fined not less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

5. Duty of Conductor. Conductors of passenger trains, street cars, interurban lines, or commercial motor vehicle provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car, interurban car or commercial motor vehicle shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car or commercial motor vehicle any passenger not entitled to ride therein under the provisions of this law, and upon his refusal to do so knowingly he shall be fined not less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

6. Fines to go to School Fund. All fines collected under the provisions of this law shall go to the available common school fund of the county in which conviction is had. Prosecutions under this law may be instituted in any county through or into which said railroad may be run or have an office. [As amended Acts 1935, 44th Leg., p. 387, ch. 147, § 1.]

Art. 1660. Exceptions.—The preceding article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

Art. 1661. Preference in transportation.—By the word "preference" as used in this article is meant any advantage, privilege, right, opportunity, precedence, choice, favor, priority, or gain that is or may be, or is sought or purposed to be accorded, granted, given, allowed, permitted or extended to any person, place, or thing, as against any other person, place, or thing in the receipt, carriage, transportation, movement, placing, storing, handling, caring for or delivery of any freight, commodity or article, or any railroad car or by any common carrier in this State, or any agent or employé thereof. Any person who shall ask, solicit, demand, or receive, directly or indirectly, from any person, corporate or otherwise, any money, reward, favor, benefit, or other thing of value, or the promise

of either, as a consideration for procuring or effecting, or with the intent of the person asking, soliciting, demanding, charging or receiving the same, or the promise thereof, that such person can or will, seek or undertake to procure or effect any preference in the receipt, carriage, transportation, storing, movement, placing, handling, caring for, or delivery of any freight, commodity or article, or any railroad car by any common carrier in this State or any agent or employé thereof, shall be fined not less than one hundred nor more than one thousand dollars and be imprisoned in jail not less than thirty days nor more than six months. [Acts 1921, p. 34.]

Separation of races in motor buses

Art. 1661.1 Motor buses.

Section 1. That every transportation company, lessee, manager, receiver and owner thereof, operating motor buses in this State as a carrier of passengers for hire shall provide and require that all White passengers boarding their buses for transportation or passage shall take seats in the forward or front end of the bus, filling the bus from the front end, and that all Negro passengers boarding their buses for transportation or passage shall take seats in the back or rear end of the bus, filling the bus from the back or rear end.

"Negro" defined

Sec. 2. The term "Negro" as used herein includes every person of African descent as defined by the Statutes of the State of Texas, and all persons not included in the definition of "Negro" shall be termed "White persons" within the meaning of this Act.

Authority of bus operator

Sec. 3. The operators of all passenger motor buses in this State shall have authority to refuse any passenger or person the right to sit or stand in any motor bus unless such passenger or person shall comply with the provisions of this Act, and such operator shall have the right and it shall be his duty to call any peace officer of the State of Texas for the purpose of removing from any bus any passenger who does not comply with the provisions of this Act, and any such peace officer shall have the right and it shall be his duty to remove from said bus, and to arrest any such passenger so violating this Act, the same as if such person were committing a breach of the peace in the presence of such officer.

Penalty

Sec. 4. If any passenger upon any bus in this State shall ride or attempt to ride on said bus in a place prohibited under the provisions of this Act, he shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

Exceptions

Sec. 5. The provisions of this Act shall not be construed so as to prohibit nurses from riding in the same end of the bus with their employers or when actually in charge of a child or children of such employers, even though of different races, and shall not prohibit officers from riding with prisoners in the same end of the bus, even though of different races.

Excursions, chartered or special buses

Sec. 6. The provisions of this Act shall not apply to any chartered bus or special bus run directly as such for the exclusive benefit of either race, but in all such cases said buses shall be plainly marked "Chartered" or "Special." [Acts 1943, 48th Leg., p. 651, ch. 370.]

CHAPTER 6A.—PASSENGER ELEVATORS

Art. 1661a. Safety devices.—Any person, or the members of any partnership, owning, leasing or in charge or control of any building or edifice operating passenger elevators, and the board of directors, president, general manager, or other agent or employé of any corporation, or any trustee or receiver of such corporation, which is the owner, lessee, or in charge of any such building or edifice operating passenger elevators therein, who shall violate the provisions of this Act shall each be guilty of a misdemeanor, and upon conviction shall be fined not less than five ($5) dollars nor more than twenty-five ($25), and each day such elevator is operated without such device shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 29, p. 147, § 3.]

CHAPTER 7.—OPERATING RAILROADS

Art.

Article 1662. [1567] Station to bear name of post office.—Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this State who shall retain, maintain or establish a name for any railway station or depot in any incorporated or unincorporated town or city within this State other than the name of the town or city which has and bears the name of its post office so given by the United States Government shall be fined not less than two hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. The venue shall be in the county where the station in question is located. [Acts 1909, p. 89.]

Art. 1663. [1568] Exceptions.—The preceding article shall not apply to two or more incorporated or unincorporated towns or cities which now are situated within five miles of each other, and which each have therein established a post office named and designated by the United States Government, nor to those cases where the post office name is so similar in sound or otherwise to that of some other station upon such railroad as that confusion in train orders and directions may arise therefrom. Where the name of such place is changed by the Federal postal department such railway shall not be required to again change the name of its station. [Id.]

Art. 1664. [1561–1562–1564] To do repair work in Texas.—All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment, owned or leased by said corporation in this State, when such rolling stock is within the State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. Any lessee, receiver, superintendent or agent of such railway corporation who violates

any provision of this article shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1909, p. 73.]

Art. 1665. [1563] Exceptions.—The preceding article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State. [Id.]

Art. 1666. Air brake inspection.—The air brakes and air brake attachments on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. Whoever operates or causes to be operated any such train without such inspection shall be fined not less than fifty nor more than one hundred dollars. [Acts 1911, p. 106.]

Art. 1667. Exceptions to brake inspection.—The preceding article shall not apply to tram roads engaged in hauling logs to a sawmill, nor to railroads under forty miles in length. [Id.]

Art. 1668. Using tracks to repair cars.—No person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any person operating any railroad, machine shop or other concern engaged in the repairing or manufacture of cars in this State who shall violate this law shall be fined not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense. [Acts 1913, p. 334.]

Art. 1669. Duty of train dispatcher.—The train dispatcher shall keep all agents at stations having telegraph offices in or near them informed of the movement of each passenger train one hour prior to the time such train is due, according to the published schedule, at such stations. If any such passenger train is delayed for more than one hour, according to said published schedule, then it shall be the duty of such train dispatcher to inform such local agent how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish such information, he shall be fined not less than fifty nor more than two hundred dollars for each offense. [Acts 1st C. S. 1903, p. 21; Acts 1913, p. 318.]

Art. 1670. Failing to bulletin passenger train.—Every railroad agent at stations having telegraphic communication with the train dispatcher of the railroad, shall ascertain one hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. If the train is late, such agent shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of the probable arrival of such train. If such agent shall fail or refuse to perform any duty required of him by this article, he shall be fined not less than fifty nor more than one hundred dollars for each offense. [Acts 1903, p. 162; Acts 1913, p. 350.]

Art. 1671. Animal found dead along railroad.—Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal be buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of record in his office without exacting any fees from the section foreman for filing same, and any person violating any of these provisions shall be fined not less than five nor more than twenty-five dollars. [Acts 1915, p. 126.]

Art. 1672. [1524] Failure to ring bell or blow whistle; stop at crossings; ordinances, compliance with.—Any engineer having charge of a locomotive engine while such engine is approaching a place where two lines of railway cross each other, who shall, before reaching such railway crossing fail to bring such engine to a full stop or who shall fail to blow the whistle and ring the bell on such engine at the distance of at least eighty (80) rods from the place where the railroad shall cross any public road or streets, or who shall fail to keep said bell ringing until such engine shall have crossed said road or street or stopped, shall be fined not less than Five ($5.00) Dollars nor more than One Hundred ($100.00) Dollars, provided that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, or shall have a flagman in attendance at such crossings; provided, however, that the governing bodies of every city or town having a population of five thousand (5,000) or more inhabitants according to the last Federal Census may regulate by ordinance the ringing of bells and blowing of whistles within their corporate limits, and a compliance with said ordinance, will be full compliance with the terms and provisions of this Act and a sufficient warning to the public at such crossings as such ordinance may affect. [Acts 1893, p. 87; Acts 1931, 42nd Leg., p. 184, ch. 107, § 2; Acts 1941, 47th Leg., p. 349, ch. 189, § 2.]

Section 1 of Acts 1931 is published as amendment of Rev.Civ.St. Art. 6371.

Art. 1673. [1531] [1010h] Unlawfully boarding a train.—Whoever boards any passenger, freight or other railway train, whether moving or standing, for any purpose without in good faith, intending to become a passenger thereon and with no lawful business thereon, and with intent to obtain a free ride on such train, however short the distance, without the consent of the person or persons in charge thereof, shall be fined not less than five nor more than one hundred dollars. [Acts 1895, p. 178.]

CHAPTER 8.—BILLS OF LADING

Art.
1674. Common carriers to issue bills of lading.
1675. What bills of lading may contain.
1676. "Straight" and "order" bills of lading.
1677. Authority of agents of carriers to be posted.
1678. Failure or refusal to issue bill of lading.
1679. Issuing fraudulent bill of lading.
1680. Forgery or uttering forgery of bill of lading.
1681. Duplication of bill of lading.
1682. Transfer of bill of lading.
1683. Procuring false bill of lading.

Article 1674. [1540] Common carriers to issue bills of lading.—All railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation shall issue bills of lading therefor, and authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. [Acts S. S. 1910, p. 138.]

Art. 1675. [1541] What bills of lading may contain.—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

1. The date of its issuance;
2. The name of the person from whom the goods have been received;
3. The place where the goods have been received;
4. The place to which the goods are to be transported;
5. A statement of whether the goods will be delivered to a specific person or to the order of a specific person;
6. A description of the goods, or the packages containing them, which may, however, be in the terms such as may be approved by the Railroad Commission:
7. The signature of the carrier, or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized agent of ———" (stating the name of his principal), which shall appear below his signature;
8. The carrier may insert in a bill of lading issued by him any other terms and conditions, provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the Railroad Commission; and provided further, that no language shall be inserted in any bill having the effect of limiting or avoiding any of the provisions of this chapter;
9. Provided, that when any form of bill of lading has been approved by the Interstate Commerce Commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. [Id.]

Art. 1676. [1542] "Straight" and "order" bills of lading.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading, and a bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided such copies have written or printed across the face thereof: "Copy —Not Negotiable." [Id.]

Art. 1677. [1544] Authority of agents of carriers to be posted.—The carriers affected by this chapter shall keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing, authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent, or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 1678. [1545] Failure or refusal to issue bill of lading.—Any officer, agent or servant of any carrier, railroad or transportation company, or receiver thereof, affected by this chapter, who shall fail or refuse to issue a bill of lading in accordance with this chapter and the regulations and orders of the Railroad Commission, when the same is rightfully demanded, shall be fined not exceeding two hundred dollars or be imprisoned in jail not exceeding six months or both. [Id.]

Art. 1679. [1546] Issuing fraudulent bill of lading.—Any officer, agent, or servant of a carrier, railroad or other transportation company, or receiver thereof, affected by this chapter, who shall wrongfully issue a bill of lading, with the intent to defraud any person, or who shall, with intent to defraud, knowingly misdescribe any goods, articles or other property, or the quantity or amount thereof, described in any bill of lading, or who shall knowingly issue a bill of lading without authority so to do, with the intent to defraud any person, shall be confined in the penitentiary not less than two and not exceeding ten years. [Id.]

Art. 1680. [1547] Forgery or uttering forgery of bill of lading.—Whoever shall forge the name of any agent of a railroad company, or other common carrier, to a bill of lading, with the intent to defraud, or who shall forge the name of any person to any certificate attached to a bill of lading issued by such carrier, with the intent to defraud, or who shall knowingly utter or attempt to utter any such forged instrument with intent to defraud, shall be confined in the penitentiary not less than five nor more than fifteen years. [Id.]

Art. 1681. [1548] Duplication of bill of lading.—Any officer, agent or servant of a common carrier who knowingly issues, or aids in issuing, or knowingly permits to be issued in parts or sets, or in duplicate, an order bill of lading, shall be fined not exceeding five thousand dollars, and be confined in the penitentiary not exceeding five years. [Id.]

Art. 1682. [1549] Transfer of bill of lading.—Whoever knowingly, and with the intent to defraud, negotiates or transfers a bill of lading issued in violation of the provisions of this chapter, or who knowingly and with the intent to defraud, negotiates or transfers a bill of lading which contains any statement of fact that is untrue, and which statement relates to a material matter, shall be fined not exceeding five thousand dollars and be imprisoned in the penitentiary not exceeding ten years. [Id.]

Art. 1683. [1550] Procuring false bill of lading.—Whoever shall knowingly and fraudulently procure and cause the agent of any common carrier to make and set forth in any bill of lading issued by him on behalf of such carrier any statements or representations which are false and which materially misrepresent the number, amount or quantity of the goods, chattels or other articles therein described, or who shall procure or cause any agent of a common carrier to issue to him a bill of lading with the intent to defraud, shall be confined in the penitentiary not less than two or more than five years. [Id.]

CHAPTER 9.—RAILROAD COMMISSION

Article 1684. [1514] [1007] Refusal to permit inspection.—Any officer, agent or employé of any railroad company who shall, upon proper demand, fail or refuse to exhibit to any member of the Railroad Commission of Texas or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent, or employé, shall be fined not less than one hundred and twenty-five dollars nor more than five hundred dollars. [Acts 1891, p. 60.]

Art. 1685. [1515] [1008] Refusal to answer.—If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks to said Railroad Commission as provided by law, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be fined five hundred dollars for each day he shall fail to perform such duty, after the expiration of the time allowed by law to so answer. [Id.]

Art. 1686. [1516] [1009] False billing or classification.—Any officer or agent of any railroad subject to the jurisdiction of the Railroad Commission, who by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any persons to obtain transportation for property at less than the regular rates then in force on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 1687. [1517] "Unjust discrimination."—If any officer, agent, clerk, servant or employé, or any receiver, or his servant, agent or employé, of any railroad company in this State shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company than such railroad company, or its said officers, agents, clerks, servants or employés, or receiver thereof, charges, demands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employé, or receiver, or his agents, servants or employés, of any railroad company in this State, shall, on behalf of such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered or to be rendered by such railroad company, or shall subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employé, or receiver, his agents, servants or employés, of such railroad company, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 203.]

Art. 1688. [1518] Not applicable, when.—Nothing herein shall prevent the carriage, storing or handling, by railroad companies in this State, or by their agents, officers, clerks, servants and employés, of freight free or at reduced rates, or to prevent railroads, their agents, employés and officers, from giving free transportation or freight rates to any railroad officers, agents, employés, attorneys, stockholders or directors, or to any other officer or person, when permitted by the laws of this State. [Id.]

Art. 1689. [1519] Persons compelled to testify.—Any court, officer or tribunal having jurisdiction of any offense mentioned in article 1687, or any district or county attorney may subpœna persons and compel their attendance as witnesses to testify as to any violation of said article; and any person so summoned and examined shall not be liable to prosecution for any offense by reason of violation of said article about which he may testify; and for any offense by reason of violation of said article, a conviction may be had upon the unsupported evidence of an accomplice or participant. [Id.]

Art. 1690. [1521] False statement to secure bond registration.—Each railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall by false statement knowingly made procure of the Railroad Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with knowledge of such fraud negotiate or cause to be negotiated any such bond or other security issued in violation of law, shall be confined in the penitentiary not less than two nor more than fifteen years. [Acts 1893, p. 59.]

Art. 1690a. Violation of orders.—(a) Any officer, agent, servant, or employee of any corporation and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this Act[1] shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment; and the violations occurring on each day shall each constitute a separate offense.

(b) Any officer, agent, servant, or employee of any motor bus company as heretofore defined, and any motor bus company, as heretofore defined and/or the owner or operator, officer, servant, agent or employee, or any such owner or operator of any bus terminal who violates or fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement of the Commission shall be subject to and shall pay a penalty not exceeding Five Hundred ($500.00) Dollars, for each and every day of such violation. Such Penalty to be recovered in any court of competent jurisdiction in Travis County, Texas, or in the County in which the violation occurs. Suit for such penalty or penalties shall be instituted and conducted by the Attorney General of the State of Texas, or by the county or district attorney of the county in which the violation occurs, in the name of the State of Texas, and by direction of the Railroad Commission of Texas.

(c) Upon the violation of any provisions of this Chapter, or upon the violation of any rule, regulation, order or decree of the Commission, promulgated under the terms of this Act,[1] any district court of Travis County, Texas, or any district court of any county where such violation occurs, shall have the power to restrain and enjoin the person, firm or corporation so offending from further violating the provisions of this Act, or from violating the rules, regulations, orders and decrees of the Commission. Such injunctive relief may be granted upon the application of the Commission, or upon the application of any person authorized by it to act, or upon the application of any "motor bus company" holding a certificate of convenience and necessity over the route affected, and against any "motor bus company" violating the

provisions of this Act and not holding a certificate over such route and attempting to operate or operating over said route. Such relief may be granted in suits for penalties as provided in sub-division (b) of this Section, but a suit for penalty shall not be a condition precedent to the injunctive relief provided by this Section.

(d) Any authorized inspector for the Commission shall have the power and authority to make arrests for the violation of this Act,[1] coming under his observation, but such authority to make arrests shall be confined solely to the violations of this Act, provided, further that it shall be the duty of all law enforcement officers of this State to enforce the provisions of this Act. [Acts 1927, 40th Leg., p. 399, ch. 270, § 14; Acts 1929, 41st Leg., 1st C.S., p. 196, ch. 78, § 5.]

[1] This article and Rev.Civ.St. Art. 911a.

Sections 1–6 of Acts 1929, being amendment sections of Rev.Civ.St. Art. 911a are published as part thereof.

Section 7 repeals all conflicting laws and parts of laws and section 8 provides that if any provision is held unconstitutional, such decision shall not affect the remainder.

Art. 1690b. Motor carriers, violation of orders, penalties.—(a) Every officer, agent, servant or employee of any corporation and every other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of this Act or who violates or fails to obey, observe or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the Commission shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars ($25.00), nor more than Two Hundred Dollars ($200.00), and the violations occurring on each day shall each constitute a separate offense.

(b) Every officer, agent, servant or employee of any corporation and every other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of this Act or who violates or fails to obey, observe or comply with any lawful order, decision, rule or regulation, direction, demand or requirement of the Commission shall in addition be subject to and shall pay a penalty not exceeding One Hundred Dollars ($100.00), for each and every day of such violation. Such penalty shall be recovered in any Court of competent jurisdiction in the county in which the violation occurs. Suit for such penalty or penalties shall be instituted and conducted by the Attorney General of the State of Texas, or by the County or District Attorney in the county in which the violation occurs, in the name of the State of Texas.

(c) Upon the violation of any provision of this Act, or upon the violation of any rule, regulation, order or decree of the Commission promulgated under the terms of this Act, any District Court of any county where such violation occurs shall have the power to restrain and enjoin the person, firm or corporation so offending from further violating the provisions of this Act or from further violating any of the rules, regulations, orders and decrees of the Commission. Such injunctive relief may be granted upon the application of the Commission, the Attorney General or any District or County Attorney. No bond shall be required when such injunctive relief is sought upon the application of the Commission, Attorney General or any District or County Attorney. Such relief may be granted in suits for penalties as provided in subdivision (b) of this Section, but a suit for penalty shall not be a condition precedent to the injunctive relief provided by this subdivision.

(d) Any authorized inspector for the Commission shall have the power and authority to make arrests for any violations of this Act and it shall be the duty of all judges, prosecuting attorneys, and peace officers of the counties and municipalities of this State to assist in the enforcement of this Act.

(e) The Commission shall prescribe an identification card which must be displayed within the cab of each motor vehicle, setting out the certificate or permit number and the route or territory over which the vehicle is authorized to operate, giving the name and address of the owner of said certificate or permit. It shall be unlawful for the owner of said certificate or permit, his agent, servant or employee, or any other person to use or display said identification card after said certificate or permit has been cancelled or disposed of. The identification card provided for herein may be in such form and contain such information as required by the Railroad Commission.

(f) It shall be unlawful for any owner of a certificate or permit, his agent, servant or employee to display upon any motor vehicle the certificate or permit number, or other insignia of authority from the Railroad Commission after said certificate or permit has expired, or has been cancelled.

(g) It shall be unlawful for any motor carrier (common or contract), or the owner of a certificate or permit, or his agent, servant or employee, directly or indirectly, to offer, permit or give to any person, directly or indirectly, any commission or other consideration to induce such person to deliver to such motor carrier or certificate or permit owner, property to be transported; and it likewise shall be unlawful for any shipper or consignee or his agent, servant or employee, to receive from such motor carrier, directly or indirectly, any such commission or consideration as an inducement to secure the transportation of any such property. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed Two Hundred ($200.00) Dollars, and each such transaction shall constitute a separate offense.

(h) Any common carrier, motor carrier, his agent, servant or employee who directly or indirectly gives to any shipper any rebate, or any shipper, his agent, servant or employee who directly or indirectly receives any rebate, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Two Hundred ($200.00) Dollars for each offense, in any court of competent jurisdiction in this State. It being the intention of this Act that such motor carriers shall in every instance collect and receive, and the shipper shall pay, only the rate or fee prescribed or approved by the Commission.

(i) If any motor carrier, or any officer, agent, clerk, servant, or employee, or receiver, or his agents, servants, or employee, of any motor carrier operating as a contract carrier in this State, shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for or on behalf of such contract carrier, knowingly charge, demand, or contract for, collect or receive from any person, firm or corporation a less compensation for any service rendered or to be rendered by any such contract carrier than is prescribed for said service by said Commission, such contract carrier or any officer, clerk, servant, or employee, or receiver, his agents, servants, or employee, of such contract carrier shall be guilty of a misdemeanor and, upon conviction shall be fined in a sum not to exceed Two Hundred Dollars ($200.00) for each offense; and every person who violates or fails to comply with, or procures, aids, or abets any contract carrier in the violation of the provisions hereof shall likewise be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Two Hundred Dollars ($200.00) for each offense. [Acts 1929, 41st Leg., p. 698, ch. 314, § 16; Acts 1931, 42nd Leg., p. 480, ch. 277, § 17.]

Sections 1–16 and 18–22 of Acts 1931, are published as Rev.Civ.St. Art. 911b.

Art. 1690c. [Unconstitutional.]

This article was Acts 1935, 44th Leg., p. 746, ch. 325, § 10.

The Act of 1935, which regulated and licensed transportation agents, was held invalid by the Court of Criminal Appeals in Ex parte Talkington, 132 Cr.R. 361, 104 S.W. 2d 495.

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.]

Sections 1–19 of Acts 1939, 46th Leg., p. 672, are published as Rev.Civ.St. art. 911d.

CHAPTER 10.—NURSERY STOCK

Art.
1691. Diseased nursery stock.
1692. Examination.
1693. Shipment.
1694. Carrier not to receive, when.
1695. Hindering Commissioner.
1696. False representations.
1697. Giving false certificate.
1698. Definitions.
1699. Unlawful delivery.
1700. Fraud in sales.

Article 1691. [717] Diseased nursery stock.—No person in this State shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees, affected with the contagious disease known as yellows; nor keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, fire blight, or root rot. No person shall knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot or plum canker; nor any tree, shrub or plant infested with or by the San Jose scale or other insect pest dangerously injurious to or destructive of trees, shrubs, or other plants; nor any grapefruit, orange, or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly," Florida red scale, cottony cushion scale, wooly aphis, or other injurious insect pests, or citrus canker, or other contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs, or plants infested with injurious insect pests or contagious diseases. [Acts 1909, p. 316; Acts 1921, p. 100.]

Art. 1692. [718] Examination.—The Commissioner of Agriculture shall cause to be made at least once each year an examination of each nursery or other place where nursery stock is exposed for sale. If such stock so examined is apparently free in all respects from any contagious or infectious disease or dangerously injurious insect pests, the Commissioner shall issue to the owner or proprietor of such stock a certificate reciting that such stock so examined was at the time of such examination apparently free from any such disease or pest. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such sale or transference shall be punishable as provided by the succeeding article. [Acts 1909, p. 316.]

Art. 1693. [719] Shipment.—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle or package contains nursery stock to be delivered to more than one person, partnership or corporation, each portion of such nursery stock to be so delivered shall also bear a copy of such certificate of inspection. Whoever sends out or delivers within this State, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, which are subject to the attacks of insects and diseases enumerated herein, unless he has in his possession a copy of said certificate, dated within a year thereof; or shall deface or destroy such certificate, or wrongfully be in possession of such certificate, or fail to attach proper tags on each shipment, such tags bearing a copy of said certificate, shall be fined not less than one hundred nor more than two hundred dollars. [Id.]

Art. 1694. [721] Carrier not to receive, when.—No transportation company or common carrier shall receive, transport or deliver shipments of nursery stock originating either within or 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 permit from this State if it be a shipment from without this State. Any person without this State, or any agent of any transportation company or common carrier, or any person who shall violate any provision of this article, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 1695. [722] Hindering Commissioner.—Whoever refuses or prevents entrance upon any premises under his control to the Commissioner of Agriculture, or his representative, seeking such entrance on official duty, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1696. [722] False representations.—Whoever shall make false representations for the purpose of obtaining any such certificate of inspection from the Commissioner of Agriculture, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1697. [724] Giving false certificate.—If the Commissioner of Agriculture or any of his agents or employés gives a false certificate or a certificate without an actual examination of the nursery stock for which said certificate is given, to any owner, proprietor or lessee of any nursery, or owner of nursery stock, or to any other person, for use under the provisions of this law, he shall be fined not less than five hundred nor more than one thousand dollars. [Id.]

Art. 1698. [725–6–7] Definitions.—1. "Nursery stock."—The term "Nursery stock" within the meaning of this law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery, or taken from the forests and offered for sale; all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this State, which may be a medium for disseminating injurious insect pests and contagious diseases.

2. "Nursery."—The term "nursery" shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. "Being in the nursery business" applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock, regardless of the variety or quantity of nursery stock sold or grown.

3. "Dealer" and "agent."—The term "dealer" shall be construed to apply to any individual, partnership

or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An "agent of a nursery or dealer" shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer with whom the nursery stock offered for barter and traffic originates, or some cooperative basis for handling nursery stock with the grower or dealer, as specified in this article. Any such agent shall have proper credentials from the dealer he represents or cooperates with, and failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of this law. [Id.]

Art. 1699. [727] Unlawful delivery.—Any agent of any dealer or nurseryman, who shall knowingly deliver to any individual, partnership or corporation, any tree, shrub, or plant infested or diseased, as specified in the provisions of this law, even though such trees, shrubs, or plants are received in a box, bale or package, bearing a certificate of inspection, as provided in this law, shall be fined not less than twenty-five nor more than five hundred dollars for each such delivery to each individual, partnership or corporation. [Id.]

Art. 1700. [728—9] Fraud in sales.—Whoever knowingly makes any false representation of the name, quality or nature of any nursery product for the purpose of inducing any vendee to buy the same, or who knowingly delivers to any vendee any such product other than that contracted for, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in jail not less than thirty days nor more than six months, or both. The statute of limitation shall not begin to run against a prosecution under this article until such product shall have developed and disclosed the fraud. [Acts 1907, p. 304.]

CHAPTER 10A.—PLANT DISEASES AND PESTS

Art.
1700a. [Repealed.]
1700a—1. Quarantine and insect and plant disease control.
1700a—2. Describing and declaring a citrus zone.
1700a—3. Dealers, handlers, transporting agents and buying agents; license requirements; bond; penalties.

Art. 1700a. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 21, ch. 15, § 9.]

Article repealed was Acts 1927, 40th Leg., p. 97, ch. 69, § 5.

Art. 1700a—1. Quarantine and insect and plant disease control.—When rules and regulations, promulgated by the Commissioner of Agriculture pursuant to any quarantine order authorized in this Act, shall provide for the prevention of the selling, moving, transporting of any plants, plant products, things, or substances from any area quarantined or declared infested as provided for herein, or shall provide for the destruction of trees or fruits, or for the cleaning of orchards or treatment of orchards, or methods of storage, or shall provide for the prevention of the entry into any pest-free zone of any plants, plant products, things, or substances found to be dangerous to the agricultural and horticultural interests of such pest-free zone, or shall provide for the maintenance of a host-free period in which certain fruits are not to be allowed to be ripened, or shall provide for any specific treatment of a grove or orchard, any person or persons found guilty of selling, carrying, or transporting such plants or plant products from a quarantined area or areas declared infested or into an area declared to be a pest-free zone, as the case may be, or who shall maintain any ripening fruit during the host-free period on any tree declared to be a nuisance in such quarantine order, or fails or refuses to administer the treatment provided for, including specific methods of spraying, removing diseased parts, removing and destroying fallen or culled fruits, or removing such weeds or plants as may be hosts or carriers of insect pests or plant diseases, or failing to store products in manner as may be required, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed One Hundred Dollars ($100), and each thing, sold or transported, and each act in violation hereof, shall be considered a separate offense; and provided further that any person violating any of the provisions of this Act may be prosecuted therefor in any county of this State where such violation occurs. [Acts 1929, 41st Leg., 2nd C.S., p. 21, ch. 15, § 9; Acts 1941, 47th Leg., p. 636, ch. 384, § 1.]

Sections 1–8 and 10–12 of this Act are published as Rev. Civ.St. Art. 135a—1. Section 13 makes the act cumulative of all laws providing for quarantine regulations and inspection of plants, fruits and shrubs, except Rev.Civ.St. Arts. 135a to 135d and Pen.Code Art. 1700a, ante, which are expressly repealed.

Art. 1700a—2. Describing and declaring a citrus zone.—Sec. 1. The counties of Cameron, Willacy, Hidalgo, Starr, Zapata, Jim Hogg, Brooks, Kenedy, Kleberg, Nueces, Jim Wells, Duval, Webb, San Patricio, Refugio, Bee, Live Oak, McMullen, La Salle, Dimmit, Maverick, Zavala, Frio, Atascosa, Wilson, Karnes, DeWitt, Victoria, Goliad, Calhoun, and Aransas, are hereby designated and declared to be the Citrus Zone of the State of Texas and shall so be referred to in the future.

Sec. 2. It shall hereby be decreed the policy of the State to recognize the Citrus industry as a valuable asset, and the crop highly susceptible to the ravages of insects, pests, and plant diseases, and to use all measures sanctioned by constitutional means to protect this industry from destruction by any and all pests.

Sec. 3. Scaly bark, Cladosporium herebarum var. citricolum; Withertip of lime, Glocosporium limetticolm; White fly, Aleyrodes, nubifera; Wooly white fly, Aleurothrixus howardii; Flocculeent white fly; Aleurothrixus floccosa; Guava white fly, Trialeurodes floridensis; Bay white fly, Paraleurodes perseae; Inconspicuous white fly, Bemesia inconspicua; Florida citrus aphid, Aphis spirecola; Citrus root weevil, Pachnaeus litus Germar; Meleanose, Phomopsis Citri; Rufous scale, Selenaspidus articulatus; Snow scale, Chionaspis citri; 6-spotted mite, Tetranychus citri; Purple mite, Tetranychus citri; Orange sawyer, Elaphidion inerne; Spiny black fly, Aleurocanthus woglumi; Citrus scab; Black scale, Saissetia oleoe; Citrus mealy bug; Cottony cushion scale; Citrus thrips, Barnacle scale; California red scale; Oyster shell scale; Citrus red spider; Citrus fruit and storage rots, are hereby declared a public nuisance and menace to the citrus industry. The prevention of the transportation of any nursery stock infected with any of the above pests and plant diseases, is hereby declared to be a public necessity.

Sec. 4. That the shipment of any nursery stock infected with any of the above named pests or plant diseases into the above designated Citrus Zone of this State, is hereby prohibited; and any person, firm, association, or corporation knowingly violating any provision of this Act shall be guilty of a misdemeanor and upon conviction therefor shall be fined any sum not less than One Hundred Dollars ($100.00) or more than One Thousand Dollars ($1,000.00) or sentenced to imprisonment in the county jail not less than ten (10) days or more than one (1) year, or by both such fine and imprisonment. [Acts 1931, 42nd Leg., p. 838, ch. 350.]

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 as 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; Acts 1939, 46th Leg., p. 41, § 10.]

Sections 1–20, 22–28 of Acts 1937, 45th Leg., p. 464, ch. 236 published as Civ.St. art. 118b.
For sections 12–14 see note under Rev.Civ.St. art. 118b.

CHAPTER 11.—AGRICULTURAL SEEDS

Art.
1701. "Agricultural seeds."
1702. Label.
1703. Mixture of.
1704. Exceptions.
1705. Samples.
1706. Penalty.
1707. Preventing inspection or sampling.
1708. Cotton seed.
1708a. [Repealed.]

Article 1701. "Agricultural seeds."—Agricultural seeds are defined as the seeds of alfalfa, Irish potatoes, sweet potatoes, clovers, corn, cotton, saccharine sorghums, non-saccharine sorghums, broom corn, small grains, including rice, cowpeas, soybeans, velvet beans, peanuts, vetch, rape, millet, Johnson grass, Bermuda grass, Kentucky blue grass, orchard grass, sudan grass, onion and Rhodes grass, which are to be used for sowing or seeding purposes. [Acts 2nd C. S. 1919, p. 158.]

Art. 1702. Label.—Agricultural seeds, except as herein otherwise provided, which are offered or exposed for sale within this State for seeding purposes, in lots of ten pounds or more, shall bear a plainly written or printed statement in the English language stating:

(a) Commonly accepted name of agricultural seed.

(b) Correct weight in pounds and ounces.

(c) Name of State where seed was grown, and if unknown, a statement that the locality where grown is unknown.

(d) Approximate percentage of germible seed as determined by germination test and date on which germination test was made.

Name and address of person, firm or party or agency making the germination test, provided however, that the statement shall not be a basis for prosecution under this chapter.

(e) Name and address of vendor.

(f) The approximate percentage, by weight, or purity, meaning freedom of such agricultural seed from foreign matter and from other seed distinguishable by their appearance.

(g) The approximate total percentage, by weight, of weed seeds or other foreign matter.

(h) The name and the approximate number per pound of each kind of the seed of the following named noxious weeds which are present at the rate of, or in excess of, one such noxious weed seed in five grams of agricultural seed. Such noxious weed seed are defined as seeds of dodder (cascuta, various species), bind weed or wild morning glory (convolvulus, various species), blue weed, (helianthus cilistus), wire grass (Pasplum distichum). Bermuda grass, Johnson grass, and all other seeds or foreign matter known by science to be noxious are hereby defined as noxious weed seeds. [Id. p. 158.]

Art. 1703. Mixture of.—Mixtures of seeds offered or exposed for sale within the State for seeding purposes, in lots of ten pounds or more, containing one or more kinds of agricultural seeds defined in the preceding article in excess of five per centum, by weight, of the total mixture, shall bear a plainly written or printed statement in English language, stating:

(a) That such seed is a mixture.

(b) The approximate percentage, by weight of inert matter.

(c) The requirements provided in paragraphs (c), (g) and (h) of the preceding article. [Id. p. 159.]

Art. 1704. Exceptions.—The provisions of this chapter shall not apply to agricultural seeds, or mixtures of seeds, when plainly labeled "not clean seed," or "not tested seed" nor seeds sold to merchants to be recleansed before being sold or exposed for sale for seeding purposes, or when in storage for the purpose of recleaning. [Id. p. 159.]

Art. 1705. Samples.—The Commissioner of Agriculture is authorized in person or by his inspectors or assistants to take for analysis, paying the reasonable purchase price, a sample not exceeding four ounces in weight, from any lot of agricultural seeds or "mixtures" offered or exposed for sale. Said sample shall be drawn or taken in the presence of the vendor or parties interested, or his or their agents or representatives, and shall not be less than ten per cent of the whole lot inspected and shall be thoroughly mixed and then divided into two samples and placed in glass or metal vessels or containers, carefully sealed and a label placed on each vessel stating the name of the agricultural seed or mixture sampled, the name of the vendor from whose stock said samples were taken, and the date and place of taking such samples, and said label shall be signed by said Commissioner, or his authorized agent; or said sample may be taken in the presence of the disinterested witnesses if the vendor or party in interest fails or refuses to be present, when notified. One of said duplicate samples shall be left with or on the premises of the vendor or party in interest, and the other retained by the Commissioner for analysis and comparison with the labels required by law. [Id. p. 159.]

Art. 1706. Penalty.—Whoever offers or exposes for sale within this State any agricultural seed, defined in the first article of this chapter without complying with the requirements of the second and third articles of this chapter, or whoever falsely marks or labels any agricultural seeds under said second article, or mixture under said third article, shall be fined not more than one hundred dollars. [Id. p. 160.]

Art. 1707. Preventing inspection or sampling.—Whoever prevents the Commissioner of Agriculture or his duly authorized agent from inspecting the seeds described in the preceding articles of this chapter, or from collecting samples as provided in the preceding articles, shall be fined not more than one hundred dollars. [Id. p. 160.]

Art. 1708. Cotton seed.—Every person who falsely advertises or proclaims himself a "Registered Cotton Seed Breeder" or "Certified Cotton Seed Grower," and every person who sells or offers for sale cotton seed and falsely represents it to be "Registered Cotton Seed" or "Certified Cotton Seed," shall be fined not less than one hundred nor more than one thousand dollars. [Acts 2nd C. S. 1923, p. 130.]

Art. 1708a. [Repealed by Acts 1941, 47th Leg., p. 893, ch. 551, § 12.]

The article repealed was Acts 1929, 41st Leg., p. 678, ch. 304, § 11.

CHAPTER 12.—COMMERCIAL FERTILIZER

Art.
1709. Branding or labeling.
1710. Statement furnished state chemist.
1711. Words prohibited on bag.
1712. Tax tags.
1713. Interfering with chemist.
1714. Forbidden materials.
1715. Unlawful acts.
1716. Definitions.
1717. Selling adulterated or misbranded fertilizer.
1718. Sale of bulk fertilizer.
1719. Unlawful tag, bag or label.
1720. General penalty.

Article 1709. Branding or labeling.—All corporations, firms or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall brand or attach to each bag, barrel or package a plainly printed statement, showing the brand or name of said fertilizer, the net weight of the contents of the package, the name and address of the corporation, firm or person registering said fertilizer and the minimum percentages guaranteed to be present of available phosphoric acid, of nitrogen and of potash soluble in distilled water. Only such potash shall be claimed to be present as sulphate, which is in excess of the quantity required to combine with the chlorine present, less one-half per cent. In bone meal, tankage, or other similar products, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid only, in which latter case the guarantee must take the form above set forth. In the case of bone meal and tankage, information showing the fineness of the product may be branded or attached to the package; provided it takes a form approved by the State Chemist. All branding or labeling must be durable and legible, and so placed and arranged as to be easily read. [Acts 1911, p. 218.]

Art. 1710. Statement furnished State Chemist.—All firms, corporations or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall annually file with the State Chemist a certified statement giving the information required by the preceding article and the true names and sources of all the ingredients used in the manufacture of said fertilizer. If the same fertilizer is sold under a different name or names, said fact shall be stated, and the different brands which are identical shall be named. If the source of any ingredient is changed, notification must be promptly furnished the State Chemist. A copy of the brand or stamp on the bag or other package or on the label attached thereto shall be filed with the State Chemist on or before delivery to the dealers, agents or consumers in this State, which brand or stamp shall be uniformly used during the fiscal year for which it is filed, but such brand or stamp shall truly set forth the data required in said preceding article, and be otherwise in accordance with the provisions of this chapter. On receipt of the certified statement above described, and the copy of the brand or stamp and after compliance with other requirements of this chapter, the State Chemist shall issue a certificate of registration for the commercial fertilizer, which shall be in force until the succeeding September 1st. A brand name previously registered shall not be allowed to be registered by another firm, corporation or individual, and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion or fraud. The party whom the previous records of the State Chemist's office show to have first registered the name shall be permitted to retain it, subject, however, to appeal and hearing before the State Chemist to determine who is entitled to the brand; but the action of the State Chemist shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. [Id.]

Art. 1711. Words prohibited on bag.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain, by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than twelve per cent available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. No commercial fertilizer shall be sold, offered or exposed for sale for use within this State, upon which the use of the words "high grade" or "standard" is prohibited by this article, unless the words "low grade" is printed in two-inch letters in a conspicuous place upon the package of said fertilizer. No claim or guarantee for less than one per cent of phosphoric

acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. [Id. p. 219.]

Art. 1712. Tax tags.—All firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Chemist an inspection tax of twenty-five cents per ton for such commercial fertilizers sold or exposed or offered for sale in this State in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the State Chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. Nothing in this article shall interfere with fertilizers passing through the State in transit; nor apply to the delivery of fertilizing materials in bulk to fertilizing factories for manufacturing purposes. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with this law shall forward to the State Chemist a request for tax tags, stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon the State Chemist shall issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this article to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required by this chapter and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the State Chemist. [Id.]

Art. 1713. Interfering with chemist.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this chapter as may be sampled under his direction. The State Chemist, in person, or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place supposed to contain fertilizers, for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Any person who opposes the entrance of said chemist or deputy, or in any way interferes with the discharge of his duty, shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 1714. Forbidden materials.—It shall be unlawful to sell or offer for sale, in this State, any fertilizer or fertilizing materials which contain an undue quantity of hair, or which contain leather scraps, peat or other substances of low availability as food for plants, but in which such forbidden materials aid in making up the required or guaranteed analysis. The presence of any forbidden material shall vitiate the whole. Manufacturers who desire to use any such material may do so under such regulations as the State Chemist may prescribe, if it be shown that it is available for a proper purpose. [Id.]

Art. 1715. Unlawful acts.—No person shall sell or offer for sale any commercial fertilizer without having attached thereto such labels, stamps and tags as are required by law, or use the required tag a second time to avoid the payment of the tonnage charge. No person shall knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food. [Id.]

Art. 1716. Definitions.—These terms mean:

1. A commercial fertilizer is any material, substance or mixture which contains or is claimed to contain more than one per cent of total phosphoric acid, or of potash, or of nitrogen, and which is used for application to the soil to promote the growth of crops, or any substance, material or mixture, which is claimed to exert a beneficial action upon the soil or to promote the growth of crops. Lime, limestone, marl, unground bones, stockpen manure, barn-yard manure, or the excrement of any domestic animal shall be exempt from the provisions of this chapter, in case that said manure or excrement has not been dried or manipulated or otherwise treated or is not claimed to have a value of more than four dollars a ton.

2. A fertilizer is misbranded if it carries any false or misleading statement upon or attached to the package, or if false or misleading statements concerning its agricultural value are made on the package or in any printed advertising matter issued by the corporation, firm or individual that registered said fertilizer, or if the number of net pounds set forth upon the package is not substantially correct.

3. A fertilizer is adulterated if it contains any substance or substances injurious to the crop or to the soil, or if the guaranteed valuation exceeds the valuation of the plant food found on analysis ten per cent or more, or if any of the plant food constituents falls twenty per cent or more below the guaranteed composition. [Id.]

Art. 1717. Selling adulterated or misbranded fertilizer.—Whoever manufactures, sells or offers for sale any adulterated or misbranded commercial fertilizer for use within this State shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1718. Sale of bulk fertilizer.—Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other commercial fertilizer in bulk to persons, individuals or firms who desire to purchase the same for their own use on their own land but not for sale or distribution, under rules and regulations prescribed by the State Chemist which will not be inconsistent with the provisions of this chapter. Inspection tax shall be paid upon such fertilizer as provided herein. If such bulk fertilizer is offered for sale or distribution, it must be tagged and branded and otherwise accord with the provisions of this chapter. [Id.]

Art. 1719. Unlawful tag, bag or label.—Whoever uses the fertilizer tags, bags or labels of some other person, party or manufacturer, in such a way as to deceive or tend to deceive, or who counterfeits or uses a counterfeit of the tax tag prescribed in this chapter, shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

Art. 1720. General penalty.—Whoever violates any provision of this chapter for which a penalty is not otherwise provided herein shall be fined not less than fifty nor more than two hundred dollars. [Id.]

CHAPTER 13.—WELFARE OR ASSISTANCE

Art.
1720a. Fees for assisting in obtaining welfare assistance limited—Advertising or soliciting—Punishment.

Sec.
1. Limitation fee; solicitation.
2. Soliciting dues for purpose of collecting or advertising for sponsoring pensions or benefits prohibited.
3. Persons not prohibited from obtaining Social Security Benefits.
4. Punishment for violations.
5. Civil suits to enforce act—enjoining violations—venue.

Art. 1720a. Fees for assisting in obtaining welfare assistance, limited—Advertising or soliciting—Punishment.

Limitation on fee; solicitation

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 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.]

Section 6 of the Act of 1939 repealed conflicting laws. Section 7 provided that partial invalidity should not impair the remaining parts of the Act.

GENERAL REPEALING CLAUSE

Section 3, of the Act of 1925, entitled, "An Act to Adopt and Establish a 'Penal Code' and a 'Code of Criminal Procedure' for the State of Texas," reads as follows:

"Art. 1. Be it further enacted by the Legislature of the State of Texas: That all penal laws and all laws relating to criminal procedure in this State, that are not embraced in this Act and that have not been enacted during the present session of the Legislature, be and the same are hereby repealed. All laws and parts of laws relating to crime omitted from this Act have been intentionally omitted, and all additions have been intentionally added, and this Act shall be construed to be an independent Act of the Legislature enacted under the caption hereof, and the articles contained in this Act, as revised, rewritten, changed, combined and codified shall not be construed as a continuation of former laws, except as otherwise herein provided.

"Art. 2. The importance of this Act, and the near approach of the close of this session of the Legislature, and the fact that it is impossible to read this Act on any day or on three several days, creates an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

"Art. 3. This Act shall take effect and be in force from and after twelve o'clock, Meridian, of the First day of September, Anno Domini, One Thousand Nine Hundred and Twenty-five."

RECORD OF ENACTMENT

The enrolled bill (*REVISED PENAL CODE 1925*) on file in the office of the Secretary of State shows that the foregoing act passed the Senate, finally January 23, 1925 (*no vote given*).

PASSED the House February 4, 1925 by following vote: 111 yeas, 4 nays.

APPROVED by the Governor Feb. 7, 1925.

*

TITLES OF
CODE OF CRIMINAL PROCEDURE
AND
VERNON'S TEXAS STATUTES 1948

Sec. 2. Be it further enacted, That the following titles, chapters and articles shall hereafter constitute the *CODE OF CRIMINAL PROCEDURE* of the State of Texas, to wit:

VERNON'S CODE OF CRIMINAL PROCEDURE

OF THE

STATE OF TEXAS

TITLE 1—INTRODUCTORY

CHAPTER 1.—GENERAL PROVISIONS

Article 1. [1] Objects of this Code.—This code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of proceeding in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

1. To adopt measures for preventing the commission of crime.
2. To exclude the offender from all hope of escape.
3. To insure a trial with as little delay as is consistent with the ends of justice.
4. To bring to the investigation of each offense on the trial all the evidence tending to produce conviction or acquittal.
5. To insure a fair and impartial trial; and
6. The certain execution of the sentence of the law when declared. [O. C. 1, Act Feb. 15, 1858.]

Art. 2. [3] Due course of law.—No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. [Bill of Rights, Sec. 19.]

Art. 3. [4] Rights of accused.—In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury. [Bill of Rights, Sec. 10.]

Art. 4. [5] Searches and seizures.—The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation. [Bill of Rights, sec. 9.]

Arts. 4a, 4b. [Repealed by Acts 1929, 41st Leg., 2nd C.S., p. 78, ch. 44, § 1.]

Art. 5. [6] Right to bail.—All prisoners shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident. This provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law. [Bill of Rights, Sec. 11.]

Art. 6. [7] Habeas corpus.—The writ of habeas corpus is a writ of right and shall never be suspended. [Bill of Rights, Sec. 12.]

Art. 7. [8] Cruelty forbidden.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. [Bill of Rights, Sec. 13.]

Art. 8. [9] Jeopardy.—No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction. [Bill of Rights, Sec. 14.]

Art. 9. [20] [21] Acquittal a bar.—An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.

Art. 10. [10] Right to jury.—The right of trial by jury shall remain inviolate. [Bill of Rights, sec. 15.]

Art. 10a. Waiver of trial by jury.—The defendant in a Criminal prosecution for any offense classified as a felony less than a capital offense, shall have the right, upon entering a plea of guilty, to waive the right of a trial by a Jury, conditioned, however, that such waiver must be made in person by the defendant in open Court with the consent and approval of the Court and the duly elected and acting Attorney representing the State. Provided, that said consent and approval by the Court shall be entered of record on the Minutes of the Court and the consent and approval of the Attorney representing the State shall be in writing, duly signed by said Attorney and filed in the papers of the Cause before the defendant enters his plea of guilty.

Provided, that before a defendant who has no Attorney can agree to waive a Jury, the Court must appoint an Attorney to represent him. [Acts 1931, 42nd Leg., p. 65, ch. 43, § 1.]

Art. 11. [22] [23] Waiver of rights.—The defendant in a Criminal prosecution for any offense, may waive any right secured him by Law except the right of a trial by a Jury in a felony case when he enters a plea of not guilty. [O.C. 26; Acts 1931, 42nd Leg., p. 65, ch. 43, § 2.]

Art. 12. [21] [22] Jury in felony.—No person can be convicted of a felony except upon the verdict of a Jury duly rendered and recorded, unless in felony cases less than capital, the defendant upon entering a plea of guilty has in open Court in person and with the approval and consent of the Court and the State's Attorney, as provided in Section 1 of this Act, (Article 10a of Code of Criminal Procedure of the State of Texas), waived his right of a trial by Jury. Provided, however, that it shall be necessary for the State to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the Court as the basis for its verdict, and in no event shall a person charged be convicted upon his plea of guilty without sufficient evidence to support the same. [O.C. 22; Acts 1931, 42nd Leg., p. 65, ch. 43, § 3.]

Art. 13. [11] Liberty of speech and press.—Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. [Bill of Rights, sec. 8.]

Art. 14. [12] Religious belief.—No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury. [Bill of Rights, Sec. 5.]

Art. 15. [13] Outlawry and transportation.—No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same. [Bill of Rights, Sec. 20.]

Art. 16. [14] Corruption of blood, etc.—No conviction shall work corruption of blood or forfeiture of estate. [Bill of Rights, Sec. 21.]

Art. 17. [15] Conviction of treason.—No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court. [Bill of Rights, Sec. 22.]

Art. 18. [16] Privilege of legislators.—Senators and representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened. [Const., art. 3, sec. 14.]

Art. 19. [17] Privilege of voters.—Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Const., Art. 6, sec. 5.]

Art. 20. [19] Dignity of State.—All judges of the Supreme Court, Court of Criminal Appeals and district courts, shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and conclude, "against the peace and dignity of the State." [Const., art. 5, sec. 12.]

Art. 21. [23] [24] Public trial.—The proceedings and trials in all courts shall be public. [O. C. 23.]

Art. 22. [24] [25] Confronted by witnesses.—The defendant, upon a trial, shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken. [O. C. 24.]

Art. 23. [25] [26] Construction of this Code.—The provisions of this Code shall be liberally construed, so as to attain the objects intended by the legislature: The prevention, suppression and punishment of crime. [O. C. 25.]

Art. 24. [26] [27] Common law governs.—If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern. [O. C. 27.]

CHAPTER 2.—GENERAL DUTIES OF OFFICERS

1. DISTRICT AND COUNTY ATTORNEYS

2. MAGISTRATES

3. PEACE OFFICERS

4. SHERIFFS

Art.
41. Conservator of the peace.
42. Custody of prisoners.
43. Report as to prisoners.
44. Deputy.

5. DISTRICT AND COUNTY CLERKS

45. Duty of clerks.
46. Power of deputy clerks.
47. Report to Attorney General.

1. DISTRICT AND COUNTY ATTORNEYS

Article 25. [30] [31] Duties of district attorneys.—Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within the county where such proceeding is had, he shall represent the State therein, unless prevented by other official duties. [O. C. 30-31.]

Art. 26. [32] [33] Duties of county attorneys.—The county attorneys shall attend the terms of all courts in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone, or when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court, and in such cases he shall receive all or one-half of the fees allowed by law to district attorneys, according as he acted alone or jointly. In such cases he shall receive all or one-half of the fees allowed by law to the district attorney whose duties he performs, or assists in performing, but shall receive no part of the constitutional salary allowed to such district attorney, according as he acted alone or jointly; provided that fees collected by the county attorney from the state for such services shall be deducted by the Comptroller of Public Accounts from the fees which otherwise would have been paid to the district attorney had he represented the State alone; provided further this article shall not be construed as inhibiting any county attorney from voluntarily, with the consent of the district attorney, assisting the district attorney in the performance of his respective duties, without compensation. [Acts 1879, p. 94; Acts 1933, 43rd Leg., p. 177, ch. 83.]

Art. 27. [33] [34] When officer neglects duty.—It shall be the duty of the district or county attorney to present by information to the court having jurisdiction, any officer for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and he shall bring to the notice of the grand jury any act of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure are not presented by information, and whenever the same may come to his knowledge. [Acts 1876, p. 86.]

Art. 28. [34] [35] Shall draw complaints.—Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney. [Id.]

Art. 29. [35] [36] When complaint is made.—If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon such complaint and file the same in the Court having jurisdiction; provided, that in counties having no County Attorney, misdemeanor cases may be tried upon complaint alone, without an information, provided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case. If the offense be a felony, he shall forthwith file the complaint with a magistrate of the county. [Acts 1876, p. 86; Acts 1931, 42nd Leg., p. 128, ch. 85, § 1.]

Art. 30. [36] [37] May administer oaths.—For the purpose mentioned in the two preceding articles, district and county attorneys are authorized to administer oaths. [Acts 1876, p. 86.]

Art. 31. [38] [39] Attorney pro tem.—Whenever any district or county attorney fails to attend any term of the district, county or justice's court, the judge of said court or such justice may appoint some competent attorney to perform the duties of such district or county attorney, who shall be allowed the same compensation for his services as is allowed the district attorney or county attorney. Said appointment shall not extend beyond the term of the court at which it is made, and shall be vacated upon the appearance of the district or county attorney.

Art. 32. [40] [41] Disqualified.—District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State. [O. C. 30.]

2. MAGISTRATES

Art. 33. [41] [42] Who are magistrates.—Each of the following officers is a "magistrate" within the meaning of this Code: The judges of the Supreme Court, the judges of the Court of Criminal Appeals, the judges of the district court, the county judge, any county commissioner, the justices of the peace, the mayor or recorder of an incorporated city or town.

Art. 34. [42] [43] Duty of magistrates.—It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment. [O. C. 32.]

Art. 35. [62] [63] "Examining court."—When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an "examining court."

3. PEACE OFFICERS

Art. 36. [43] [44] Who are peace officers.—The following are "peace officers:" the sheriff and his deputies, constable, the marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the State ranger force, and any private person specially appointed to execute criminal process. [O. C. 53, Acts 1919, p. 264.]

Art. 37. [44] [45] Duties and powers.—It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall, in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried. [O. C. 34.]

Art. 38. [45] [46] May summon aid.—Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey. [O. C. 44.]

Art. 39. [46] [47] Person refusing to aid.—The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the proper district or county attorney, in order that he may be prosecuted for the offense. [O. C. 45.]

Art. 40. [47] [48] Neglecting to execute process.—If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpœna or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court. The payment of such fine shall be enforced in the same manner as fines for contempt in civil cases. [Act Feb. 11, 1860.]

4. SHERIFFS

Art. 41. [48] [49] Conservator of the peace.—Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had. [Act May 12, 1846, p. 265.]

Art. 42. [50] [51] Custody of prisoners.—When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in a bailable case, give the person arrested a reasonable time to procure bail; but, he shall so guard the accused as to prevent escape.

Art. 43. [51] Report as to prisoners.—At each term of any court having criminal jurisdiction, the sheriff shall give notice to the district or county attorney as to all prisoners in his custody and of the authority under which he detains them.

Art. 44. [54] [55] Deputy.—Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy. When there is no sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office. [O. C. 46.]

5. DISTRICT AND COUNTY CLERKS

Art. 45. [55] [56] Duty of clerks.—Each clerk of the district or county court shall receive and file all papers in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

Art. 46. [56] [57] Power of deputy clerks.—Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy. [O. C. 48.]

Art. 47. [57] [58] Report to Attorney General.—The clerks of the district and county courts shall, when required by the Attorney General, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by their records.

When any district clerk has failed, neglected or refused to make any such report after being requested in writing by the Attorney General to make such report, the Attorney General shall notify in writing the Comptroller of Public Accounts of such failure, neglect or refusal, and said Comptroller shall not thereafter draw any warrant in favor of said clerk until said report has been filed with the Attorney General. [As amended Acts 1933, 43rd Leg., p. 152, ch. 75.]

CHAPTER 3.—DEFINITIONS

Article 48. [58-59] Words and phrases.—All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined; and, unless herein specially excepted have the meaning which is given to them in the Penal Code.

Art. 49. [60] [61] Criminal action.—A criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws. [O. C. 51.]

Art. 50. [61] [62] "Officers."—The general term "officers" includes both magistrates and peace officers. [O. C. 54.]

TITLE 2—COURTS AND CRIMINAL JURISDICTION

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS—Cont'd

DALLAS COUNTY CRIMINAL DISTRICT COURTS—Cont'd

HARRIS COUNTY CRIMINAL DISTRICT COURT

TRAVIS COUNTY CRIMINAL DISTRICT COURT

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS—Cont'd

NUECES, KLEBERG, KENEDY, WILLACY AND CAMERON COUNTIES—CRIMINAL DISTRICT COURT

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DALLAS COUNTY COURT AT LAW

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS—Cont'd

DALLAS COUNTY COURT AT LAW—Cont'd

BEXAR COUNTY COURT FOR CRIMINAL CASES

HARRIS COUNTY COURT AT LAW

HARRIS COUNTY COURT AT LAW NO. 2

JEFFERSON COUNTY COURT AT LAW

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS—Cont'd

GALVESTON COUNTY COURT AT LAW

HARRIS COUNTY CRIMINAL DISTRICT COURT NO. 2

DALLAS COUNTY CRIMINAL COURT

JEFFERSON COUNTY CRIMINAL DISTRICT COURT

BEXAR COUNTY CRIMINAL DISTRICT COURT

Article 51. [63] [64] What courts have criminal jurisdiction.—The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. The district courts;
3. The criminal district courts;
4. The county courts;
5. All county courts at law with criminal jurisdiction;
6. Justice courts;
7. Corporation courts.

Art. 52. Certain courts continued.—Each of the following courts shall continue with the jurisdiction, organization, terms and powers now existing until otherwise provided by law:

1. Criminal District Court of Dallas County. [Acts 1893, p. 118; Acts 1915, pp. 74, 138; Acts 1917, pp. 315, 341.]
2. Criminal District Court No. 2 of Dallas County. [Acts 1st C. S. 1911, p. 136; Acts 1915, pp. 74, 138; Acts 1917, p. 315.]
3. Criminal District Court of Harris County. [Acts 1911, p. 111.]
4. Criminal District Court of Tarrant County. [Acts 1917, p. 144; Acts 2nd C. S. 1919, p. 246.]
5. Criminal District Court of Travis County. [Acts 1923, p. 129.]
6. Criminal District Court for the Counties of Nueces, Kleberg, Kennedy, Willacy and Cameron. [Acts 1st C. S. 1921, p. 18.]
7. All County Courts at Law.

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS

DALLAS COUNTY CRIMINAL DISTRICT COURTS

Art. 52—1. Dallas criminal district court created; jurisdiction.—There is hereby created and established at the city of Dallas a criminal district court, which shall have and exercise all the criminal jurisdiction heretofore vested in and exercised by the district courts of Dallas county. All appeals from the judgments of said court shall be to the court of criminal appeals, under the same regulations as are now or may hereafter be provided by law for appeals in criminal cases from district courts. [Acts 1893, p. 118.]

Art. 52—2. Dallas county district courts to have no criminal jurisdiction.—The district courts of Dallas county shall not have nor exercise any criminal jurisdiction. [Id.]

Art. 52—3. Judge; qualifications, election, etc.—The judge of said criminal district court shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of a judge of the district court, and shall receive the same salary as is now, or may hereafter, be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of the judge, a special judge may be selected, elected, or appointed, as provided by law in cases of district judges. [Id.]

Art. 52—4. Seal of the court and its use.—Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments, and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this state in like manner as similar certified copies from courts of record are now or may hereafter be admissible. [Id.]

Art. 52—5. Sheriff, clerk and county attorney to serve, etc.—The sheriff, the county attorney, and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney, and clerk, respectively, of said criminal district court, under the same rules and regulations as are now, or may hereafter be, prescribed by law for the government of sheriffs, county attorneys, and clerks in the district courts of the state; and said sheriff, county attorney, and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the state, to be paid in the same manner. [Id.]

Art. 52—6. Terms of the court and grand juries.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of January, one term beginning the first Monday of April, one term beginning the first Monday of July, and one term beginning the first Monday of October. A grand jury shall be impaneled in said court for each term thereof; and jury commissioners shall be appointed for drawing jurors for said court, as is now or may hereafter be required by law in district courts, and under like rules and regulations. [Id.]

Art. 52—7. Practice in.—The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice, and proceedings in criminal cases in the district courts. [Id.]

Art. 52—8. Criminal District Court No. 2 of Dallas County created.—There is hereby created and established at the city of Dallas a criminal district court to be known as the "Criminal District Court No. 2 of Dallas County," which court shall have and exercise concurrent jurisdiction with the criminal district court of Dallas county, Texas, as now given and exercised by the said criminal district court of Dallas county under the Constitution and laws of the State of Texas. [Act 1911, 1st S. S., p. 106, ch. 19, § 1.]

Art. 52—9. Same; concurrent jurisdiction with criminal district court of Dallas county; transfer of causes.—From and after the time this law shall take effect the criminal district court of Dallas county, and the criminal district court No. 2 of Dallas county shall have and exercise concurrent jurisdiction with each other in all felony causes and in all matters and proceedings of which the said criminal district court of Dallas county now has jurisdiction; and either of the judges of said criminal district court may in their discretion transfer any cause or causes that may at any time be pending in his court to the other criminal district court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made the clerk of such district court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the judge shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. [Id., § 2.]

Act March 22, 1915, ch. 86, in its title purports to amend this article, but the enacting part makes no reference to the matter of amendment. The amendatory act is set forth in Article 52—23, post.

Art. 52—10. Judge, how elected; term; qualifications; powers and duties; exchange; special judge; etc.—The judge of said criminal district court No. 2 of Dallas county shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now or may hereafter be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of the criminal district court of Dallas county. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and, in case of disqualification or absence of a judge, a special judge may be selected, elected or appointed as provided by law in cases of district judges; provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court, who shall hold the office until the next general election, after the passage of this law, and until his successor shall have been elected and qualified. [Id., § 3.]

Art. 52—11. Seal of court, etc.—Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court No. 2 of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said court, under the hand of the clerk and attested by the seal of said

court, shall be admissible in evidence in all the courts of this State in like manner as similar certified copies from courts of record are now or may hereafter be admissible. [Id., § 4.]

Art. 52—12. Criminal judicial district created.—There is hereby created and established a Criminal Judicial District of Dallas County, Texas, to be composed of the County of Dallas, Texas, alone, and the Criminal District Court of Dallas county, and the Criminal District Court No. 2 of Dallas county, Texas, shall have and exercise all the Criminal Jurisdiction of such courts, of and for said Criminal District of Dallas county, Texas, that are now conferred by law on said Criminal District Courts. [Act March 29, 1917, ch. 121, § 1.]

Sections 2 to 10, inclusive, relate to the Criminal District Attorney of Dallas County, and are set forth as Article 52—24, post. Section 11 repeals all laws in conflict.

Art. 52—13. Sheriff, county attorney, and clerk of Dallas county to act, etc.; fees.—The sheriff, county attorney and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney and clerk, respectively, of said criminal district court under the same rules and regulations as are now or may hereafter be prescribed by law for the government of sheriffs, county attorneys and clerks of the district courts of the State; and said sheriff, county attorney and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the State to be paid in the same manner. [Act 1911, 1st S. S., p. 106, ch. 19, § 5.]

Art. 52—14. Terms of court; grand jury; drawing jurors; pleading, practice, and procedure.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, and one term beginning the first Monday of January. The grand jury shall be impaneled in said court for each term thereof unless otherwise directed by the judge of said court, and the procedure for drawing jurors for said court shall be the same as is now or may hereafter be required by law in district courts, and under the same rules and regulations. The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice and proceedings in criminal cases in the district courts. [Id., § 6.]

Art. 52—15. Apportionment.—Dallas county shall constitute the Forty-fourth Judicial District and the Sixty-eighth Judicial District, and Dallas county and Rockwall county shall constitute the Fourteenth Judicial District. The said district courts herein named shall not have nor exercise any criminal jurisdiction in Dallas county, such criminal jurisdiction having been by law exclusively vested in the Criminal District Courts for said county. But all of said three courts shall have and exercise concurrent jurisdiction coextensive with the limits of Dallas county in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State. The said Fourteenth Judicial District Court shall have jurisdiction in Rockwall county, Texas, in all civil and criminal cases which under the Constitution and laws of this State are cognizable by district courts, and in which the jurisdiction is in Rockwall county, Texas; and all appeals in criminal cases shall be to the Court of Criminal Appeals of the State of Texas under the same regulations as are now or may hereafter be provided by the laws for appeals in criminal cases in the district court. [Act 1913, p. 171, ch. 89, § 1.]

Art. 52—16. Concurrent jurisdiction of criminal district courts with county court at law; transfer of causes.—The Criminal District Court and Criminal District Court No. 2 of Dallas County shall have and exercise original concurrent jurisdiction with each other and with the County Court of Dallas County at Law in all matters and proceedings relative to misdemeanor causes of which the County Court of Dallas County at Law now has jurisdiction and either of the judges of said Criminal District Courts and the judge of said County Court of Dallas County at Law may, in his discretion, or upon the motion of the county attorney of Dallas county, transfer by written order or orders, entered upon the minutes of said court, any misdemeanor cause or misdemeanor causes that may at any time be pending in either of said courts to either of the other of said courts, as should, in his discretion, be transferred or as may be prayed for in the motion of the county attorney. [Act 1915, p. 74, ch. 37, § 1.]

Art. 52—17. Duty of county clerk on transfer of cause; costs and fees; duty of clerk of district court.—Upon the transfer of any such cause or causes from said County Court of Dallas County at Law to either of said Criminal District Courts it shall be the duty of the county clerk of Dallas County to prepare and forward with the papers in said cause or causes so transferred a bill of the cost then accrued which said cost shall follow said cause or causes, and be taxed in said cause or causes with any other cost that may accrue in said cause or causes in either of said Criminal District Courts to which said cause or causes may be transferred; provided that the county clerk of Dallas County making such a bill of cost shall receive the sum of 50 cents for the preparation and forwarding of said bill of cost, in each cause so transferred, which said sum and cost shall be taxed in said cause and collected as other cost in the manner now provided by law; and the clerk of the District Court of Dallas County shall likewise, upon the transfer of any such cause from either of said Criminal District Courts to the County Court of Dallas County at Law, prepare such bill of cost and forward same as provided therein, and shall receive the same compensation as herein provided for the county clerk of Dallas County in such cases. [Id., § 2.]

Art. 52—18. Misdemeanor dockets for transferred causes.—The clerk of the District Court of Dallas County shall keep for each of said Criminal District Courts a misdemeanor docket and a misdemeanor motion docket in like manner as is now provided for by law for the County Court of Dallas County at Law, and upon any such cause or causes being transferred from the County Court of Dallas County at Law or from one of said Criminal District Courts to the other, said cause or causes shall be docketed as now provided by law for the County Court of Dallas County at Law. [Id., § 3.]

Art. 52—19. Practice in transferred causes.—In trial of causes transferred to either of the Criminal District Courts of Dallas County from the County Court of Dallas County at Law, the trials, pleadings and practice shall be the same as in trial of other causes over which the Criminal District Courts of Dallas County now have jurisdiction. [Id., § 4.]

Art. 52—20. Fees of officers in misdemeanor causes.—The county attorney of Dallas county and all other officers shall receive the same fees in misdemeanor causes in said Criminal District Courts as are now provided by law in the County Court of Dallas County at Law and in all other matters of cost tax in said causes in said Criminal District Courts, the item shall in no event be greater than that provided by law for such items in the County Court of Dallas

County at law, and all such cost in such causes shall be paid to the officers of the court in which same is accrued. [Id., § 5.]

Art. 52—21. Filing misdemeanor causes in either court.—All misdemeanor causes of which the County Court of Dallas County now has jurisdiction may be filed originally with the clerk of the district [court] of Dallas [1] county, in either the Criminal District Court of Dallas County or the Criminal District Court No. 2 of Dallas County, in the same manner as is now provided by law for the filing of such causes with the county clerk of Dallas county in the County Court of Dallas County at Law. [Id., § 7.]

[1] So in Session Laws. Enrolled bill reads "clerk of district of or Dallas."

Art. 52—22. Jurisdiction of proceeding on bail bonds and recognizances given in transferred causes.—Said Criminal District Courts shall have jurisdiction on all bail bonds and recognizances taken in proceedings had before such courts; in all causes transferred to said courts from either of them or that may be transferred to said courts from the County Court of Dallas County at Law; and may enter forfeitures thereof; and final judgment and enforce the collection of same by proper process in the manner as provided by law in said bail bond proceedings; and all bail bonds, recognizances or other obligations taken for the appearance of defendants, parties and witnesses, in either the County Court of Dallas County at Law or Criminal District Court of Dallas County or Criminal District Court No. 2 of Dallas County, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in either of said courts in which said cause may be pending or to which same may be transferred. [Id., § 7a.]

Art. 52—23. Judges of criminal district courts may sit in either court.—From and after the time this law shall take effect the Criminal District Court of Dallas County, Texas, and the Criminal District Court Number Two of Dallas County, Texas, and the respective judges thereof, shall have and exercise concurrent jurisdiction with each other in all felony cases, and in all misdemeanor cases in which said courts have, or may hereafter have, concurrent jurisdiction with the County Court of Dallas County at Law, and in all matters and proceedings of which either of said criminal district courts of Dallas County, Texas, now have jurisdiction; and either of the judges of said criminal district courts may, in his discretion, in the absence of the judge of the other criminal district court from his courtroom, or from the County of Dallas, Texas, try and dispose of any cause or causes that may be pending in such criminal district court as fully as could such absent judge were he personally present and presiding. And either of said judges may receive in open court from the foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any impaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent district judge could do if personally present and presiding over such court; and may make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto, as the regular judge of said criminal district judge could make if personally present and presiding. [Act 1915, p. 138, ch. 86, § 1.]

Act March 22, 1915, ch. 86, in its title purports to amend chapter 19, section 2, of Act Sept. 14, 1911, set forth in Article 52—9, ante, but the enacting part makes no mention of the matter of amendment.

Art. 52—24. Criminal District Attorney; duties; salary; fees; accounting; assistants; oath; powers; report of expenses; election.—There shall be elected by the qualified electors of the Criminal Judicial District of Dallas county, Texas, an attorney for said district, who shall be styled the "Criminal District Attorney of Dallas county," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other district attorneys. [March 29, 1917, ch. 121, § 2.]

It shall be the duty of said Criminal District Attorney or his assistants, as hereinafter provided to be in attendance upon each term of the "Criminal Court of Dallas County" and the "Criminal District Court No. 2 of Dallas County" and to represent the state in all matters pending before said courts. And he shall have exclusive control of all criminal cases where ever pending, or in whatever court in Dallas County that now has jurisdiction of criminal cases, as well as any or all courts that may hereafter be created and given jurisdiction in criminal cases, and he shall have the fees therefor fixed by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Dallas County, as well as before the Criminal Court of said county. The Criminal District Attorney of Dallas County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within said Criminal District of Dallas County as are by law now conferred, or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this state.

It is further provided that he and his assistants shall have the exclusive right and it shall be their sole duty to perform the duties provided for in this Act, except in cases of absence from the county of the Criminal District Attorney and his assistants, or their inability or refusal to act; and no other person shall have the power to perform the duties provided for in this Act, or to represent the state in any criminal case in Dallas County, except in case of the absence from Dallas County, or the inability or refusal to act of the Criminal District Attorney and his assistants. [Id., § 3.]

The said Criminal District Attorney of Dallas County shall be commissioned by the Governor and shall receive a salary of $500.00 per annum, to be paid by the state, and in addition thereto shall receive the following fees in felony cases, to be paid by the state; for each conviction of felonious homicide, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases, where the defendant does not appeal, or dies, or escapes, after appeal, and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and judgment by confinement in the House of Correction and Reformatory, his fee shall be fifteen dollars. For representing the state in each case of habeas corpus where the defendant is charged with felony, the sum of twenty dollars. For representing the state in examining trials, in felony cases, where indictment is returned, in each case, the sum of five dollars. The Criminal District Attorney shall also receive such fees for other services rendered by him as is now, or may hereafter be authorized by law to be paid to other district and county attorneys in this state for such services. [Id., § 4.]

The Criminal District Attorney of Dallas County shall retain out of the fees earned and collected by him the sum of three thousand five hundred dollars per annum and in addition thereto one fourth of the gross excess of all such fees in excess of three thousand five hundred dollars per annum to an amount not in excess of two thousand dollars. The three fourth remaining to be applied first to the payment of the salaries of the Assistant District Attorneys and extra assistant District Attorneys and stenographer as hereinafter provided for. The remainder to be paid into the treasury of Dallas County; provided that in arriving at the amount collected by him he shall include the fees arising from all classes of criminal cases whether felony or misdemeanor arising in any of the courts in Dallas County now existing, or which may hereafter be created including habeas corpus hearing and fines and forfeitures; provided that after the 30th day of November and before the first day of January following of each year, he shall make a full and complete report and accounting to the county judge of Dallas County of all of such fees so collected by him; provided that in addition to the above he shall receive ten per cent. for the collection of delinquent fees as is now provided by law relating to the collection of delinquent fees by county and district attorneys. Such fees however, to be included in the reports herein provided for and to be taken into consideration in arriving at the total maximum compensation provided in this Act. [Id., § 5.]

The Criminal District Attorney of Dallas County may appoint two assistants criminal district attorneys who shall each receive a salary of not to exceed eighteen hundred dollars per annum payable monthly, and four additional assistant district attorneys who shall each receive a salary of not to exceed fifteen hundred dollars a year payable monthly. He may appoint a stenographer who shall receive a salary of not more than twelve hundred dollars per annum payable monthly.

In addition to the assistant criminal district attorneys and stenographer above provided for, said Criminal District Attorney of Dallas County may, with the approval of the county judge and commissioners court of Dallas county, appoint as many additional extra assistant district attorneys as may be necessary to properly administer the affairs of the office of Criminal District Attorney and enforce the law, upon the Criminal District Attorney making application under oath addressed to the county judge of Dallas county, setting out the need therefor; provided, the county judge, with the approval of the commissioners court, may discontinue the services of any one or more of said extra assistant criminal district attorneys so appointed, the salary of said extra assistant criminal district attorney to be fixed by the commissioners court of Dallas county. [Id., § 6.]

The assistant criminal district attorneys and the extra assistant criminal district attorneys above provided for, when so appointed, shall take oath of office and be authorized to represent the state before said criminal district court, and in all other courts of Dallas county, in which the criminal district attorney of Dallas county is authorized by this Act to represent the state, such authority to be exercised under the direction of said criminal district attorney, and which said assistants shall be subject to removal at the will of the said criminal district attorney. Each of said assistant criminal district attorneys shall be authorized to administer oaths, file information, examine witnesses before the grand jury and generally perform any duty devolving upon the criminal district attorney of Dallas county, and to exercise any power conferred by law upon the said criminal district attorney when by him so authorized. The criminal district attorney of Dallas county shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services shall have been rendered by himself. [Id., § 7.]

The criminal district attorney of Dallas county is authorized, with the consent of the county judge and county commissioners of Dallas county, to appoint not to exceed two assistants in addition to his regular assistant criminal district attorneys, provided for in this Act, which two assistants shall not be required to possess the qualifications prescribed by law for district or county attorneys, and who shall perform such duties as may be assigned to them by the criminal district attorney, and who shall receive as their compensation one hundred dollars per month each, to be paid in monthly installments out of the county funds of Dallas county, Texas, by warrants drawn on such county fund; and provided further, that the criminal district attorney of Dallas county shall be allowed a sum of money by order of said commissioners court of Dallas county, as in the judgment of the commissioners court may be deemed necessary, to the proper administration of the duties of such office not to exceed, however, the amount of fifty dollars per month. Such amount as may be thus necessarily incurred shall be paid by the commissioners court upon affidavit made by the criminal district attorney of Dallas county, showing the necessity for such expenditure and for what the same was incurred. The commissioners court may also require any other evidence as in their opinion may be necessary to show the necessity for such expenditure, but they shall be the sole judge as to the necessity for such expenditure and their judgment allowing same shall be final. [Id., § 8.]

The criminal district attorney shall at the close of each month of the tenure of such office make, as a part of the report required by this Act, an itemized and sworn statement of the actual and necessary expenses incurred by him in the conduct of his said office, such as stamps, stationery, books, telephone, traveling expenses and other necessary expenses. 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 and if it appears that any item of such expenses was not incurred by such officer or that such item was not necessary thereto, such item may be by the said auditor rejected, in which case the correction of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense shall be deducted by the criminal district attorney of Dallas county in making such a report from the amount if any due by him to the county under the provisions of this Act. [Id., § 9.]

The criminal district attorney of Dallas county, as provided for in this Act, shall be elected by the qualified electors of the criminal judicial district of Dallas county at the next general election, and it is provided and directed that the present county attorney of Dallas county, Texas shall continue in office and assume the duties and be known as the criminal district attorney of Dallas county, Texas, and proceed to organize and arrange the affairs of the office of criminal district attorney of Dallas county, and appoint assistants as provided for in this Act and receive the fees provided for in this Act for such office until the next general election and until the criminal district attorney of Dallas county shall be elected and qualified. [Id., § 10.]

Art. 52—24a. Jurisdiction increased.—Sec. 1. In addition to the jurisdiction now conferred upon the Criminal District Court of Dallas County, and upon the Criminal District Court No. 2 of Dallas County, by the Constitution and laws of the State of Texas, said Courts 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 Courts, all the officers of said Courts 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 Dallas 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 Dallas County, Texas.

Sec. 3. Any Judge of any District Court of Dallas County may at his discretion transfer any cause or causes set out in Section 1 hereof that may at any time be pending in his Court to any other District Court of Dallas County by an order or orders entered upon the minutes of his Court; and the presiding Judge of the District Courts of Dallas County may in like manner assign any case in his Court or in any of the District Courts in Dallas County involving or pertaining to the matters set out in Section 1 hereof to any other Judge or Court, including the Criminal District Courts of Dallas 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 Fifth Supreme Judicial District of Texas in the manner now or that may hereafter be provided by law. [Acts 1935, 44th Leg., p. 604, ch. 243.]

HARRIS COUNTY CRIMINAL DISTRICT COURT

Art. 52—25. Galveston and Harris counties criminal judicial district changed to include only Harris county; criminal district court of Harris county created; original jurisdiction.—The territorial limits of the Criminal Judicial District composed of the counties of Galveston and Harris is hereby changed so as to hereafter include Harris county alone, and there is hereby created and established in the city of Houston, in the county of Harris, a Criminal District Court, which shall have original and exclusive jurisdiction over all criminal cases, both felony and misdemeanor, in the county of Harris, of which district and county courts under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall be known as "The Criminal District Court of Harris County." [Act 1911, p. 111, ch. 67, § 1.]

Art. 52—26. Appellate jurisdiction.—The said court shall have exclusive appellate jurisdiction over all criminal cases tried and determined by justices of the peace, mayors and recorders in said county of Harris, under the same rules and regulations as are provided by law for appeals from justices of the peace, mayors and recorders to the county courts in criminal cases. [Id., § 2.]

Art. 52—27. May grant habeas corpus, etc.—The judge of said court hereinafter provided for shall have power to grant writs of habeas corpus, mandamus and all writs necessary to enforce the jurisdiction of his court, under the same rules and regulations which govern district judges. [Id., § 3.]

Art. 52—28. Jurisdiction over bail bonds, etc.—Said court shall have jurisdiction over all bail bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereof, and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. [Id., § 4.]

Art. 52—29. Jurisdiction over cases transferred.—Said court shall have jurisdiction over all criminal cases heretofore transferred from other courts to the Criminal District Court of Harris County as heretofore established, and over such criminal cases as may hereafter be transferred to the court created by this Act, as fully in all respects as if said cases had originated in said court. [Id., § 5.]

Art. 52—30. Seal of court.—The said Criminal District Court of Harris County shall have a seal similar to the seal of the district court, with the words "Criminal District Court of Harris County" engraved thereon, an impression of which seal shall be attached to all writs and other process, except subpœnas issuing from said court, and shall be used in the authentication of all official acts of the clerk of the said court. [Id., § 6.]

Art. 52—31. Rules of practice; pleading and evidence.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern in so far as the same may be applicable. [Id., § 7.]

Art. 52—32. Selection, etc., of juries.—All laws regulating the selection, summoning, and impaneling of grand and petit jurors in the district court shall govern and apply in the criminal district court in so far as the same may be applicable; provided, that the clerk of the district court of Harris county shall assist in drawing the names of the jurors for said criminal court as is now provided by law. [Id., § 8.]

Art. 52—33. Procedure.—All rules of the criminal procedure governing the district and county courts shall apply to and govern said criminal district court. [Id., § 9.]

Art. 52—34. Terms of court.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in May, one term beginning the first Monday in August, one term beginning on the first Monday in November and one term beginning on the first Monday in February of each year. Each term shall continue until the business is disposed of. [Act 1903, ch. 18; Act 1911, p. 112, ch. 67, § 11.]

Art. 52—35. Extension of term.—Whenever the Criminal District Court of Harris County shall be engaged in the trial of any cause when the time for the expiration of the term of said court as fixed by law shall arrive, the judge presiding shall have the power and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case the extension of such term shall be shown on the minutes of the court before they are signed. [Act 1911, p. 112, ch. 67, § 12.]

Art. 52—36. Sheriff of Harris county shall attend, etc.—The sheriff of Harris county and his deputies shall attend upon said court and execute all the process issuing therefrom and perform all duties required by said court or the judge thereof, and shall perform all such services for said court as sheriffs and constables are authorized or required to perform in and for other district courts of this State and he shall receive the same fees for his services as are provided by law for the same services in the district court. [Id., § 13.]

Art. 52—37. Same powers as district court.—In all matters over which said criminal district court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of such power. [Id., § 14.]

Art. 52—38. Appeals and writs of error.—Appeals and writs of error may be prosecuted from the said criminal district court to the court of criminal appeals, in the same manner and form as from district courts in like cases. [Id. sec. 15, superseding article 2228, Rev. Civ. St. 1911.]

Art. 52—39. Harris county separate criminal judicial district judge, clerk, and district attorney, how elected; duties and powers.—The county of Harris is hereby created a separate criminal judicial district and at the next general election after this Act shall take effect, there shall be elected in and for said district a criminal district judge, a criminal district clerk and a district attorney, each of whom shall have and exercise, respectively, the same duties, powers and authority within said county as are now possessed and exercised by the judge of the criminal district court, the clerk of the criminal district court, and the district attorney for the criminal district composed of Galveston and Harris Counties, and such other duties as are prescribed herein. [Act 1911, p. 113, ch. 67, § 16.]

Art. 52—40. Abolished as to Galveston county; transfer of cases; jurisdiction of district and county courts, etc.; compensation of district clerk; special deputy clerks; duty of county attorney, etc.—From and after the taking effect of this Act, the criminal district now composed of Galveston and Harris counties shall cease to exist so far as it embraces Galveston county, and all cases of felony that are then pending on the docket of the Criminal District Court of Galveston County shall be at once transferred to the district courts in said county of the Tenth and Fifty-sixth Judicial Districts, the felony cases on said docket of even numbers shall be transferred to the district court for the Tenth Judicial District and the felony cases on said docket of odd numbers shall be transferred to the district court for the Fifty-sixth Judicial District, and the said district court for the Tenth Judicial District and the said court for the Fifty-sixth Judicial District are hereby vested with concurrent exclusive jurisdiction of all felony cases arising in the county of Galveston, and the judges of said courts are hereby vested with all powers, privileges, and authority given by the Constitution and laws of this State in criminal matters, to the district courts of this State; and the judge of the district court for the Tenth Judicial District and the judge of the district court for the Fifty-sixth Judicial District shall alternately impanel grand juries in said county of Galveston in the same manner provided therefor by the judges of the district courts of this State; and from and after taking effect of this Act, all cases of misdemeanor pending on the docket of the Criminal District Court of Galveston County shall be transferred to the County Court of Galveston County, Texas, unless there be a county court at law of said county, in which event they shall be transferred to the latter court; and said county court and the judge thereof is hereby vested with all the powers, privileges and authority in criminal cases that are conferred by the laws of this State on the county court; and the clerk of the District Court of Galveston County is hereby vested with the powers, duties and authority in criminal matters in cases of felony that are now conferred by law on clerks of the district court in this State, and shall be the custodian of the records in felony cases transferred from said Criminal District Court and hereafter arising in the county of Galveston; and the clerk of the County Court of Galveston County is hereby vested with the powers, duties and authority in criminal matters in cases of misdemeanor as are now conferred by law on the clerks of the county courts of this State, and such clerk shall be the custodian of the papers and records of misdemeanor cases arising in such county after such transfer. and the clerk of the Criminal District Court of Galveston County shall at once make the transfer of cases herein provided and turn over the papers and records of his office to the clerk of the district court and the clerk of the County Court of Galveston County as herein provided. The clerk of the district court shall file and docket the even numbered felony cases in the court of the Tenth Judicial District and the odd numbered felony cases in the court of the Fifty-sixth Judicial District, but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred by one of said district courts to the other, and in case of the disqualification of the judge of either of said courts and in any case, such case on his suggestion of disqualification shall stand transferred to the other of said courts and docketed by the clerk accordingly. All writs and process heretofore, or that may hereafter be issued, up to the time this Act shall take effect, which are made returnable to the Criminal District Court of Galveston and Harris Counties, shall be returnable to the court to which the cause has been or may be transferred in like manner as if originally made returnable to said court and all writs and process are hereby validated.

The district clerk of Galveston county shall receive the sum of $600.00 per annum, to be paid by the county of Galveston for ex officio services, and receive the same fees in criminal cases as fixed by law in felony cases, and the county clerk shall receive the sum of $600.00 per annum for ex officio services and be entitled to such fees as are provided by law in misdemeanor cases.

The county commissioners court shall have authority to pay for the services of a special deputy district or county clerk, or both, if in their judgment such shall be required; such assistant to be appointed by the clerk of the court in which his services are needed. The county attorney and his assistant shall conduct all prosecutions in said district and county courts and county court at law and said county attorneys and the clerks of said court shall receive such fees as are now or may hereafter be provided for by law. [Id., § 17.]

Art. 52—41. Continuation in matters of jurisdiction, records and procedure of former court.—The Criminal District Court of Harris County herein provided for shall, from and after the time when this Act takes effect, be taken and deemed to be, in respect to all matters of jurisdiction, records and procedure a continuation of the Criminal District Court of Galveston and Harris Counties as now organized for Harris county, it being the intention of this Act to reduce the territorial limits of the Criminal Judicial District of Galveston and Harris Counties to Harris county alone. [Id., § 17a.]

Art. 52—42. Judge, how elected; term; qualifications; salary; powers and duties.—The judge of the Criminal District Court of Harris County shall be elected by the qualified voters of said county for

a term of four years and shall hold his office until his successor is elected and qualified. He shall possess the same qualifications as are required of the judges of the district court and shall receive the salary and compensation as is now, or may hereafter be provided for district judges of this State, to be paid in the same manner as the salary and compensation of other district judges is paid. Said judge of said criminal district court shall have and exercise all the powers and duties which are now, or hereafter may be by law vested in and exercised by district judges of this State in criminal cases. The judge of said court may exchange with other district judges, as provided by law, and the said judge shall have all the power within said criminal district which is by the Constitution and laws of this State vested in district judges of their respective judicial districts, except that the jurisdiction and authority of said criminal district judge shall be limited to criminal cases, and to the exercise of such powers and the granting of such writs and process as may be necessary or incidental to the exercise of such criminal jurisdiction. [Id., § 18].

Art. 52—43. Criminal district attorney of Harris county; powers and duties.—There shall be elected by the qualified electors of the criminal district of Harris county, Texas, an attorney for said court who shall be styled "The Criminal District Attorney of Harris County," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said criminal district attorney shall possess all of the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other district attorneys. It shall be the duty of said criminal district attorney, or of his assistants, as hereinafter provided, to be in attendance upon each term of said Criminal District Court of Harris County and to represent the State in all matters pending before said court. And he shall have exclusive control of all criminal cases wherever pending, or in whatever court in Harris county that now has jurisdiction of criminal cases, as well as any or all courts that may be hereafter created and given jurisdiction of any criminal cases, and he shall collect the fees therefor provided by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Harris county, as well as before the criminal court of said county. The criminal district attorney of Harris county shall have and exercise, in addition to the specific powers given and duties imposed upon him by this Act, all such powers, duties and privileges within said criminal district of Harris county as are by law now conferred or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this State. It is further provided that he and his assistants shall have the exclusive right, and it shall be their sole duty to perform the duties provided for in this Act, except in cases of the absence from the county of the criminal district attorney and his assistants, or their inability or refusal to act; and no other person shall have the power to perform the duties provided in this Act, or to represent the State in any case in Harris county, except in case of the absence from Harris county, or the disability or refusal to act, of the criminal district attorney and his assistants. [Id., § 19.]

Art. 52—44. Same; appointment and compensation.—The said criminal district attorney of Harris county shall be commissioned by the Governor and shall receive a salary of five hundred dollars per annum, to be paid by the State, and in addition thereto shall receive the following fees in felony cases, to be paid by the State: For each conviction of felonious homicide, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases, where the defendant does not appeal, or dies, or escapes, after appeal, and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and judgment by confinement in the House of Correction and Reformatory, his fee shall be fifteen dollars. For representing the State in each case of habeas corpus where the defendant is charged with a felony, the sum of twenty dollars. For representing the State in examining trials, in felony cases, where indictment is returned, in each case, the sum of five dollars. The criminal district attorney shall also receive such fees in misdemeanor cases, to be paid by the defendant and by the county, as is now provided by law for district and county attorneys, and he shall also receive such compensation for other services rendered by him as is now, or may hereafter be, authorized by law to be paid to other district and county attorneys in this State. [Id., § 20.]

Art. 52—45. Same; accounting for fees in excess of specified amount.—The criminal district attorney of Harris county shall retain out of the fees earned by him in the Criminal District Court of Harris County the sum of twenty-five hundred dollars per annum, and in addition thereto, one-fourth of the gross excess of all fees in excess of twenty-five hundred dollars per annum, the three-fourths of the excess over and above twenty-five hundred dollars per annum, remaining, to be paid by him into the treasury of Harris county. It is provided that in arriving at the amount collected by him, he shall include the fees arising from all classes of criminal cases of which the Criminal District Court of Harris County has original and exclusive jurisdiction, whether felony, misdemeanor, habeas corpus hearings, or commission on fines and forfeitures collected in said court, it being the intention of this Act that the criminal district attorney of Harris county shall include all fees of every kind and class earned by him in said criminal district court in arriving at the amount collected by him; it being further provided that at the end of each year he shall make a full and complete report and accounting to the county judge of Harris county of the amount of such fees collected by him. [Id., § 21.]

Art. 52—46. Same; assistants and stenographer; salaries; oath; removal; powers of assistants; fees.—The Criminal District Attorney of Harris County shall appoint two assistant criminal district attorneys, who shall each receive a salary of eighteen hundred dollars per annum, payable monthly. He shall also appoint a stenographer, who shall receive a salary of not more than twelve hundred dollars per annum, payable monthly. In addition to the assistant criminal district attorneys and stenographer, above provided for, the county judge of Harris County may, with the approval of the commissioners' court, appoint as many additional assistants as may be necessary to properly administer the affairs of the office of Criminal District Attorney and enforce the law, upon the Criminal District Attorney making application under oath, addressed to the County Judge of Harris County, setting out the need therefor, provided, the county judge, with the approval of the commissioners' court may discontinue the service of any one or more of the assistant criminal district attorneys provided for in this Act, when in his judgment and of the judgment of the commissioners' court, they are not necessary; provided that the additional assistants appointed by the county judge as herein provided for shall receive not more than $1,800.00 per year, payable monthly. The salaries of all assist-

ants shall be paid by Harris County; provided that if the above salaries be insufficient and inadequate for the proper investigation of crime in Harris County and the efficient performance of the duties of said office, then the Criminal District Attorney may contract for and pay such additional compensation as is necessary for the proper and efficient discharge of his duties, out of the excess fees collected by him which would otherwise go to the county, a detailed itemized statement, under oath, of which he shall include in his annual report to the County Judge of Harris County, to be approved by the county auditor, but in no event shall the county be liable for such extra compensation. Provided further that before said Criminal District Attorney shall pay such extra compensation he shall secure the written approval of a majority of the District Judges of Harris County. The assistant criminal district attorneys above provided for, when so appointed, shall take the oath of office and be authorized to represent the State before said Criminal District Court, and in all other courts in Harris County in which the Criminal District Attorney of Harris County, is authorized by this Act to represent the State, such authority to be exercised under the direction of the said Criminal District Attorney, and which assistants shall be subject to removal at the will of the said Criminal District Attorney. Each of said assistant criminal district attorneys shall be authorized to file informations, examine witnesses before the grand jury and generally to perform any duty devolving upon the Criminal District Attorney of Harris County, and to exercise any power conferred by law upon the said Criminal District Attorney when by him so authorized. The Criminal District Attorney of Harris County shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services should have been rendered by himself. Provided, further, that the $2,500 in fees and the one-fourth of the excess fees heretofore provided for shall in no event exceed the total sum of $6,000 per year as compensation to said District Attorney, and any amount in excess thereof shall be turned in to the County Treasurer. [Act Feb. 23, 1917, ch. 42, § 1.]

Art. 52—47. Clerk, how elected; term; fee; salary; powers and duties; deputies.—The clerk of the Criminal District Court of Harris County shall be elected by the qualified voters of Harris county, and shall hold his office for a term of two years, and until his successor is elected and qualified. Said clerk shall receive such fees as are now or may hereafter be prescribed by law to be paid to the clerk of the district courts of this State, and to be paid and collected in the same manner; and in addition thereto, he shall receive an annual salary of one thousand dollars, to be paid out of the treasury of Harris county monthly. Said clerk shall have the same power and authority, and shall perform the same duties with respect to said Criminal District Court of Harris County as are by law conferred upon the clerks of other district courts in criminal cases, and shall have authority to appoint one or more deputies as needed, whose salary shall be paid by said clerk. Said deputies shall take the oath of office prescribed by the Constitution of this State, and said deputies are authorized to perform such services as may be authorized by said criminal district clerk, and shall be removable at the will of the clerk. [Act 1911, p. 117, ch. 67, § 23.]

Acts 1933, 43rd Leg., Spec.L., p. 78, ch. 62, abolishes the office of the Clerk of the Criminal District Court of Harris County, transfers his duty to the Clerk of the District Court of Harris County and requires the retiring clerk to deliver all records to the Clerk of the District Court.

Art. 52—48. Judge, attorney and clerk to continue in office until, etc.; clerk to be appointed.—The criminal district judge and the criminal district attorney of the criminal judicial district composed of Galveston and Harris counties, who shall be in office at the time when this Act goes into effect, shall continue in office, respectively, as the judge and the district attorney of the Criminal District Court of Harris County until the next general election, or until their successors shall be elected and qualified.

The clerk of the Criminal District Court of Harris County who shall be in office at the time when this Act goes into effect shall continue in office as clerk of the Criminal District Court of Harris County until January 1, A. D. 1912, and until his successor is appointed and qualified.

The Governor shall, on January 1, 1912, or thereafter, appoint a clerk of the Criminal District Court of Harris County, who shall hold his office from January 1, A. D. 1912, until the next general election, or until his successor is elected and qualified. [Id., § 24.]

TRAVIS COUNTY CRIMINAL DISTRICT COURT

Art. 52—49. Criminal District Court of Travis County; jurisdiction.—The criminal district court of Travis and Williamson Counties, as now created by law shall when this bill takes effect, be known as the Criminal District Court of Travis County, Texas, and shall exercise, have and enforce all the powers and jurisdiction which it now has within and for Travis County and, in addition thereto, shall have and exercise all of the jurisdiction, powers, and functions of a district court under the Constitution and laws of the State of Texas; provided, however, that it shall not exercise or have any jurisdiction or powers as such other than is incident to a district court of general jurisdiction, it being the purpose of this Act to take Williamson County out of the district of said criminal district court as now organized and confine its jurisdiction exclusively to Travis County. The said criminal district court, when this bill becomes effective, shall have the right and power to certify and transfer to the Fifty-third Judicial District Court either civil or criminal cases and the Fifty-third Judicial District Court shall have the right to certify and transfer to the criminal district court of Travis County for trial civil cases. Civil cases may be filed or instituted in either the criminal district court of Travis County or in the Fifty-third Judicial District Court in Travis County and both of said courts, or either of them, shall have the right, power and jurisdiction to try either civil or criminal cases within its jurisdiction under the Constitution and General Laws of the State. The Criminal District Court of Travis County shall continue, as now provided by law, to select jury commissioners and impanel grand juries and exercise all of the other powers, functions and jurisdiction now conferred upon it by law, it being the purpose of this Act, not to repeal the Act hereby amended otherwise than is herein specifically done, and this Act is in addition to and cumulative of the Act hereby amended. [Acts 1923, 38th Leg., ch. 68, § 5.]

Art. 52—50. Terms of Court.—The Criminal District Court of Travis County shall hold its terms at the following time, to-wit: On the first Monday in February and may continue in session to and including the last Saturday in March; on the first Monday in April and may continue in session to and including the last Saturday in May; on the first Monday in June and may continue in session to and including the last Saturday in August; on the first Monday in October and may continue in session to and including the last Saturday in November; on the first Monday in December and may continue in session to and including the last Saturday in January. [Acts 1923, 38th Leg., ch. 68, § 5a.]

Art. 52—51. Clerk.—The district clerk of Travis County shall be the clerk of the district courts for the Fifty-third Judicial District and of the Criminal Dis-

trict Court of Travis County and shall perform all of the duties of clerk of the said two courts. [Acts 1923, 38th Leg., ch. 68, § 6.]

Art. 52—52. Election of judge; term.—At the general election, next preceding the taking effect of this Act, there shall be elected, a district judge for the Criminal District Court of Travis County who shall qualify as soon as the Act takes effect, and his term of office shall be four years, and he shall continue in office until his successor is elected and qualified. [Acts 1923, 38th Leg., ch. 68, § 8.]

Art. 52—53. Court reporter.—Upon the taking effect of this Act, the respective judges of each of the said three district courts shall, each for his respective court, appoint an official court reporter who shall have the qualifications and be subject to the same regulations and receive the same compensation as is now, or may hereafter be, fixed by law, for court reporters in district courts. [Acts 1923, 38th Leg., ch. 68, § 9.]

Art. 52—54. District attorney for Fifty-Third Judicial District; election; compensation.—The office of district attorney of Travis and Williamson Counties from and after the first day of January, 1927, shall cease to exist, and there shall be elected a district attorney for the Fifty-third Judicial District at the next general election after the passage of this Act, and at each general election thereafter. He shall represent the State in all criminal cases in all of the district courts of Travis County, and perform such other duties as are or may be provided by law governing district attorneys; and he shall receive, in addition to the five hundred ($500.00) dollars per annum allowed by law to district attorneys, the same per diem and compensation provided by law for district attorneys in judicial districts of this State composed of two or more counties. [Acts 1923, 38th Leg., ch. 68, § 10; Acts 1925, 39th Leg., p. 355, ch. 147, § 1.]

The amendatory Act of 1925, cited to the text, was also published as article 322a in Rev.Civ.St.1925.

Art. 52—55. Grand juries.—Grand juries for the Criminal District Court of Travis County shall be organized at each of the terms of said court. And grand juries for the Twenty-sixth Judicial District Court shall be organized at the January, May and September terms of the said court; provided, however, that the judge of the district court for the Twenty-sixth Judicial District may, when deemed necessary, organize and impanel grand juries at any other term of said court by entering an order therefor. [Acts 1923, 38th Leg., ch. 68, § 11.]

Art. 52—56. Transfer of causes.—Upon the taking effect of this Act the district clerk of Williamson County shall transfer all causes pending on the docket of the said Criminal District Court in Williamson County to the docket of the Twenty-sixth Judicial District Court; and that all causes so transferred shall be disposed of as though originally filed in the said court to which they were so transferred. [Acts 1923, 38th Leg., ch. 68, § 13.]

Art. 52—57. Same.—Either judge of the Fifty-third Judicial District or the Criminal District Court of Travis County may, in his discretion, at any time, transfer any cause pending on the docket of his court to the other District Court in Travis County, and when the said transfer is so made the said cause so transferred shall be disposed of by the court to which the same was so transferred as though originally filed in the said court. [Acts 1923, 38th Leg., ch. 68, § 14.]

Art. 52—58. Writs, processes, bonds, etc.; return.—All writs, processes, bonds, recognizances and orders in civil and criminal cases and matters, issued, executed, entered into, or required prior to the taking effect of this Act, in the Twenty-sixth Judicial District Court, and in the Criminal District Court of Travis and Williamson Counties, respectively, and returnable to terms of said courts, as heretofore fixed by law, in the counties of Travis and Williamson, are hereby made returnable to the next ensuing terms of the respective courts to which they are required to be transferred, under the provisions of this Act, and shall be as valid and binding as if no change had been made in said courts, or in the time of holding same; and all juries drawn and selected under existing laws shall be as valid as if no change had been made in said courts or in the time of holding same; and at the last term of the Criminal District Court for Travis and Williamson Counties held in Williamson and Travis Counties, under existing laws, the judge of said criminal district court shall provide for the drawing and selection of a grand jury for the proper terms of court in Travis and Williamson Counties, to be held after this Act takes effect; and the said petit and grand juries so drawn and selected shall be required to appear and serve and their acts shall be valid as if no change had been made in said courts, or in the times of holding said courts. [Acts 1923, 38th Leg., ch. 68, § 15.]

Art. 52—59. Judgments and orders.—This Act shall not be construed to in anywise or in any manner affect judgments or orders rendered or made in the Twenty-sixth Judicial District Court in Travis County, or rendered or made in the Criminal District Court for Travis and Williamson Counties, in either of said counties prior to the taking effect of this Act; but it is provided that after this Act becomes effective as a law the Twenty-sixth Judicial District shall have jurisdiction of all judgments, orders and matters over which the Criminal District Court of Travis and Williamson Counties had or could exercise jurisdiction in Williamson County under the law as it now exists; and after this Act becomes effective as a law the Fifty-third Judicial District Court and the Criminal District Court of Travis County shall have jurisdiction of all judgments, orders and matters over which the Criminal District Court for Travis and Williamson Counties and the Twenty-sixth Judicial District had or could exercise jurisdiction in Travis County under the law as it now exists. [Acts 1923, 38th Leg., ch. 68, § 16.]

Art. 52—60. Taking effect of Act.—It is provided that this Act shall take effect and be in force on and after January first, 1925. [Acts 1923, 38th Leg., ch. 68, § 17.]

Art. 52—61. Repeal.—All laws and parts of laws in conflict herewith be, and the same are hereby, repealed. [Acts 1923, 38th Leg., ch. 68, § 18.]

NUECES, KLEBERG, KENEDY, WILLACY AND CAMERON COUNTIES—CRIMINAL DISTRICT COURT

Art. 52—62. Criminal District Court of Nueces, Kleberg, Kenedy, Willacy and Cameron, Counties.—See Rev. Civ. St. art. 199—28.

TARRANT COUNTY CRIMINAL DISTRICT COURT

Art. 52—63. Court for Tarrant County created; jurisdiction.—There is hereby created and established at the city of Ft. Worth a Criminal District Court to be known as "Criminal District Court of Tarrant County," which Court shall have and exercise, from and after the taking effect of this Act, original and exclusive jurisdiction over all criminal cases of the grade of felony in the county of Tarrant of which district courts, under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall have and exercise such concurrent jurisdiction with the county court of Tarrant county over misdemeanor cases as is hereinafter provided by this Act. [Act March 15, 1917, ch. 77, § 1.]

Art. 52—64. Criminal judicial district created.—There is hereby created and established a Criminal Judicial District of Tarrant County, Texas, to be composed of the County of Tarrant, Texas, alone and which shall be co-extensive with the territorial boundaries and limits of said Tarrant County, and the Crim-

inal District Court of Tarrant County, Texas, shall have and exercise all of the criminal jurisdiction of and for said Criminal District of Tarrant County, Texas, which is now conferred by law on said Criminal District Court. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 1.]

Art. 52—65. Jurisdiction; transfer of causes.—From and after the time this Act shall take effect, the county court of Tarrant county and the Criminal District Court of Tarrant county created by this Act, shall have and exercise concurrent jurisdiction with each other in all misdemeanor cases of which the county court of Tarrant county may now, or may hereafter have exclusive jurisdiction; and of such misdemeanor cases as shall be filed in said county court on appeal from justices' or recorders' courts; and either the judge of said Criminal District Court, or the judge of said county court of Tarrant county, may upon motion of the county attorney of Tarrant county, or other officer representing the State in said courts, in his discretion transfer any cause or causes that may at any time be pending in his court to the other court by an order or orders entered upon the minutes of his court; and where such transfer or transfers, are made, the clerk of the court making such transfer shall certify to the clerk of the court to which such transfer is made a statement of the cause or causes so transferred giving the style and number of the same to the clerk of the court to which such transfer is made and shall accompany such statement with all the papers in said cause or causes so transferred and upon receipt of such statement and the papers in such cause or causes so transferred, the clerk of the court to which such transfer is made shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of the court to which such transfer or transfers are made shall dispose of said cause or causes in the same manner as if such cases were originally instituted in said court. [Act March 15, 1917, ch. 77, § 2.]

Art. 52—66. Jurisdiction over bail bonds, etc.—Said court shall have jurisdiction over all bail bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereof and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. [Id., § 3.]

Art. 52—67. Seal of court.—The said Criminal District Court of Tarrant county shall have a seal similar to the seal of the district court with the words "Criminal District Court of Tarrant county" engraved thereon, an impression of which seal shall be attached to all writs and other processes, except subpœnas, issuing from said court, and shall be used in the authentication of the official acts of the clerk of said court. [Id., § 4.]

Art. 52—68. Procedure.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern insofar as the same may be applicable. [Id., § 5.]

Art. 52—69. Jury laws to apply.—All laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern and apply in the Criminal District Court in so far as the same may be applicable. [Id., § 6.]

Art. 52—70. Rules of criminal procedure.—All rules of criminal procedure governing the district and county courts shall apply to and govern said Criminal District Court. [Id., § 7.]

Art. 52—71. Juries in misdemeanor cases.—Said Criminal District Court of Tarrant County shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant. [Id., § 8.]

Art. 52—72. Terms of court; grand jury.—Said Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of. The grand jury shall be impanelled in said court for each term thereof, unless otherwise directed by the judge of said Court. [Id., § 9.]

Art. 52—73. Continuance of term.—Whenever the Criminal District Court of Tarrant County shall be engaged in the trial of any cause when the time for expiration of the terms of said court as fixed by law shall arrive, the judge presiding shall have the power, and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case, the extension of such term shall be shown on the minutes of the court before they are signed. [Id., § 10.]

Art. 52—74. Officers.—The sheriff, county attorney, and the clerk of the district court of Tarrant county shall be the sheriff, county attorney and clerk, respectively, of said Criminal District Court under the same rules and regulations as are now, or may hereafter be prescribed by law for the government of sheriffs, county attorneys, and clerks of the district courts of this State; and said sheriff, county attorney and clerk shall respectively receive such fees as are now, or may hereafter be prescribed for such officers in the district courts of the State, to be paid in the same manner, provided that the clerk of the court herein created, shall receive as compensation for his services the sum of $125.00 (one hundred and twenty-five dollars) per month, to be paid as all the salaries of other clerks of criminal district courts in this State. [Id., § 11.]

Art. 52—75. Same powers as district court; rules.—In all such matters over which said Criminal District Court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of said power. [Id., § 12.]

Art. 52—76. Appeal and error.—Appeals and writs of error may be prosecuted from said Criminal District Court to the court of criminal appeals in criminal cases and to the courts of civil appeals in the same manner and form as from district courts in like cases. [Id., § 13.]

Art. 52—77. Jurisdiction of district court.—From and after the taking effect of this Act, the district courts of Tarrant county as now constituted, shall be, and they are hereby deprived and divested of all jurisdiction in all criminal cases, and of all jurisdiction given the Criminal District Court of Tarrant county by this Act, and all criminal causes pending in said district courts at the time of the taking effect of this Act and all matters pertaining to criminal cases pending therein over which the court herein created is given jurisdiction, shall be, by the judges of the other district courts ordered transferred to and entered upon the docket of said Criminal District Court, and when so entered upon the docket, the judge of said Criminal District Court shall try and dispose of same in the same manner as if such cases were originally instituted therein. Provided that the other district courts of Tarrant county shall have jurisdiction concurrently with this court to empanel grand juries and to receive their bills of indictment and make proper transfer of same to the Criminal District Court. [Id., § 14.]

Art. 52—78. Judge; election; term; qualifications; salary; powers; appointment.—The judge of said Criminal Court of Tarrant county shall be elected by the qualified voters of Tarrant county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now, or may hereafter be paid, to the district judges to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of this State in criminal cases. Provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court who shall hold the office until the next general election after the passage of this Act, and until his successor shall have been elected and qualified. [Id., § 15.]

Art. 52—79. Exchange of judges; disqualification or absence.—The judge of said criminal district court may exchange districts with or hold court for any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of a judge, a special judge may be selected. [Id., § 16.]

Art. 52—80. Validation of process heretofore issued.—All orders heretofore made and all process heretofore issued in any criminal cause so transferred are hereby validated and made of full force and effect in the Criminal District Court of Tarrant county. [Id., § 17.]

Art. 52—81. Criminal district attorney; election; term of office; qualifications; oath; bond.—There shall be elected by the qualified electors of the Criminal Judicial District of Tarrant County, Texas, an Attorney for said District who shall be styled the "Criminal District Attorney of Tarrant County" and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other District Attorneys. [Acts 1919, 36th Leg., 2d C. S., ch. 80, § 2.]

Art. 52—82. Same; powers and duties.—It shall be the duty of said Criminal District Attorney or his assistants as herein provided to be in attendance upon each term and all sessions of the Criminal District Court of Tarrant County, and of all sessions and terms of the County Court of Tarrant County, Texas, held for the transaction of criminal business, and to represent the State in all matters pending before said Courts, and to represent Tarrant County in all matters pending before such Courts, the Commissioners' Court of Tarrant County and Justice Courts and any other courts where said Tarrant County has pending business of any kind or matter of concern or interest. The Criminal District Attorney of Tarrant County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within such criminal district of Tarrant County as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys in the various Counties and Judicial Districts of this State. [Id , § 3.]

Art. 52—83. Same; compensation.—Said Criminal District Attorney of Tarrant County shall be commissioned by the Governor and shall receive as salary and compensation the following and no more:

A salary of Five Hundred ($500.00) Dollars from the State of Texas, as provided in the Constitution of the State of Texas, for the salary of District Attorney, and so much of the fees, commissions and perquisites earned by said office to make up the total compensation to the sum of Six Thousand ($6,000) Dollars; provided, that the amount of such salary, fees and perquisites to be received and retained by him shall never exceed the sum of Six Thousand ($6,000) Dollars in any one year; and, provided, further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of $6,000 during each and every fiscal year shall be paid into the County Treasury of said county in accordance with the terms and provisions of the maximum fee bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, as hereinafter provided. [Id., § 4.]

Art. 52—84. Same; assistants.—The Criminal District Attorney of Tarrant County, for the purpose of conducting the affairs of such office, shall be and is hereby authorized, by and with the written consent of the county judge of said county, to appoint such assistant district attorneys who shall have all the qualifications of the criminal district attorney, as are necessary to perform the duties and affairs of such office, not to exceed six in number, two of whom shall receive a salary not to exceed three thousand dollars each per annum; two of whom shall receive a salary not to exceed twenty-five hundred dollars each per annum; one of whom shall receive a salary not to exceed twenty-one hundred dollars per annum; one of whom shall receive a salary not to exceed fifteen hundred dollars per annum. Said criminal district attorney shall also be authorized, with the consent of the county judge of said county, to appoint, not to exceed two assistants who shall not be required to possess the qualifications prescribed by law for criminal district attorneys, who shall perform such duties as may be assigned to them by said criminal district attorney, and who shall receive as their compensation a salary not to exceed twenty-one hundred dollars each per annum. All salaries above mentioned shall be payable monthly, and the said salaries to be paid only out of the fees of office collected by said district attorney, said fees of office to be the same as are now allowed and permitted by law to be paid to the county and district attorneys of this State. The fixing of the amount of salaries to be paid by said criminal district attorney to said assistants shall be fixed and regulated by the commissioners court of said county by an order passed at a regular session of said court and duly spread upon the minutes of said court; provided that the two assistants to the district attorney who are not required to have the qualifications of a criminal district attorney shall, so far as Tarrant County is concerned, be in lieu of the assistants of like character provided for in any statutes of this State. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 5; Acts 1920, 36th Leg. 3d C. S., ch. 6, § 1 (§ 5).]

Art. 52—85. Same; assistants; oath, etc.—The Assistant Criminal District Attorneys above provided for when so appointed shall take the oath of office as such, and be authorized to represent the State before the Criminal District Court of Tarrant County in which the Criminal District Attorney of Tarrant County is authorized by this Act to represent the State, or to represent Tarrant County. Each of said Assistant Criminal District Attorneys shall be authorized to administer oaths, file information, examine witnesses before the Grand Jury, and generally to perform any duty devolving upon the Criminal District Attorney of Tarrant County, and to exercise any power conferred by law upon such Criminal District Attorney when by him so authorized and directed. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 6.]

Art. 52—86. Same; powers; fees.—Said Criminal District Attorney of Tarrant County shall be clothed with all the powers and vested with all the rights and privileges conferred upon County Attorneys and District Attorneys of this state, and shall receive no salary or compensation or perquisites or fees of any character save those provided in Section 4 of this Act. All fees or commissions from all sources, including fees and commissions in all criminal and civil cases, and for the prosecution of all tax suits, and from every other

source, shall be turned over to the County Treasurer of said County by the said District Attorney, subject only to the payment of the salary of himself and his deputies, as provided in this Act. [Id., § 7.]

Art. 52—87. Same; election.—The Criminal District Attorney of Tarrant County, as provided for in this Act shall be elected by the qualified voters of the Criminal Judicial District of Tarrant County at the next general election, but it is provided and directed that the present County Attorney of Tarrant County shall continue in office and assume the duties and be known as the "Criminal District Attorney of Tarrant County" and shall proceed to organize and arrange the affairs of the office of the Criminal District Attorney of Tarrant County, and appoint Assistants as provided for in this Act, and receive the compensation and salary provided for in this Act for such office until the next general election, and until his successor shall be elected and qualified. Provided this Act shall not be construed as, creating any Court additional to those now existing in Tarrant County. [Id., § 8.]

Section 9 of Acts 1919, 36th Leg., 2d C. S., ch. 80, p. 246, repeals all conflicting laws.

Art. 52—87a1. Criminal District Court No. 2 of Tarrant County.—That there is hereby created and established at the City of Fort Worth, a Criminal District Court to be known as the "Criminal District Court No. 2 of Tarrant County", which Court shall have and exercise concurrent jurisdiction with the Criminal District Court of Tarrant County under the constitution and laws of the State of Texas. [Acts 1947, 50th Leg., p. 636, ch. 337, § 1.]

Section 11 of the Act of 1947 repealed conflicting laws. Section 12 provided that partial invalidity should not affect the remainder of the Act.

Art. 52—87a2. Jurisdiction; concurrent jurisdiction; transfer of causes.—From and after the time this law shall take effect, the Criminal District Court of Tarrant County and the Criminal District Court No. 2 of Tarrant County shall have and exercise concurrent jurisdiction with each other in all felony and misdemeanor causes, and in all matters and proceedings of which the said Criminal District Court of Tarrant County has jurisdiction; and either of the Judges of said Criminal District Courts may in their discretion transfer any cause or causes that may at any time be pending in his court to the other Criminal District Court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made the Clerk of such Criminal District 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 of that court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court; and the said Criminal District Court No. 2 of Tarrant County, Texas, shall have and exercise original and concurrent jurisdiction over misdemeanor cases as is hereafter provided by this Act. [Acts 1947, 50th Leg., p. 636, ch. 337, § 2.]

Art. 52—87a3. Misdemeanor cases.—From and after the date this Act shall take effect the Criminal District Court No. 2 of Tarrant County, Texas, shall have and exercise original and concurrent jurisdiction of all misdemeanor cases of which the County Courts at Law Nos. 1 and 2 now have concurrent jurisdiction, and of such misdemeanor cases as shall be filed in said County Courts at Law of Tarrant County, Texas, on appeal from Justices or Recorders Courts and either the Judge of said Criminal District Court No. 2 or the Judge of said County Court at Law, may, upon motion of the District Attorney of Tarrant County, or other officer representing the state in said court, in his discretion, transfer any cause or causes that may at any time be pending in his court to the other court by an order or orders upon the minutes of his court; and where such transfer or transfers are made, the Clerk of the court making such transfer shall certify to the Clerk of the court to which such transfer or transfers are made, and when so entered upon the docket the Judge of the court to which such transfer or transfers are made, shall dispose of said cause or causes in the same manner as if such cases were originally instituted in said court. [Acts 1947, 50th Leg., p. 636, ch. 337, § 3.]

Art. 52—87a4. Transfer of cases pending in County Courts at Law; County Court at Law No. 1 abolished; County Court at Law No. 2 as County Court at Law of Tarrant County.—Immediately after this Act takes effect the Clerk of the County Courts at Law Nos. 1 and 2, Tarrant County, Texas, shall transfer all civil cases which may be pending in the County Court at Law No. 1 to the County Court at Law No. 2, and all misdemeanor cases which may be pending in said County Courts at Law Nos. 1 and 2 to the Criminal District Court No. 2 of Tarrant County, Texas; and the office of Judge of the County Court at Law No. 1 of Tarrant County, Texas, shall be abolished and the said County Court at Law No. 2 shall hereafter be known as the County Court at Law of Tarrant County, Texas. All process and orders issued by the court transferring any case under the provisions of this Act shall be valid for all purposes in the court to which such case is transferred as if originally issued or made by the court to which such case is transferred. [Acts 1947, 50th Leg., p. 636, ch. 337, § 4.]

Art. 52—87a5. Judge of Criminal District Court No. 2 of Tarrant County.—The Judge of the said Criminal District Court No. 2 of Tarrant County, Texas, shall be elected by the qualified voters of Tarrant County for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as required of the Judge of a District Court, and shall receive the same salary as is now or may hereafter be paid to the District Judges and to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by District Judges of the Criminal District Court of Tarrant County. The Judge of said court may exchange with any District Judge, as provided by law in cases of District Judges, and, in case of disqualification or absence of a Judge, a Special Judge may be selected, elected or appointed as provided by law in cases of District Judges; provided, that the Governor, under the authority now provided by law, upon this Act becoming effective shall appoint a Judge of said court, who shall hold the office until the next general election after the passage of this law, and until his successor shall have been elected and qualified. Either of the Judges of said Criminal District Courts may, in his discretion, in the absence or inability to serve of the Judge of the other Criminal District Court from his court room or from the County of Tarrant, Texas, try and dispose of any cause or causes that may be pending in such Criminal District Court as fully as could such absent Judge were he personally present and presiding. And either of said Judges may receive in open court from the Foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any empaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such other District Judge could do if personally present and presiding over such court; and make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto as the regular-

Judge of said Criminal District Court could make if personally present and presiding. [Acts 1947, 50th Leg., p. 636, ch. 337, § 5.]

Art. 52—87a6. Seal; certified copies of orders, etc.—Said court shall have a seal of like design as the seal now provided by law for District Courts, except that the words "Criminal District Court No. 2 of Tarrant County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seal of the District Courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said court, under the hand of the Clerk and attested by the seal of said court shall be admissible in evidence in all the courts of this state in like manner as similar certified copies from the courts of record are now or may hereafter be admissible. [Acts 1947, 50th Leg., p. 636, ch. 337, § 6.]

Art. 52—87a7. Sheriff, Criminal District Attorney and Clerk of Criminal District Court No. 2 of Tarrant County.—The Sheriff, Criminal District Attorney and Clerk of the District Courts of Tarrant County, as heretofore provided by law, shall be the Sheriff, District Attorney and Clerk, respectively, of said Criminal District Court No. 2 of Tarrant County under the same rules and regulations as are now or may hereafter be prescribed by law for the government of Sheriffs, District Attorneys and Clerks of the District Courts of the state; and said Sheriff, Criminal District Attorney and Clerk shall, respectively, receive such fees as are now or may hereafter be prescribed by law for such offices in the District Courts of the state and to be paid in the same manner. [Acts 1947, 50th Leg., p. 636, ch. 337, § 7.]

Art. 52—87a8. Additional Deputy District Clerks; Assistant Criminal District Attorney.—The County Commissioners Court shall have authority to authorize the employment of such additional Deputy District Clerks as in their judgment shall be required, and to pay out of the General Fund of the county for their services such Deputy or Deputies to be appointed by the District Clerk of Tarrant County, Texas, and to be removable at the will of the Clerk, and to be paid a salary not to exceed the compensation allowed by law to other Deputy District Clerks. The Criminal District Attorney may appoint an Assistant Criminal District Attorney, in addition to those now provided by law, to attend said court. Said Assistant shall have the authority and shall qualify as provided by law for Assistant Criminal District Attorneys, and shall be removable at the will of the Criminal District Attorney, and shall receive a salary not to exceed the maximum salary allowed Assistant Criminal District Attorneys; said salary to be payable as is provided by law. [Acts 1947, 50th Leg., p. 636, ch. 337, § 8.]

Art. 52—87a9. Terms of Criminal District Court No. 2 of Tarrant County; trial and proceedings.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it; one term beginning the first Monday in January, one term beginning the first Monday in April, one term beginning on the first Monday in July, and one term beginning the first Monday in October, of each year. The trials and proceedings in said court shall be conducted according to the law governing the practice and proceedings in felony and misdemeanor cases. The District Judges of the Criminal District Courts of Tarrant County may alternately appoint Grand Jury Commissioners and empanel grand juries. [Acts 1947, 50th Leg., p. 636, ch. 337, § 9.]

Art. 52—87a10. Jurors; selection, summoning and empaneling.—All laws regulating the selection, summoning and empaneling of grand and petit jurors in the District Courts shall govern and apply in the Criminal District Court No. 2 of Tarrant County, insofar as the same may be applicable. Provisions of the articles commonly known as the "Jury Wheel Law" shall remain in full force and effect insofar as the same may be applicable. [Acts 1947, 50th Leg., p. 636, ch. 337, § 10.]

Art. 52—87a10a. Salary of judge.—The salary for such District Judge shall be the same as the salary provided for other District Judges in this state. There is hereby appropriated to pay the salary of such Judge for the biennium beginning September 1, 1947, the sum of Six Thousand ($6 000.00) Dollars for each year of such biennium, which said salary shall be paid in monthly installments out of the General Revenue Fund of the state in the same manner as provided for other District Judges in House Bill No. 244, Acts of the Regular Session, 50th Legislature, 1947. [Acts 1947, 50th Leg., p. 636, ch. 337, § 10a.]

JURISDICTION OF COUNTY COURTS

Art. 52—88. [91] County Courts; exclusive jurisdiction of misdemeanors, except, etc.—The county courts shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except cases in which the highest penalty or fine that may be imposed under the law may not exceed two hundred dollars, and except in counties where there is established a criminal district court. [Const., art. 5, § 16; Act June 16, 1876, p. 13, § 3.]

Art. 52—89. [92] Power to forfeit bail bonds.—County courts shall have jurisdiction in the forfeiture and final judgment of all bonds and recognizances taken in criminal cases, of which criminal cases said courts have jurisdiction. [Act June 16, 1876, p. 18, § 3.]

Art. 52—90. [93] Power to issue writs of habeas corpus.—The county courts, or judges thereof, shall have the power to issue writs of habeas corpus in all cases in which the constitution has not conferred the power on the district courts or judges thereof; and, upon the return of such writ, may remand to custody, admit to bail or discharge the person imprisoned or detained, as the law and nature of the case may require. [Const., art. 5, § 16; Act June 16, 1876, p. 19, § 5.]

Art. 52—91. [94] Appellate jurisdiction.—The county courts shall have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals have original jurisdiction. [Const., art. 5, § 16; Act June 16, 1876, p. 18, § 3.]

DALLAS COUNTY COURT AT LAW

Art. 52—92. Creation of county court of Dallas county, at law.—There is hereby created a court to be held in Dallas county, to be called the "County Court of Dallas County, at Law." [Acts 1907, p. 115, sec. 1.]

Art. 52—93. County court of Dallas county at law, jurisdiction of defined.—The county court of Dallas county at law shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the state, the county court of said county would have jurisdiction, except as provided in article 102;[1] and all cases other than probate matters, and such as are provided in article 102,[1] be, and the same are hereby, transferred to the county court of Dallas county at law; and all writs and process, civil and criminal, heretofore issued by or out of said county court, other than pertaining to matters over which, by article 102,[1] jurisdiction remains in the county court of Dallas county, be and the same are hereby made returnable to the county court of Dallas county at law. The jurisdiction of the county court of Dallas county at law, and of the judge thereof, shall extend to all matters of eminent domain, of which jurisdiction has been

heretofore vested in the county court or in the county judge; but this provision shall not affect the jurisdiction of the commissioners' court, or of the county judge of Dallas county as the presiding officer of such commissioners' court, as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or the judge thereof. [Act 1907, p. 115.]

[1] Now Article 52—94, post.

Art. 52—94. Jurisdiction retained by the county court of Dallas county.—The county court of Dallas county shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, person non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Dallas county shall have no other jurisdiction, civil or criminal. The county judge of Dallas county shall be the judge of the county court of Dallas county. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Dallas county, except in so far as the same shall, by this act, be committed to the judge of the county court of Dallas county at law. [Id., p. 115.]

Art. 52—95. Terms of county court of Dallas county, at law; practice, etc.—The terms of the county court of Dallas county, at law, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. [Acts 1907, p. 115, § 4.]

Art. 52—96. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law, who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. [Id., sec. 5.]

Art. 52—97. Bond and oath of judge.—The judge of the county court of Dallas county, at law, shall execute a bond and take the oath of office, as required by the law relating to county judges. [Id., sec. 6.]

Art. 52—98. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law, may be appointed or elected as provided by laws relating to county courts and to the judges thereof. [Id. sec. 7.]

Art. 52—99. Power of the county court of Dallas county at law, of the judge thereof.—The county court of Dallas county at law, or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Act 1907, p. 115.]

Art. 52—100. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 9.]

Art. 52—101. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Dallas county, at law. [Id. sec. 10.]

Art. 52—102. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law, may be filled by the commissioners' court of Dallas county until the next general election. [Id. sec. 11.]

Art. 52—103. Fees and salary of judge.—The judge of the county court of Dallas county, at law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners' court. [Id. sec. 12.]

Art. 52—104. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. [Id. sec. 13.]

BEXAR COUNTY COURT FOR CRIMINAL CASES

Art. 52—105. County court of Bexar county for criminal cases created.—There is hereby created a court to be held in Bexar County, Texas, to be called the "County Court of Bexar County for Criminal Cases." [Act 1915, p. 78, ch. 39, § 1.]

Art. 52—106. Same; jurisdiction.—The County Court of Bexar County for Criminal Cases shall have exclusive jurisdiction of all criminal matters and causes, original and appellate, over which, by the General Laws of the State of Texas, the County Court of said county would have jurisdiction, and the same are hereby transferred to the County Court of Bexar County for Criminal Cases; and all criminal writs and processes heretofore issued by or out of said County Court, be, and the same are hereby made returnable to the County Court of Bexar County for Criminal Cases. [Id. § 2.]

Art. 52—107. Same; jurisdiction retained by other courts.—The jurisdiction hereby transferred to the County Court of Bexar County for Criminal Cases shall include all criminal cases and matters, the forfeiture of bonds in criminal cases, all proceedings in relation thereto; but the County Court of Bexar County shall retain, as heretofore, the jurisdiction of all cases of eminent domain; the general jurisdiction of a probate court; it 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 administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors, as provided by law. The county judge of Bexar county shall be the judge of County Court of Bexar County, and all ex-officio duties of the county judge shall be exercised by the said judge of the County Court of Bexar County, except in so far as the same shall, by this Act and by Act of the Thirty-second Legislature, General Laws pages 15–17, House Bill No. 111, Chap-

ter 10, be committed to the judge of the County Court of Bexar County for Civil Cases. The county judge of Bexar County shall retain authority to determine all matters relating to or arising out of or connected with the granting or revoking of liquor licenses, and all matters appertaining thereto, try all applications for liquor licenses and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the Juvenile Court. [Id., § 3.]

Art. 52—108. Same; power to issue writs.—The said County Court of Bexar County for Criminal Cases, and the judge thereof shall have the power to issue writs of injunction, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the General Laws governing County Courts throughout the State; and to issue writs of habeas corpus in cases within the jurisdiction of said court. [Id., § 4.]

Art. 52—109. Same; terms.—The County Court of Bexar County for Criminal Cases shall hold at least four terms for criminal business annually as may be provided by the Commissioners Court of Bexar County under authority of law, and such other terms each year as may be fixed by the Commissioners Court of Bexar County; provided the Commissioners Court having fixed the terms of said court, shall not change the same until the expiration of one year. [Id., § 5.]

Art. 52—110. Same; election of judge; qualifications and tenure.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the County Court of Bexar County for Criminal Cases, who shall be learned in the laws of the State, who shall hold his office for two years, and until his successor shall have been duly qualified. [Id., § 6.]

Art. 52—111. Same; judge's bond.—The judge of the County Court of Bexar County for Criminal Cases shall execute a bond in the sum of five thousand ($5.000.00) dollars and take the oath of office as required by the law relating to county judges. [Id., § 7.]

Art. 52—112. Same; special judge.—Special judge of the County Court of Bexar County for Criminal Cases may be appointed or elected as provided by laws relating to County Courts, and to the judges thereof, and shall receive salary and compensation similar to the judge of the court hereby created, but which shall be prorated and paid to him only for the actual number of days he actually serves. [Id., § 8.]

Art. 52—113. Same; clerk and sheriff.—The county clerk of Bexar County shall be the clerk of the County Court of Bexar County for Criminal Cases. The seal of said court shall be the same as that provided for County Courts, except that the seal shall contain the words "County Court of Bexar County for Criminal Cases." The sheriff of Bexar County shall in person or by deputy attend the court when required by the judge thereof. [Id., § 9.]

Art. 52—114. Same; jurors.—The jurisdiction and authority now vested by law in the County Court of Bexar County, and the County Court of Bexar County for Civil Cases, for the selection and service of jurors shall be exercised by each of the three courts within their jurisdiction. [Id., § 10.]

Art. 52—115. Same; vacancy in office of judge; appointment of first incumbent.—Any vacancy in the office of the judge of the court created by this Act may be filled by the Commissioners Court of Bexar County until the next general election. The Commissioners Court of the county shall, as soon as may be, after this Act shall take effect, appoint a judge of the County Court of Bexar County for Criminal Cases, who shall serve until the next general election, and until his successor shall be duly elected and qualified. [Id., § 11.]

Art. 52—116. Same; removal of judge.—The judge of the County Court of Bexar County for Criminal Cases may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. [Id., § 13.]

Art. 52—117. Same; purpose of act.—The provisions of this law are not intended to in any manner affect the jurisdiction of the County Court of Bexar County for Civil Cases, and this law is intended to create another court somewhat similar to said County Court of Bexar County for Civil Cases, but the court hereby created to have jurisdiction of criminal matters only. [Id., § 14.]

HARRIS COUNTY COURT AT LAW

Art. 52—118. County court at law of Harris county, Texas, created.—The County Court of Harris County for Civil Cases shall hereafter be known as the County Court at Law of Harris County, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words: "County Court at Law of Harris County, Texas." [Act 1913, p. 10, ch. 8, § 1.]

Art. 52—119. Same; effect of change of name of former court.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said County Court of Harris County for Civil Cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed. All process heretofore issued out of said County Court for Civil Cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. [Id., § 2.]

Art. 52—120. Same; jurisdiction.—The said court to be hereafter known as the County Court at Law for Harris County shall have all the jurisdiction heretofore conferred upon it under the name of the County Court of Harris County for Civil Cases, and its judge shall have all the powers heretofore conferred upon the judge of the County Court of Harris County for Civil Cases; and in addition to the said jurisdiction the said County Court at Law of Harris County shall have all of the, and the same jurisdiction over criminal matters that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, and all appeals from justices, mayors, recorders, or other inferior courts within Harris county, shall hereafter lie to said County Court at Law of Harris County instead of as heretofore, to the Criminal District Court of Harris County, and the judge of said court shall have, in addition to the powers now conferred upon him, the same powers, rights and privileges, as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now in the county court of Harris county or the judge thereof. [Id., § 3.]

Art. 52—121. Same; clerk; fees.—The county clerk of Harris county shall have no authority in criminal matters pending in said County Court at Law for Harris County. The clerk of the Criminal District Court of Harris County shall act as the clerk of the said County Court of Law for Harris County in all criminal matters, but only in criminal matters, and he shall sign all papers emanating from said court, including the minutes of said court in criminal matters, whenever its clerk's signature is necessary, as ex officio clerk of said County Court at Law for Harris County, using the seal of said court. The fees of said clerk as to those criminal matters, the jurisdiction over which

is hereby vested in said County Court at Law, shall be the same in all respects, including amount, manner of payment and collection, as if the Criminal District Court of Harris County had retained jurisdiction over said matters. [Id., § 4.]

Art. 52—122. Same; transfer of misdemeanor cases.—All misdemeanor criminal cases now pending in the Criminal District Court of Harris County, as well as all criminal cases on appeal to the said district court from the various subordinate courts of Harris county shall, immediately upon the taking effect of this Act, be transferred to the County Court at Law of Harris County, and the same are hereby so transferred, and upon said County Court at Law is hereby conferred jurisdiction of such cases. [Id., § 5.]

Art. 52—123. Same; fees of judge.—In addition to the compensation now provided by law, the judge of said County Court at Law of Harris County, shall tax up, receive and collect in each case, the same fees and costs in criminal cases over which said county court has jurisdiction, as are now provided by the General Laws of the State, for judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the additional jurisdiction conferred upon his court. [Id., § 6.]

Art. 52—124. Same; terms.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. [Id., § 7.]

HARRIS COUNTY COURT AT LAW NO. 2

Art. 52—125. County court at law No. 2 of Harris County.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." [Act 1915, 1st S. S., p. 18, ch. 8, § 1.]

Art. 52—126. Same; jurisdiction.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted original and appellate jurisdiction, in all matters and causes of a civil and criminal nature, concurrent with and in all things equal to that heretofore conferred upon the County Court at Law of Harris County, Texas. [Id., § 2.]

Art. 52—127. Same; judge; concurrent jurisdiction with county court at law; proviso.—The judge of said County Court at Law No. 2 of Harris County, Texas, shall have and exercise all the powers and shall be subject to all the limitations and obligations heretofore or hereafter conferred or imposed upon the judge of the County Court at Law of Harris County, Texas. Said County Court at Law No. 2 of Harris County, Texas, shall have concurrent jurisdiction with the County Court at Law of Harris County over criminal matters, and shall have the same jurisdiction over criminal matters, that is now vested in county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. And said County Court at Law No. 2 of Harris County shall have concurrent jurisdiction with the County Court at Law of Harris County in all appeals from justices, mayors, recorders or other inferior courts within Harris County; and the judge of said court shall have the same powers, rights and privileges as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now vested in the County Court of Harris County, or the judge thereof. [Id., § 3.]

Art. 52—128. Same; qualifications of judge; compensation; fees.—The judge of the County Court at Law No. 2 of Harris County, Texas, shall be well informed in the law; he shall have been a duly licensed and practicing member of the bar of this State for not less than two years; he shall be appointed by the Governor of the State of Texas as soon as may be after this Act takes effect; he shall take the oath of office and execute an official bond as now required by the law relating to county judges, and he shall collect the same fees in civil cases as are now provided by law in case of county judges, all of which he shall pay monthly into the county treasury, and in lieu of such fees he shall receive a salary of three thousand dollars per annum to be paid out of the county treasury by the Commissioners Court of Harris County in monthly installments of two hundred and fifty dollars each. In addition to the compensation hereinbefore provided the judge of the County Court at Law No. 2 of Harris County shall tax up, receive and collect in each criminal case the same fees and costs as are now provided by the General Laws of the State for the judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the exercise of the criminal jurisdiction herein conferred upon his court. [Id., § 4.]

Art. 52—129. Same; clerk; fees.—The county clerk of Harris County shall be the clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. [Id., § 5.]

Art. 52—130. Same; seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. [Id., § 6.]

Art. 52—131. Same; sheriff; fees.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. [Id., § 7.]

Art. 52—132. Same; special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. [Id., § 8.]

Art. 52—133. Same; power to issue writs.—Said court shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction; and, within the limitations placed upon county courts, to punish contempts thereof. Writs of injunction granted in civil cases by the judge of said County Court at Law No. 2 and by the judge of said County Court at Law shall be made returnable to the court in which the petition for injunction shall be filed, as hereinafter provided. [Id., § 9.]

Art. 52—134. Same; jurisdiction of county court at law not impaired.—The jurisdiction, civil and criminal, of the County Court at Law of Harris County, Texas, shall not in anywise be impaired or affected by this Act. [Id., § 10.]

Art. 52—135. Same; terms of court.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. [Id., § 11.]

Art. 52—136. Same; transfer of pending causes.—As soon as may be, after this Act takes effect, the clerk of the County Court at Law of Harris County, Texas, shall transfer to the docket of the County Court at Law No. 2 of Harris County, Texas, one-half of the civil cases then pending in said County Court at Law. In making such transfer, said Clerk shall first transfer to said County Court at Law No. 2 the case having the smallest file number on the docket of said County Court at Law. The case having the next highest file number shall remain on the docket of said County Court at Law. The case having the third smallest file number shall be transferred. In like manner said clerk shall go through the docket of said County Court at Law, transferring to the docket of said County Court at Law No. 2 every second civil case thereafter. The clerk shall note such transfer, when made, on the minutes of the County Court at Law of Harris County, Texas. New civil and new criminal cases filed with said clerk after such transfer has been made, irrespective of the court or judge to which the petitions in such civil cases shall be addressed, shall, in like manner, be filed by the said clerk, one civil and one criminal case in said County Court at Law No. 2, and one civil and one criminal case in said County Court at Law. The first new civil case and the first new criminal case, filed with said clerk after such transfer has been made, shall both be filed in said County Court at Law No. 2. [Id., § 12.]

Art. 52—137. Same; transfer of causes.—The judges of said County Court at Law and of said County Court at Law No. 2, in their discretion, either in term time or in vacation, by an order entered upon the minutes of their respective courts, may transfer to the court of the other any case or cases then pending in their respective courts. And when such case or cases shall be so transferred the court to which such transfer shall be made shall have the same right and authority to try and finally dispose of the same as the court making such transfer. [Id., § 13.]

Art. 52—138. Same; procedure.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. [Id., § 14.]

Art. 52—139. Same; return of process in transferred causes.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act, in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act, all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. [Id., § 15.]

Art. 52—140. Same; appointment of judge in first instance; election.—As soon as this Act shall take effect the Governor of the State shall appoint a judge of the County Court at Law No. 2 of Harris County, who shall serve until the next general election and until his successor shall be duly elected and qualified. And any vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Harris County, created by this Act, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election, and until his successor shall have qualified. There shall be elected by the qualified voters of Harris County at each general election hereafter, a judge of the County Court at Law No. 2 of Harris County, who shall hold his office for two years, and until his successor shall be duly qualified. [Id., § 16.]

JEFFERSON COUNTY COURT AT LAW

Art. 52—141. County court of Jefferson county at law created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. [Acts 1915, p. 51, ch. 29, § 1.]

Art. 52—142. Same; jurisdiction.—The County Court of Jefferson County at Law shall have jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State the County Court of said county would have jurisdiction, except as hereinafter provided in Section 3 of this Act, and all cases pending in the County Court of said county other than probate matters such as are provided in Section 3 of this Act, shall be and the same are hereby transferred to the County Court of Jefferson County at Law, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those pertaining to matters which are hereby exempt from this bill that are to remain in the County Court of Jefferson County, shall be and the same are hereby made returnable to the County Court of Jefferson County at Law. The jurisdiction of the County Court of Jefferson County at Law, and to the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the County Court or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court or the County Judge of Jefferson County as the presiding officer of said Commissioners Court as to roads, bridges and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof. [Id., § 2.]

Art. 52—143. Same; jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the court herein created shall have no other jurisdiction than that named in this bill, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County at Law in this bill, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this bill be committed to the County Court of Jefferson County at Law. [Id., § 3.]

Art. 52—144. Same; clerk; seal; sheriff and deputy.—The County Clerk of Jefferson County, Texas, shall be the clerk of the County Court of Jefferson County at Law, and the seal of said court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County shall in person or by deputy attend said court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a deputy to specially attend to the matters pertaining to the County Court of Jefferson County at Law, and said deputy shall be allowed a salary of one hundred dollars per month. [Id., § 10.]

GALVESTON COUNTY COURT AT LAW

Arts. 52—145 to 52—156. [Repealed by Acts 1933, 43rd Leg., Spec.L., p. 64, ch. 53, § 1, as amended, Acts 1941, 47th Leg., p. 761, ch. 475, § 1.]

Section 2 of Acts 1933, 43rd Leg., Spec.L., p. 64, ch. 53, reads as follows: "That the jurisdiction of the 'County Court of Galveston County at Law' be hereby vested in the District Court of the Tenth Judicial District of Texas, and all writs and process heretofore issued by said 'County Court of Galveston County at Law' be and the same is made returnable to the District Court of the Tenth Judicial District of Texas."

Sections 2 and 3 of Acts 1941, 47th Leg., p. 761, ch. 475, read as follows:

"§ 2. That the jurisdiction of the 'County Court of Galveston County at Law' be and it is hereby vested in the County Court of Galveston County, Texas, and all writs and process heretofore issued by said 'County Court of Galveston County at Law' and all writs and process in misdemeanor cases heretofore issued by or out of the District Court of the Tenth Judicial District of Texas be and the same are hereby made returnable to the County Court of Galveston County, Texas.

"§ 3. All sums received in payment of fines and fees in all such misdemeanor cases, the jurisdiction of which is hereby transferred to the County Court of Galveston County, shall be paid to and deposited in the Road and Bridge Fund of said County. The County Judge and the County Clerk of said Galveston County shall each be allowed by said County, to be paid from said Road and Bridge Fund, the sum of Six Hundred ($600.00) Dollars per year, payable in equal monthly installments, as additional compensation for handling said misdemeanor cases and shall be in addition to all salaries now being paid to such officers from the Officers' Salary Fund of said County. The County Clerk of Galveston County shall have authority to appoint an additional Deputy Clerk to handle such misdemeanor cases to be paid a salary not to exceed One Hundred Twenty-five ($125.00) Dollars per month by said County from the Road and Bridge Fund of said County."

Art. 52—157. [95] Appeal, etc., to district court, when.—In all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. [Act April 21, 1879, p. 125.]

HARRIS COUNTY CRIMINAL DISTRICT COURT NO. 2

Art. 52—158. Criminal district court No. 2, Harris county created.—Sec. 1. There is hereby created and established at the city of Houston a criminal district court to be known as the "Criminal District Court No. 2 of Harris County," which court shall have and exercise concurrent jurisdiction with the criminal district court of Harris County under the Constitution and laws of the State of Texas.

Sec. 2. From and after the time this law shall take effect, the criminal district court of Harris County and the Criminal District Court No. 2 of Harris County shall have and exercise concurrent jurisdiction with each other in all felony causes, and in all matters and proceedings of which the said criminal district court of Harris County now has jurisdiction; and either of the judges of said criminal district courts may in their discretion transfer any cause or causes that may at any time be pending in his court to the other criminal district court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made the clerk of such criminal district court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the judge of that court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. From and after the taking effect of this Act, all felony cases of even numbers that are then pending on the docket of the criminal district court of Harris County shall be at once transferred to the Criminal District Court No. 2 of Harris County, and from and after the taking effect of this Act, the clerk of the criminal district court shall file and docket the felony cases of even numbers in the Criminal District Court No. 2 of Harris County, and the felony cases of odd numbers in the criminal district court of Harris County.

Sec. 3. The judge of said Criminal District Court No. 2 of Harris County shall be elected by the qualified voters of Harris County for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now or may hereafter be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of the criminal district court of Harris County. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and, in case of disqualification or absence of a judge, a special judge may be selected, elected or appointed as provided by law in cases of district judges; provided, that the Governor, under the authority now provided by law, upon this Act becoming effective, shall appoint a judge of said court, who shall hold the office until the next general election, after the passage of this Law, and until his successor shall have been elected and qualified. Either of the judges of said criminal district courts may, in his discretion, in the absence of the judge of the other criminal district court from his court room or from the County of Harris, Texas, try and dispose of any cause or causes that may be pending in such criminal district court as fully as could such absent judge were he personally present and presiding. And either of said judges may receive in open court from the foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any empaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent district judge could do if personally present and presiding over such court; and may make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto as the regular judge of said criminal district court could make if personally present and presiding.

Sec. 4. Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court No. 2 of Harris County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this State in like manner as similar certified copies from courts of record are now or may hereafter be admissible.

Sec. 5. The sheriff, district attorney and the clerk of the criminal district court of Harris County, as heretofore provided for by law, shall be the sheriff, district attorney and clerk, respectively, of said Criminal District Court No. 2 of Harris County under the same rules and regulations as are now or may hereafter be prescribed by law for the government of sheriffs, district attorneys and clerks of the district courts of the State; and said sheriff, district attorney and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the State, to be paid in the same manner.

The county commissioners' court shall have authority to pay out of the general funds of the county for the services of such special deputy district clerks as in their judgment shall be required, such special deputy or deputies to be appointed by the clerk of the criminal district court, and to be removable at the will of the clerk, and to be paid a salary not to ex-

ceed the compensation allowed by law to other deputy district clerks, said salary shall be payable monthly. The criminal district attorney may appoint an assistant district attorney, in addition to those now provided by law, to attend said court. Said assistant shall have the authority and shall qualify as provided by law for assistant district attorneys, and shall be removable at the will of the district attorney, and shall receive a salary not to exceed the maximum salary allowed assistant district attorneys; said salary to be payable monthly by said county by warrant drawn from the general funds thereof.

Sec. 6. Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in May, one term beginning on the first Monday in August, one term beginning on the first Monday in November, and one term beginning on the first Monday in February of each year. Each term shall continue until the business is disposed of. The trials and proceedings in said court shall be conducted according to the law governing the pleadings, practice and proceedings in criminal cases in the district courts. The district judges of the criminal district courts of Harris County shall alternately appoint grand jury commissioners and empanel grand juries; and they shall meet together and determine approximately the number of petit jurors that are reasonably necessary for jury service in the criminal district courts of the county for each week during the time said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the jury wheel of the county for each of said weeks, said jury to be known as the panel of jurors for service in the criminal district courts for the respective weeks for which they are designated to serve. The judges of the said criminal district courts shall agree upon which one shall be authorized to act in carrying out the provisions of this Act as relating to the calling and qualifying of the jury panel; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the criminal district judge to whom the panel of jurors shall report for duty, and said judge, for such time as he is chosen to so act, shall organize said juries and have immediate supervision and control of them. The said jurors, after being regularly drawn from the wheel, shall be served by the sheriff to appear and report for jury service before said judge so designated, who shall hear excuses of said jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in any of said criminal district courts, and they may be used interchangeably in the criminal district courts. In the event of a deficiency of said jurors, the judge having control of said panel of jurors shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. The provisions of the articles commonly known as the "jury wheel law" shall remain in full force and effect, except as modified by this Act and other laws now in effect. [Acts 1927, 40th Leg., p. 33, ch. 24.]

Section 7 of Acts 1927, 40th Leg., p. 33, ch. 24, repeals all conflicting laws and parts of laws; and section 9 provides that if any provision or part shall be held invalid, it shall not affect the remainder.

DALLAS COUNTY CRIMINAL COURT

Art. 52—159. County Criminal Court of Dallas County, creation, jurisdiction, etc.—Sec. 1. There shall be created a court to be held in Dallas County, Texas, to be known and designated as "The County Criminal Court of Dallas County, Texas."

Sec. 2. The county criminal court of Dallas County, Texas, shall have and same is hereby vested with concurrent jurisdiction within the said county of all criminal matters and causes, original and appellate that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section Three of this Act.

Sec. 3. The county court of Dallas County, Texas, shall retain as heretofore, its jurisdiction as a juvenile court, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlements, partition and distribution of the estates of deceased persons; and of apprenticing minors as provided by law. The county judge of Dallas County shall be the judge of the county court of Dallas County, Texas, and all ex-officio duties of the county judge shall be exercised by the said judge of the said county court, except as in so far as the same shall, by this Act, be committed to the judge of the county criminal court of Dallas County, Texas; and except such as have heretofore been conferred upon the judges of the County Court at Law, Number One, and the County Court at Law, Number Two, of Dallas County, Texas.

Sec. 4. The county criminal court of Dallas County, Texas, or the judge thereof shall have the power of [to] issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws, in cases where the offense charged is within the jurisdiction of said court or any court or tribunal inferior to said court; and shall also have power to punish for contempt under such provisions as are now or may be provided by the General Law governing county courts throughout the State.

Sec. 5. The terms of the county criminal court of Dallas County, Texas, and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of said county criminal court shall be held not less than four times each year and the commissioners' court of Dallas County, Texas, shall fix the time at which said court shall hold its terms, until the same may be changed according to law.

Sec. 6. As soon as may be after the passage of this Act, there shall be appointed by the commissioners' court of Dallas County in accordance with the law, a judge of the county criminal court hereby created, who shall be well informed in the laws of the State and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. The judge of said court elected at any general election shall hold office for two years and until his successor shall have duly qualified; provided, that no person shall be eligible for judge of said court unless he shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court in said State for four years next preceding his appointment or election, and who shall have resided in the county of Dallas for two years next preceding his appointment or election.

Sec. 7. The judge of the county court of Dallas County, Texas, shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 8. A special judge of the county criminal court of Dallas County, Texas, may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the county criminal court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts except that the seal shall contain the words "The county criminal court, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the judge thereof.

Sec. 10. The Judge of the County Criminal Court of Dallas County, Texas, shall collect the same fee provided by law for County Judges in similar cases, all of which shall be paid by him monthly into the County Treasury, and the Judge of said Court shall receive a salary of Five Thousand Dollars, ($5,000.00) annually, to be paid monthly out of the County Treasury by the Commissioners' Court; such Judge shall devote his entire time to the duties of his office, and shall not engage in the practice of the law while in office. [As amended Acts 1929, 41st Leg., 1st C.S., p. 61, ch. 27.]

Sec. 11. The judge of the county criminal court of Dallas County, Texas, may be removed from office in the same manner, and for the same causes as any other county judge may be removed under the laws of this State.

Sec. 12. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the county criminal court of Dallas County, Texas, shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court and who shall hold his office at the pleasure of the court; the provisions of the general laws of Texas relating to the appointment of stenographers for the District Courts shall, and is hereby made to apply in all its provisions, in so far as they are applicable to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are in said laws provided for the stenographers of District Courts of this State, and also be governed by any other laws covering the stenographers of the District Courts of this State; provided, that the official shorthand reporter of said court shall not be required to take testimony in cases where neither party litigant nor the judge demands it; but where the testimony is taken by said reporter a fee of Three Dollars ($3.00) shall be taxed by the clerk as costs in the case, the said Three Dollars ($3.00), when collected to be paid into the County Treasury of Dallas County, Texas.

Sec. 13. As soon as may be, after this Act takes effect, the clerk of the County Court of Law Number One of Dallas County, Texas, and the County Court at Law Number Two, shall transfer to the docket of the County Criminal Court of Dallas County, Texas, hereby created, all of the criminal cases then pending in the County Courts at Law Number One and Number Two of Dallas County, Texas. The clerk shall note such transfer when made on the minutes of the County Courts at Law Number One and Number Two of Dallas County, Texas. [Acts 1927, 40th Leg., p. 36, ch. 25.]

Acts 1929, 41st Leg., 1st C.S., p. 61, ch. 27, amended section 10 of this article.

Section 14 of Acts 1927, 40th Leg., p. 36, ch. 25, declared that decisions that any part of the act were invalid should not impair other provisions of the act.

JEFFERSON COUNTY CRIMINAL DISTRICT COURT

Art. 52—160. Criminal District Court of Jefferson county, creation, jurisdiction, etc.—Sec. 1. That there is hereby created and established at the County Seat of Jefferson County, a criminal District Court to be known as "Criminal District Court of Jefferson County," which court shall have and exercise, from and after the taking effect of this Act, original and exclusive jurisdiction over all criminal cases of the grade of felony in the County of Jefferson of which district courts, under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall have and exercise such concurrent jurisdiction with the county court of Jefferson County at law over misdemeanor cases as is hereinafter provided by this Act.

Sec. 2. From and after the time this Act shall take effect the County Court of Jefferson County at law and the Criminal District Court of Jefferson County created by this Act, shall have and exercise concurrent jurisdiction with each other in all misdemeanor cases of which the County Court of Jefferson County at Law may now, or may hereafter have exclusive jurisdiction; and of such misdemeanor cases as shall be filed in said County Court on appeal from Justices' or Recorders' Courts; and either the Judge of said Criminal District Court, or the Judge of said County Court of Jefferson County at Law may upon motion of the County Attorney of Jefferson County, or other officer representing the State in said Courts, in his discretion transfer any cause or causes that may at any time be pending in his court to the other court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made, the Clerk of the Court making such transfer shall certify to the Clerk of the Court to which such transfer is made, a statement of the cause or causes so transferred, giving the style and number of the same to the Clerk of the Court to which such transfer is made and shall accompany such statement with all the papers in said cause or causes so transferred and upon receipt of such statement and the papers in such cause or causes so transferred, the Clerk of the Court to which such transfer is made shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of the Court to which such transfer or transfers are made, shall dispose of said cause or causes in the same manner as if such cases were originally instituted in said Court.

Sec. 3. Said Court shall have jurisdiction over all bail, bond and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereof and final judgments and enforce the collection of the same by proper process in the same manner as is provided by law in District Courts.

Sec. 4. The said Criminal District Court of Jefferson County shall have a seal similar to the seal of the District Court with the words "Criminal District Court of Jefferson County" engraved thereon, an impression of which seal shall be attached to all writs and other processes, except subpœnas, issuing from said court, and shall be used in the authentication of the official acts of the Clerk of said Court.

Sec. 5. The practice in said court shall be conducted according to the laws governing the practice in the District Court, and the rules of pleading and evidence in the District Court shall govern in so far as the same may be applicable.

Sec. 6. All laws regulating the selecting, summoning and impaneling of grand and petit jurors in the District Court shall govern and apply in the Criminal District Court in so far as the same may be applicable.

Sec. 7. All rules of criminal procedure governing the District and County Courts shall apply to and govern said Criminal District Court.

Sec. 8. Said Criminal District Court of Jefferson County shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant.

Sec. 9. Said Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday

of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of. The grand jury shall be impaneled in said Court for each term thereof, unless otherwise directed by the Judge of said Court.

Sec. 10. Whenever the Criminal District Court of Jefferson County shall be engaged in the trial of any cause when the time for expiration of the terms of said court as fixed by law shall arrive, the Judge presiding shall have the power, and may if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case, the extension of such term shall be shown on the minutes of the Court before they are signed.

Sec. 11. The Sheriff, County Attorney, and the Clerk of the District Court of Jefferson County shall be the sheriff, County Attorney and Clerk, respectively, of said Criminal Court under the same rules and regulations as are now, or may hereafter be prescribed by law for the government of sheriffs, county attorneys and clerks of the District Courts of this State; and said Sheriff, County Attorney and Clerk shall respectively receive such fees as are now, or may hereafter be prescribed for such officers in the District Courts of the State, to be paid in the same manner.

Sec. 12. In all such matters over which said Criminal District Court has jurisdiction, it shall have the same power within said District as is conferred by law upon the District Court, and shall be governed by the same rules in the exercise of said power.

Sec. 13. Appeals and writs of error may be prosecuted from said Criminal District Court to the Court of Criminal Appeals and to the Courts of Civil Appeals in the same manner and form as from the District Courts in like cases.

Sec. 14. From and after the taking effect of this Act, the District Courts of Jefferson County as now constituted, shall be, and they are hereby deprived and divested of all jurisdiction in all criminal cases, and of all jurisdiction given the Criminal District Court of Jefferson County by this Act, and all criminal cases pending in said District Courts at the time of the taking effect of this Act, and all matters pertaining to criminal cases pending therein over which the Court herein created is given jurisdiction, shall be, by the Clerk of the District Courts transferred to and entered upon the docket of said Criminal District Court, and when so entered upon the docket, the judges of said Criminal District Court shall try and dispose of same in the same manner as if such cases were originally instituted therein.

Sec. 15. The Judges of said Criminal District Court of Jefferson County shall be elected by the qualified voters of Jefferson County for a term of four years, and shall hold office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the Judge of the District Court, and shall receive the same salary as is now, or may hereafter be paid, to the District Judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by District Judges of this State in criminal cases. Provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a Judge of said Court who shall hold the office until the next general election after the passage of this Act, and until his successor shall have been elected and qualified.

Sec. 16. The Judge of said Criminal District Court may exchange Districts with or hold court for any District Judge, as provided by law in cases of District Judges, and in case of disqualification or absence of a Judge, a special Judge may be selected. [Acts 1929, 41st Leg., p. 374, ch. 170.]

Section 17 of this Act repeals all conflicting laws and parts of laws.

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.]

BEXAR COUNTY CRIMINAL DISTRICT COURT

Art. 52—161. Criminal Judicial District of Bexar County; creation, jurisdiction, officers, etc.—Sec. 1. There is hereby created and established a Criminal Judicial District of Bexar County, Texas, to be composed of the County of Bexar, State of Texas, alone, and which district shall be co-extensive with the territorial boundaries and limits of Bexar County, Texas.

Sec. 2. There is hereby created and established at the City of San Antonio a Criminal District Court to be known as "Criminal District Court of Bexar County," which Court shall have and exercise, from

and after the taking effect of this Act, original jurisdiction over criminal cases, only, of the grade of felony in the County of Bexar, of which District Courts, under the Constitution and laws of this State, have original and exclusive jurisdiction. All appeals from the judgment of said Court shall be to the Court of Criminal Appeals of the State of Texas under the same regulations as are now or may hereafter be provided by law for appeals in criminal cases from District Courts.

Sec. 3. Immediately upon the taking effect of this Act, it shall be the duty of the District Clerk of Bexar County, Texas, to transfer all the criminal cases pending in the 94th Judicial District Court and the 37th District Court of Texas to the Criminal District Court of Bexar County. Said Clerk shall transfer all of the civil cases then pending in said 94th District Court to the respective dockets of the 37th, 45th, 57th and 73rd District Courts by placing upon the docket of each of said Courts every fourth case until all of said cases have been transferred.

Sec. 4. The Judge of said Criminal District Court of Bexar County shall be elected by the qualified voters of Bexar County at the regular election to be held in November, 1934, and at the regular November election each four (4) years thereafter for a term of four (4) years, who shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of a Judge of the District Court, and shall receive the same salary as is now or may hereafter be paid to the District Judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by District Judges in criminal cases. The Judge of said Criminal District Court may exchange with any District Judge, as provided by law in cases of District Judges, and in case of disqualification or absence of the Judge, a special Judge may be selected, elected or appointed as provided by law in case of District Judges.

Sec. 5. Said Court shall have a seal of like design as the seal now provided by law for District Courts except that the words "Criminal District Court of Bexar County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the District Courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said Court, under the hand of the Clerk, and attested by the seal of said Court, shall be admissible in evidence in all the Courts of this State in like manner as similar certified copies from Courts of record are now or may hereafter be admissible.

Sec. 6. The Sheriff and the Clerk of the District Court of Bexar County, as heretofore provided for by law, shall be the Sheriff and Clerk, respectively, of said Criminal District Court, under the same rules and regulations as are now or may hereafter be prescribed by law for Sheriffs and Clerks of the District Courts of the State of Texas; and said Sheriff and Clerk shall, respectively, receive such fees as are now or may hereafter be prescribed by law for such officers of the District Courts of the State of Texas and to be paid in the same manner.

Sec. 7. Said Criminal District Court shall hold six (6) terms of Court for the trial of causes and the disposition of business coming before it: One term beginning the first Monday in January; one the first Monday in March; one the first Monday in May; one the first Monday in July; one the first Monday in September; and one the first Monday in November; each term to last for two (2) months. A Grand Jury shall be impaneled for each term thereof, and jury commissioners shall be appointed for drawing Grand Jurors for said Court, and said Grand Jury Commissioners when so appointed at each term shall select Grand Jurors for the next succeeding term, and the Petit Jurors for said Criminal District Court of Bexar County, Texas, shall be selected in the same manner as is now or may hereafter be provided by law for District Courts in Bexar County. [As amended Acts 1935, 44th Leg., 2nd C.S., p. 1739, ch. 451, § 1.]

Sec. 8. The trials and proceedings in said Court shall be conducted according to the laws governing the pleadings, practice and proceedings in criminal cases in the District Court.

Sec. 9. All process upon the taking effect of this Act heretofore issued or served in criminal cases pending in the District Court of the 94th and 37th Judicial Districts of Texas shall be considered as returnable at the time as hereinafter prescribed, and all such process is hereby legalized and validated as if the same had been made returnable to said Criminal District Court of Bexar County, and at the time herein prescribed, and all bail bonds and recognizances in criminal cases pending in the 94th and 37th Judicial Districts of Texas when this Act shall take effect, binding any person or persons to appear in said District Courts, shall have the effect to require such person or persons to appear at the first term of the Criminal District Court of Bexar County to be held in accordance with the provisions of this Act, and there to remain from day to day, and from term to term, until finally discharged under the same penalty as may be provided in such bail bonds or recognizances.

Sec. 10. Whenever the Criminal District Court of Bexar County shall be engaged in the trial of any cause when the time for expiration of the terms of said Court as fixed by said Court shall arrive, the Judge presiding shall have the power and may, if he deems it expedient, continue the term of said Court until the conclusion of such pending trial; and in such case the extension of such term shall be shown on the minutes of the Court before they are signed.

Sec. 11. The 94th Judicial District of Texas and the office of District Judge of said 94th Judicial District of Texas, and the office of District Attorney of the 37th Judicial District of Texas, and the office of County Attorney of Bexar County are hereby abolished from and after effective date hereof.

Sec. 12. There shall be elected by the qualified electors of the Criminal Judicial District of Bexar County, Texas, at the regular election in November, 1934, and at the regular November election each two (2) years thereafter, an attorney for said district who shall be styled the "Criminal District Attorney of Bexar County" and who shall hold his office for a period of two (2) years and until his successor is elected and qualified. The said Criminal District Attorney of Bexar County shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State or other District Attorneys.

Sec. 13. It shall be the duty of said Criminal District Attorney of Bexar County, or his assistant as herein provided, to be in attendance upon each term and all sessions of the Criminal District Court of Bexar County and of all sessions and terms of all the inferior Courts of Bexar County held for the transaction of criminal business, and to exclusively represent the State of Texas in all matters pending before said Courts and to represent Bexar County in all matters pending before such Courts and any other Court where Bexar County has pending business of any kind, matter or interest. The Criminal District Attorney of Bexar County shall have and exercise, in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within such Criminal Judicial District of Bexar County, Texas, as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys in the various counties and Judicial Districts of this State. He shall collect such fees, commissions

and perquisites as is now or may hereafter be provided by law for similar services rendered by District and County Attorneys of this State.

Sec. 14. The Criminal District Attorney of Bexar County shall be commissioned by the Governor and shall receive as salary and compensation the following and no more: A salary of Five Hundred Dollars ($500.00) from the State of Texas, as provided in the Constitution of the State of Texas for the salary of District Attorneys, and so much of the fees, commissions and perquisites earned by said office to make up the total compensation to the sum of Five Thousand Dollars ($5,000.00); provided that the amount of such salary, fees and perquisites, including the Five Hundred Dollars ($500.00) received from the State of Texas, to be received and retained by him shall never exceed the sum of Five Thousand Dollars ($5,000.00) in any one year; and, provided further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of Five Thousand Dollars ($5,000.00) during each and every fiscal year shall be paid into the County Treasury of Bexar County in accordance with the terms and provision of the maximum fee bill, except as to such portion of said excess as shall be used and expended in the payment of salaries to assistants, investigators, stenographers and bailiffs and as provided herein, and such other expenses incident to the office as authorized under the maximum fee bill.

Sec. 15. The Criminal District Attorney of Bexar County, for the purpose of conducting the affairs of his office, shall be and is hereby authorized to appoint seven assistants, one of whom shall receive a salary not to exceed Three Thousand Six Hundred Dollars ($3,600.00) per annum; one of whom shall receive a salary of not to exceed Three Thousand Dollars ($3,000.00) per annum; one of whom shall receive a salary of not to exceed Two Thousand Four Hundred [1] Dollars ($2,400.00) per annum; two of whom shall receive a salary of not to exceed Two Thousand Dollars ($2,000.00) per annum each, and two of whom shall receive a salary of not to exceed One Thousand Eight Hundred Dollars ($1,800.00) per annum each.

[1] So in enrolled bill. Session Laws omit word "Hundred."

The Criminal District Attorney of Bexar County may employ two stenographers who shall each receive a salary of not to exceed One Thousand Five Hundred Dollars ($1,500.00) per annum each. He may employ three investigators, who shall be peace officers, and who shall receive a salary not to exceed One Thousand Eight Hundred Dollars ($1,800.00) per annum each.

The Judge of the Criminal District Court of Bexar County may appoint grand jury bailiffs, not exceeding seven (7), whose compensation shall be Eighteen Hundred Dollars ($1800) per annum, each; said compensation to be payable in twelve (12) equal monthly installments. Bailiffs thus appointed are subject to removal at the will of the Judge of the Criminal District Court of Bexar County. [As amended Acts 1935, 44th Leg., p. 301, ch. 114, § 1.]

The Criminal District Attorney of Bexar County may also appoint two (2) Assistant Criminal District Attorneys whose duty it shall be to attend upon the trial of misdemeanor cases in the County and Justice Courts of Bexar County, whose salary shall not exceed Two Thousand Dollars ($2,000.00) per annum each. He may also appoint one assistant who shall have charge of the collection of delinquent State and County taxes in Bexar County, whose salary shall not exceed Two Thousand Four Hundred Dollars ($2,400.00) per annum.

The Criminal District Attorney of Bexar County may appoint a stenographer to assist said Assistant District Attorney in charge of the collection of such delinquent taxes due the State and County, whose salary shall not exceed One Thousand Five Hundred Dollars ($1,500.00) per annum. Any assistant, stenographer or investigator provided for herein shall be subject to removal at the will of said Criminal District Attorney of Bexar County.

Sec. 16. The Assistant Criminal District Attorney of Bexar County, investigators, and bailiffs, when so appointed, shall take the Constitutional oath of office and the said Criminal District Attorney of Bexar County and his assistants shall have the exclusive right, and it shall be their duty, to represent the State of Texas in all criminal cases pending in any and all of the Courts of Bexar County, Texas, except in the City Court of the City of San Antonio. Said Assistant Criminal District Attorneys of Bexar County are hereby authorized to administer oaths, file information, examine witnesses before the Grand Jury and generally perform any duty devolving upon the Criminal District Attorney of Bexar County and exercise any power, and to perform any duty conferred by law upon said Criminal District Attorney of Bexar County.

Sec. 17. This Act shall become effective and be operative from and after January 1, 1935, but it is specially provided that the Judge of the Criminal District Court of Bexar County and the Criminal District Attorney of Bexar County shall be elected at the general election to be held in November, 1934, and when so elected they shall not qualify to the respective offices to which they were elected until January 1, 1935.

Sec. 18. If any part or section of this Act shall be held unconstitutional or invalid, for any reason, the remainder of the Act shall, nevertheless, be in full force and effect.

Sec. 19. All laws and parts of laws heretofore enacted which are in conflict herewith are hereby repealed. [Acts 1933, 43rd Leg., p. 867, ch. 247; Acts 1933, 43rd Leg., Spec.L., p. 20, ch. 19.]

Acts 1935, 44th Leg., p. 301, ch. 114, § 1, amended paragraph 3 of section 15 of this article. Acts 1935, 44th Leg., 2nd C.S., p. 1739, ch. 451, § 1, amended section 7.

Acts 1935, 44th Leg., p. 498, ch. 209, authorizes the Judge of the Criminal District Court of Bexar County, Texas, to transfer any criminal suit or cause of action now pending or hereafter filed in said Criminal District Court of Bexar County from said Criminal District Court to either the 37th, 45th, 57th or 73rd District Courts in Bexar County, Texas.

Art. 53. [68–86–87] Court of Criminal Appeals.—The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court or county court at law, in which the fine imposed by the county court or county court at law shall not exceed one hundred dollars.

Art. 53a. Mandamus, certiorari, and contempt.—Sec. 1. In addition to the power and authority now vested in the Court of Criminal Appeals of the State of Texas, said Court and each member thereof shall have and is hereby given power and authority to grant and issue and cause the issuance of writs of mandamus and certiorari, agreeable to the principles of law regarding said writs, whenever in the judgment of said Court or any member thereof the same should be necessary to enforce the jurisdiction of said Court.

Sec. 2. The Court of Criminal Appeals of Texas, and each of the judges thereof, are hereby empowered to punish disobedience of any of the above named writs and to hold in contempt any party found by said Court to have wilfully disobeyed any of said writs so issued by said Court or any of the members thereof. [Acts 1927, 40th Leg., p. 54, ch. 38.]

Art. 54. [88] [87] Jurisdiction of district courts.—District courts and criminal district courts shall have original jurisdiction in criminal cases of

the grade of felony, and of all misdemeanors involving official misconduct.

Art. 55. [89] [88] When felony includes misdemeanor.—Upon the trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.

Art. 56. [98] [91] Jurisdiction of county courts.—The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars. [Const., art. 5, sec. 16.]

Art. 57. [101–897] Appellate jurisdiction of county courts.—The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

Art. 58. [106] [1] [95] Appeal from inferior court.—If the jurisdiction of any county court has been transferred to the district court or to a county court at law, then an appeal from a justice or other inferior court will lie to the court to which such appellate jurisdiction has been transferred. [Acts 1879, p. 126.]

[1] Reference in brackets to 106 should be 105.

Art. 59. [99] [92] To forfeit bail bonds.—County courts and county courts at law shall have jurisdiction in the forfeiture and final judgment of all bonds and recognizances taken in criminal cases of which said courts have jurisdiction.

Art. 60. [106] [96] Jurisdiction of justice courts.—Justices of the peace shall have jurisdiction in criminal cases where the fine to be imposed by law may not exceed two hundred dollars. [Const. art. 5, sec. 19.]

Art. 60a. Misdemeanor cases; precinct in which defendant to be tried in justice court.—No person shall be tried in any misdemeanor case in any Justice Precinct Court except in the precinct in which the offense was committed, or in which the defendant resides; provided that in any misdemeanor case in which the offense was committed in a precinct where there is no qualified Justice Precinct Court, then trial shall be had in the next adjacent precinct in the same county which may have a duly qualified Justice Precinct Court, or in the precinct in which the defendant may reside; provided that in any such misdemeanor case, upon disqualification for any reason of all Justices of the Peace in the precinct where the offense was committed, such case may be tried in the next adjoining precinct in the same county, having a duly qualified Justice of the Peace; provided that, upon agreement between the attorney representing the State and each defendant or his attorney, which said agreement shall be reduced to writing, signed by said attorney representing the State and each defendant or his attorney, and filed in the Justice Court in which such misdemeanor case is pending, the Justice of the Peace before whom such case is pending may, in his discretion, transfer such cause to the Justice Court of any other precinct in the same county, named in such agreement; provided that in any misdemeanor case in the Justice Court in which two (2) or more defendants are to be tried jointly, such case may be tried in a Justice Court of the Precinct where the offense was committed, or where any of the defendants reside. [Acts 1943, 48th Leg., p. 424, ch. 290, § 1.]

Section 2 of the Act of 1943 repealed conflicting laws.

Art. 60a—1. Constable's fees in misdemeanor cases arising in other than his own precinct.—No Constable shall be allowed a fee in any misdemeanor case arising in any precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the Minutes of the County Commissioners Court. [Acts 1943, 48th Leg., p. 424, ch. 290, § 1-A.]

Art. 60a—2. Violations of Act.—Any Justice of the Peace, Constable, Deputy Constable, Sheriff, or Deputy Sheriff either elected or appointed, violating any provision of this Act shall be punished by fine of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) and shall be subject to be removed from office by action brought in District Court for that purpose. [Acts 1943, 48th Leg., p. 424, ch. 290, § 1-B.]

Art. 61. [107] [97] Justice may forfeit bail bond.—A justice of the peace shall have the power to take forfeitures of all bail bonds given for the appearance of any party at his court, regardless of the amount. [Acts 1876, p. 155.]

Art. 62. [108] [98] Corporation court.—The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits. [Acts 1899, p. 40.]

Art. 63. [109] [99] May sit at any time.—Justice courts and corporation courts may sit at any time to try criminal cases over which they have jurisdiction.

Art. 64. [63] Concurrent jurisdiction.—When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction of such offense to the exclusion of all other courts. [Acts 1903, p. 194.]

TITLE 3—THE PREVENTION AND SUPPRESSION OF OFFENSES, AND THE WRIT OF HABEAS CORPUS

CHAPTER 1.—PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON

Article 65. [110] [100] May prevent.—The commission of offenses may be prevented either by lawful resistance or by the intervention of the officers of the law. [O. C. 66.]

Art. 66. [111] [101] Resistance to protect person.—Resistance by the party about to be injured may be used to prevent the commission of any offense

which, in the Penal Code, is classed as an "offense against the person." [O. C. 67.]

Art. 67. [112] [102] To protect property.—Resistance may also be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession. [O. C. 68.]

Art. 68. [113] [103] Limit to resistance.—The resistance which the person about to be injured may make to prevent the commission of the offense must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression. [O. C. 69.]

Art. 69. [114] [104] Excessive force.—If the person about to be injured, in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used. [O. C. 70.]

Art. 70. [115] [105] Other person may prevent.—Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense. [O. C. 71.]

Art. 71. [116] [106] Defense of another.—The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater. [O. C. 72.]

CHAPTER 2.—PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Article 72. [117] [107] When magistrate hears threat.—It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury. [O. C. 73.]

Art. 73. [119] [109] Threat to take life.—If, within the hearing of a magistrate, one person shall threaten to take the life of another, he shall issue a warrant for the arrest of the person making the threat, or, in case of emergency, he may himself immediately arrest such person. [O. C. 75.]

Art. 74. [118] [108] On attempt to injure.—Whenever, in the presence or within the observation of a magistrate, an attempt is made by one person to inflict an injury upon the person or property of another, it is his duty to use all lawful means to prevent the injury. This may be done, either by verbal order to a peace officer to interfere and prevent the injury, or by the issuance of an order of arrest against the offender, or by arresting the offender; for which purpose he may call upon all persons present to assist in making the arrest. [O. C. 74.]

Art. 75. [120] [110] May compel offender to give security.—When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody. [O. C. 76.]

Art. 76. [121] [111] Duty of peace officer as to threats.—It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense. [O. C. 77.]

Art. 77. [122] [112] Peace officer to prevent injury.—Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another, it is his duty to prevent it; and, for this purpose, he may summon any number of the citizens of his county to his aid. He must use the amount of force necessary to prevent the commission of the offense, and no greater. [O. C. 92.]

Art. 78. [123] [113] Conduct of peace officer.—The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression. [O. C. 79.]

CHAPTER 3.—PROCEEDINGS BEFORE MAGISTRATES TO PREVENT OFFENSES

Article 79. [124] [114] Shall issue warrant.—Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, it is his duty immediately to issue a warrant for the arrest of the accused, that he may be brought before such magistrate or before some other named in the warrant. [O. C. 80.]

Art. 80. [125] [115] Accused brought before magistrate.—When the accused has been brought before the magistrate, he shall hear proof as to the accusation, and, if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others for one year from the date of such bond. [O. C. 81.]

Art. 81. [126] [116] Form of peace bond.—Such bond shall be sufficient if it be payable to the State of Texas, conditioned as required in said order of the magistrate, be for some certain sum, and be signed by the defendant and his surety, and dated. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be a defense in a suit thereon. [O. C. 84.]

Art. 82. [127] [117] Oath of surety; bond filed.—The officer taking such bond shall require the sureties of the accused to make oath as to the value

of their property as pointed out with regard to bail bonds. Such officer shall forthwith deposit such bond and oaths in the office of the clerk of the county where such bond is taken. [O. C. 90.]

Art. 83. [128] [118] Amount of bail.—Magistrates, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed. [O. C. 90.]

Art. 84. [129] [119] Surety may exonerate himself.—A surety upon any such bond may, at any time before a breach thereof, exonerate himself from the obligations of the same by delivering to any magistrate of the county where such bond was taken the person of the defendant; and such magistrate shall in that case again require of the defendant bond, with other security in the same amount as the first bond; and the same proceeding shall be had as in the first instance, but the one year's time shall commence to run from the date of the first order. [O. C. 89.]

Art. 85. [130] [120] Failure to give bond.—If the defendant fail to give bond, he shall be committed to jail for one year from the date of the first order requiring such bond. [O. C. 82.]

Art. 86. [131] [121] Discharge of defendant.—A defendant committed for failing to give bond shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed. [O. C. 86.]

Art. 87. [132] [122] May discharge defendant.—If the magistrate believes from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

Art. 88. [133] [123] Bond of person charged with libel.—If any person shall make oath, and shall convince the magistrate that he has good reason to believe that another is about to publish, sell or circulate, or is continuing to sell, publish or circulate any libel against him, or any such publication as is made an offense by the penal law of this State, the person accused of such intended publication may be required to enter into bond with security not to sell, publish or circulate such libelous publication, and the same proceedings be had as in the cases before enumerated in this chapter. [O. C. 95.]

Art. 89. [159] [149] Destruction of libel.—On conviction for making, writing, printing, publishing, selling or circulating a libel, the court may, if it be shown that there are in the hands of defendant or another copies of such libel intended for publication, sale or distribution, order all such copies to be seized and destroyed by the sheriff or other proper officer. [O. C. 116.]

Art. 90. [134] [124] When defendant has committed a crime.—If it appears from the evidence before the magistrate that the defendant has committed a criminal offense, the same proceedings shall be had as in other cases where parties are charged with crime. [O. C. 91.]

Art. 91. [135] [125] Costs.—If the accused is found subject to the charge and required to give bond, the costs of the proceeding shall be adjudged against him. [O. C. 95.]

Art. 92. [136] [126] May order protection.—When, from the nature of the case and the proof offered to the magistrate, it may appear necessary and proper, he shall have a right to order any peace officer to protect the person or property of any individual threatened; and such peace officer shall have the right to summon aid by requiring any number of citizens of his county to assist in giving the protection. [O. C. 92.]

Art. 93. [137] [127] Suit on bond.—A suit to forfeit any bond taken under the provisions of this chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken. [O. C. 87.]

Art. 94. [138] [128] Limitation and procedure.—Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the same rules as civil actions, except that the sureties may be sued without joining the principal. To entitle the State to recover, it shall only be necessary to prove that the accused violated any condition of said bond. The full amount of such bond may be recovered of the accused and the sureties. [O. C. 88.]

CHAPTER 4.—SUPPRESSION OF RIOTS AND OTHER DISTURBANCES

Art.
95. Officer may require aid.
96. Military aid in executing process.
97. Military aid in suppressing riots.
98. Dispersing riot.
99. Officer may call aid.
100. Means adopted to suppress.
101. Unlawful assembly.
102. Suppression at election.
103. Power of special constable.

Article 95. [139] [129] Officer may require aid.—When any officer authorized to execute process is resisted, or when he has sufficient reason to believe that he will meet with resistance in executing the same, he may command as many of the citizens of his county as he may think proper; and the sheriff may call any military company in the county to aid him in overcoming the resistance, and, if necessary, in seizing and arresting the persons engaged in such resistance. [O. C. 95.]

Art. 96. [140] [130] Military aid in executing process.—If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance. [O. C. 98.]

Art. 97. [141] [131] Military aid in suppressing riots.—Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same. [O. C. 104.]

Art. 98. [142] [132] Dispersing riot.—Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant. [O. C. 99.]

Art. 99. [143] [133] Officer may call aid.—In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process. [O. C. 100.]

Art. 100. [144] [134] Means adopted to suppress.—The officer engaged in suppressing a riot, and those who aid him, are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater de-

gree of force than is requisite to accomplish that object. [O. C. 102.]

Art. 101. [145] [135] Unlawful assembly.—The articles of this chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code. [O. C. 103.]

Art. 102. [146] [136] Suppression at election.—To suppress riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables. Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue. Before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election. [O. C. 106.]

Art. 103. [147] [137] Power of special constable.—Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers. [O. C. 117.]

CHAPTER 5.—OFFENSES INJURIOUS TO PUBLIC HEALTH

Art.
104. Trade injurious to health.
105. Refusal to give bond.
106. Requisites of bond.
107. Suit upon bond.
108. Proof.
109. Unwholesome food.

Article 104. [148] [138] Trade injurious to health.—After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious to the health of those in the neighborhood, the court shall have power, on the application of any one interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and, if, upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county. [O. C. 108.]

Art. 105. [149] [139] Refusal to give bond.—If the party refuses to give bond when required under the provisions of the preceding article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same. [O. C. 108.]

Art. 106. [150] [140] Requisites of bond.—Such bond shall be payable to the State of Texas, in a reasonable amount to be fixed by the court, conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. Said bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court. [O. C. 109.]

Art. 107. [151] [141] Suit upon bond.—Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the State of Texas, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions. [O. C. 109.]

Art. 108. [152] [142] Proof.—It shall be sufficient proof of the breach of any such bond to show that the party continued after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties. [O. C. 110.]

Art. 109. [153] [143] Unwholesome food.—After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant. [O. C. 108.]

CHAPTER 6.—OBSTRUCTIONS OF PUBLIC HIGHWAYS

Art.
110. Order to remove.
111. Bond of applicant.
112. Removal.

Article 110. [155] [145] Order to remove.—After prosecution begun against any person for obstructing any highway, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and, upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction. Before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed with the papers in the cause. [O. C. 113.]

Art. 111. [156] [146] Bond of applicant.—If the defendant be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession. [O. C. 114.]

Art. 112. [158] [148] Removal.—Upon the conviction of a defendant for obstructing a public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the cost of the defendant, to be taxed and collected as other costs in the case.

CHAPTER 7.—HABEAS CORPUS

1. DEFINITION AND OBJECT OF THE WRIT

Art.
113. What writ is.
114. To whom directed.
115. Want of form.
116. Construction.

2. BY WHOM AND WHEN GRANTED

117. By whom writ may be granted.
118. Returnable to any county.
119. Return to certain county; procedure after conviction.
120. Applicant charged with felony.
121. Applicant charged with misdemeanor.
122. Proceedings under the writ.
123. Early hearing.

2. BY WHOM AND WHEN GRANTED—Cont'd.

3. SERVICE AND RETURN OF THE WRIT, AND PROCEEDINGS THEREON

4. GENERAL PROVISIONS

1. DEFINITION AND OBJECT OF THE WRIT

Article 113. [160–161] What writ is.—The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint. [O. C. 117–118.]

Art. 114. [162] [152] To whom directed.—The writ runs in the name of "The State of Texas." It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court. [O. C. 119.]

Art. 115. [163] [153] Want of form.—The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance. [O. C. 120.]

Art. 116. [164] [154] Construction.—Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it. [O. C. 121.]

2. BY WHOM AND WHEN GRANTED

Art. 117. [69–84–92–100–165] By whom writ may be granted.—The Court of Criminal Appeals, the district courts, the county courts, or any judge of said courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper application, to grant the writ under the rules prescribed by law.

Art. 118. [166] [156] Returnable to any county.—Before indictment found, the writ may be made returnable to any county in the State. [O. C. 123.]

Art. 119. [167] [157] Return to certain county; procedure after conviction.—After indictment found in any felony case, and before conviction, the writ must be made returnable in the county where the offense has been committed, on account of which the applicant stands indicted.

After final conviction in any felony case the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas. The writ may issue upon the order of any district judge, and said judge may upon presentation to him of a petition for said writ, set the same down for a hearing as to whether the writ should issue, and ascertain the facts, which facts shall be transmitted to the Court of Criminal Appeals with the return of the writ if same is issued after such hearing. Provided further, that should such writ be returned to the Court of Criminal Appeals without the facts accompanying same, or without all of the facts deemed necessary by the Court of Criminal Appeals, said court may designate and direct any district judge or judges of this state to ascertain the facts necessary for proper consideration of the issues involved; and it shall be the duty of the official court reporter of the district judge or judges so designated to forthwith prepare a narration of the facts adduced in evidence upon any such hearing and transmit the same to the clerk of the Court of Criminal Appeals within ten days of the date of such hearing. And it shall be the duty of the district clerk of the county wherein the writ is issued to make up a transcript of all pleadings in such case and to transmit the same within ten days to the clerk of the Court of Criminal Appeals. Provided, that upon good cause shown, the time may be extended by the Court of Criminal Appeals for filing of such narration of facts or transcript.

The clerk of the Court of Criminal Appeals shall forthwith docket the cause and same shall be heard by the court at the earliest practicable time. Upon reviewing the record the court shall enter its judgment remanding the petitioner to custody or ordering his release, as the law and facts may justify. The mandate of the court shall issue to the court issuing the writ, as in other criminal cases. After conviction the procedure outlined in this Act shall be exclusive and any other proceeding shall be void

and of no force and effect in discharging the prisoner.

Upon any hearing by a district judge by virtue of this Act, the attorney for petitioner, and the state, shall be given at least one full day's notice before such hearing is held. [O.C. 124; Acts 1943, 48th Leg., p. 354, ch. 233, § 1.]

Art. 120. [168] [158] Applicant charged with felony.—If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or, if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 121. [169] [159] Applicant charged with misdemeanor.—If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or, if there be no county judge in said county, then to the county judge whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 122. [170] [160] Proceedings under the writ.—When application has been made to a judge under the circumstances set forth in the two preceding articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the application. [O. C. 129.]

Art. 123. [171] [161] Early hearing.—The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant. [O. C. 127.]

Art. 124. [172] [162] Who may present petition.—Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief. [O. C. 128.]

Art. 125. [173] [163] "Applicant."—The word "applicant," as used in this chapter, refers to the person for whose relief the writ is asked, tho the petition may be signed and presented by any other person. [O. C. 129.]

Art. 126. [174] 164] Requisites of petition.—The petition must state substantially:

1. That the person for whose benefit the application is made is illegally restrained in his liberty, and by whom—naming both parties, if their names are known, or, if unknown, designating and describing them.

2. When the party is confined or restrained by virtue of any writ, order or process, or under color of either, a copy shall be annexed to the petition, or it shall be stated that a copy can not be obtained.

3. When the confinement or restraint is not by virtue of any writ, order or process, the petition may state only that the party is illegally confined or restrained in his liberty.

4. There must be a prayer in the petition for the writ of habeas corpus.

5. Oath must be made that the allegations of the petition are true, according to the belief of the petitioner. [O. C. 130.]

Art. 127. [175] [165] Writ granted without delay.—The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever. [O. C. 131.]

Art. 128. [176] [166] Writ may issue without application.—A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any application being made for the same. [O. C. 132.]

Art. 129. [177] [167] Judge may issue warrant of arrest.—Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law. [O. C. 133.]

Art. 130. [178] [168] May arrest detainer.—Where it appears by the proof offered, under circumstances mentioned in the preceding article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and, upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require. [O. C. 134.]

Art. 131. [179] [169] Proceedings under the warrant.—The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained. [O. C. 135.]

Art. 132. [180] [170] Officer executing warrant.—The same power may be exercised by the officer executing the warrant in cases arising under the foregoing articles as is exercised in the execution of warrants of arrest. [O. C. 136.]

Art. 133. [181] [171] Constructive custody.—The words, "confined," "imprisoned," "in custody," "confinement," "imprisonment," refer, not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits. [O. C. 137.]

Art. 134. [182] [172] "Restraint."—By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right. [O. C. 138.]

Art. 135. [183] [173] Scope of writ.—The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law. [O. C. 139.]

Art. 136. [184] [174] One committed in default of bail.—Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced. [O. C. 141.]

Art. 137. [185] [175] Person afflicted with disease.—When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life. [O. C. 141.]

3. SERVICE AND RETURN OF THE WRIT, AND PROCEEDINGS THEREON

Art. 138. [186] [176] Who may serve writ.—The service of the writ may be made by any person competent to testify. [O. C. 143.]

Art. 139. [187] [177] How writ may be served and returned.—The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ. [O. C. 144.]

Art. 140. [188] [178] Return under oath.—The return of a writ of habeas corpus, under the provisions of the preceding article, if made by any person other than an officer, shall be under oath. [O. C. 145.]

Art. 141. [189] [179] Must make return.—The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not. [O. C. 146.]

Art. 142. [190] [180] How return is made.—The return is made by stating in plain language upon the copy of the writ or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition.
2. By virtue of what authority, or for what cause, he took and detains such person.
3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer.
4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody.
5. The return must be signed and sworn to by the person making it. [O. C. 147, 148.]

Art. 143. [191] [181] Applicant brought before judge.—The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he can not be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel. [O. C. 149.]

Art. 144. [192] [182] Custody pending examination.—When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safe keeping under the control of the judge or court, till the case is finally determined.

Art. 145. [193] [183] Court shall allow time.—The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

Art. 146. [194] [184] Disobeying writ.—When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding. [O. C. 151.]

Art. 147. [195] [185] Further penalty for disobeying writ.—Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto. [O. C. 152.]

Art. 148. [196] [186] Applicant may be brought before court.—In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named. [O. C. 153.]

Art. 149. [197] [187] Death, etc., sufficient return of writ.—It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence. [O. C. 154.]

Art. 150. [198] [188] When a prisoner dies.—When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the death of the prisoner at the hearing of an application under habeas corpus. [O. C. 158.]

Art. 151. [199] [189] Who shall represent the State.—If neither the county or district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be

paid the same fee allowed district attorneys for like services. [O. C. 156.]

Art. 152. [200] [190] Prisoner discharged.—The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and, if no legal cause be shown for the imprisonment or restraint, or, if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged. [O. C. 157.]

Art. 153. [201] [191] Where party is indicted for capital offense.—If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part, both of the State and the applicant and may either remand or admit him to bail, as the law and the facts may justify. [O. C. 158.]

Art. 154. [202] [192] If court has no jurisdiction.—If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

Art. 155. [203] [193] Presumption of innocence.—No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

Art. 156. [204] [194] Action of court upon examination.—The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail. [O. C. 160.]

Art. 157. [205] [195] Void or informal.—If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail. [O. C. 161.]

Art. 158. [206] [196] If proof shows offense.—Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail. [O. C. 162.]

Art. 159. [207] [197] May summon magistrate.—To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest. [O. C. 163.]

Art. 160. [208] [198] Written issue not necessary.—It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief. [O. C. 164.]

Art. 161. [209] [199] Order of argument.—The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus. [O. C. 165.]

Art. 162. [210] [200] Costs.—The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all. [O. C. 166.]

Art. 163. [211] [201] Record of proceedings.—If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the application is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the application to the clerk of the court which has jurisdiction of the offense. [O. C. 167.]

Art. 164. [212] [202] Proceedings had in vacation.—If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, who shall keep them safely. [O. C. 168.]

Art. 165. [213] [203] Construing the two preceding articles.—The two preceding articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case. [O. C. 169.]

Art. 166. [214] [204] Court may grant necessary orders.—The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.

Art. 167. [215] [205] Meaning of "return."—The word "return," as used in this chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.

4. GENERAL PROVISIONS

Art. 168. [216] [206] Effect of discharge before indictment.—Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail. [O. C. 172.]

Art. 169. [217] [207] Writ after indictment.—Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this chapter. [O. C. 173.]

Art. 170. [218] [208] Person committed for a capital offense.—If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in articles 137 and 171. [O. C. 174.]

Art. 171. [219] [209] Obtaining writ a second time.—A party may obtain the writ of habeas corpus a second time by stating in application therefor that since the hearing of his first application important testimony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and, if it be that of a witness, the affidavit of the witness shall also accompany such application. [O. C. 175.]

Art. 172. [220] [210] Refusing to execute writ.—Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court. [O. C. 178.]

Art. 173. [221] [211] Refusal to obey writ.—Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in article 146 of this Code. [O. C. 178.]

Art. 174. [222] [212] Refusal to give copy of process.—Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense. [O. C. 179.]

Art. 175. [223] [213] Held under Federal authority.—No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States. [O. C. 180.]

Art. 176. [224] [214] Application of chapter.—This chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained of their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of the writ of habeas corpus in other cases where heretofore used, a simple order shall be substituted. [O. C. 181.]

TITLE 4—LIMITATION AND VENUE

CHAPTER 1.—LIMITATION

Art. 177. [225] [215] Treason; theft or conversion by executor, administrator or guardian; forgery.—An indictment for treason may be presented within twenty (20) years, or for theft or conversion of any estate, real, personal, or mixed by an executor, administrator, or guardian with intent to defraud any creditor, heir, legatee, ward, or distributee interested in such estate, may be presented within ten (10) years, and for forgery or the uttering, using or passing of forged instruments, within ten (10) years from the time of the commission of the offense, and not afterward. [O.C. 182; Acts 1941, 47th Leg., p. 512, ch. 310, § 1.]

Art. 178. [226] [216] Rape.—An indictment for rape may be presented within one year, and not afterward. [O. C. 184.]

Art. 179. [227] [217] Theft, etc., five years.—An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward. [O. C. 183.]

Art. 180. [228] [218] Other felonies.—An indictment for any other felony may be presented within three years from the commission of the offense, and not afterward; except murder, for which an indictment may be presented at any time. [O. C. 185.]

Art. 181. [229] [219] Misdemeanors, two years.—An indictment or information for any misdemeanor may be presented within two years from the commission of the offense, and not afterward. [O. C. 186.]

Art. 182. [230] [220] Computation.—The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

Art. 183. [231] [221] Absence from state and time of pendency of indictment, etc., not computed.—1. The time during which the accused is absent from the State shall not be computed in the period of limitation.

2. The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

3. The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason. [As amended, Acts 1941, 47th Leg., p. 1335, ch. 603, § 1.]

Section 2 of the Act of 1941 provided that partial invalidity should not affect the remaining portion.

Art. 184. [232] [222] An indictment is "presented," when.—An indictment is considered as "presented," when it has been duly acted upon by the grand jury and received by the court.

Art. 185. [233] [223] An information is "presented," when.—An information is considered as "presented" when it has been filed by the proper officer in the proper court.

CHAPTER 2.—VENUE

Art.
192. Person within the State inflicting injury on another out of the State.
193. Person without the State inflicting injury on one within.
194. Committed on a boundary stream.
195. Injured in one county and dying in another.
196. Committed on a boundary.
197. Theft.
198. Mortgaged property.
199. Accomplices and accessories to theft.
200. Receiving and concealing stolen property.
201. By commissioner of deeds.
202. On vessels.
203. Embezzlement.
204. False imprisonment, kidnapping and abduction.
205. Conspiracy.
206. Bigamy.
207. Rape.
208. Conviction or acquittal in another State.
209. Jurisdiction in different counties.
210. Proof of venue.
211. Other offenses.

Article 186. [234] [224] Offenses not committed in the State.—Prosecutions for offenses committed wholly or in part without, and made punishable by law within this State, may be begun and carried on in any county in which the offender is found. [O. C. 190.]

Art. 187. [235] [225] Forgery.—Forgery may be prosecuted in any county where the written instrument was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association or corporation either for collection or credit for the account of any person, firm, association or corporation. All forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in Travis County, or in the county in which such land, or any part thereof, is situated. [Acts 1st C. S. 1921, p. 39.]

Art. 188. [236] [226] Counterfeiting.—Counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed. [O. C. 207.]

Art. 189. [237] [227] Perjury and false swearing.—Perjury and false swearing may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used. [O. C. 190a.]

Art. 190. [238] [228] On the boundary of two counties.—An offense committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county. [O. C. 191.]

Art. 191. [239] [229] Person dying out of the State.—If any person, being at the time within this State, shall inflict upon another, also within this State, an injury of which such person afterward dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted. [O. C. 192.]

Art. 192. [240] [230] Person within the State inflicting injury on another out of the State.—If a person, being at the time within this State, shall inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted. [O. C. 193.]

Art. 193. [241] [231] Person without the State inflicting an injury on one within.—If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies. [O. C. 194.]

Art. 194. [242] [232] Committed on a boundary stream.—If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed. [O. C. 195.]

Art. 195. [243] [233] Injured in one county and dying in another.—If a person receive an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found. [O.C. 196; Acts 1935, 44th Leg., p. 487, ch. 200, § 1.]

Art. 196. [244] [234] Committed on a boundary.—Where a river or other stream or highway is the boundary between two counties, any offense committed on such river, stream or highway at a place where it is such boundary, is punishable in either county. [O. C. 197.]

Art. 197. [245] [235] Theft.—Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried it. [O. C. 198.]

Art. 198. [246] Mortgaged property.—When mortgaged property is taken from one county and unlawfully disposed of in another county, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in which the lien on it is registered. [Acts 1899, p. 8.]

Art. 199. [247] [236] Accomplices and accessories to theft.—Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice or accessory to the offense. [Acts 1889, p. 37.]

Art. 200. [248] [237] Receiving and concealing stolen property.—Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender. [Id.]

Art. 201. [249] [238] By commissioner of deeds.—Offenses committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State. [O. C. 200.]

Art. 202. [250] [239] On vessels.—An offense committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates. [O. C. 201.]

Art. 203. [251] [240] Embezzlement.—Embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it. [O. C. 203.]

Art. 204. [252] [241] False imprisonment, kidnapping and abduction.—Venue for false imprisonment, kidnapping and abduction belongs either to the county in which the offense was committed, or to any county through, into or out of which the person falsely imprisoned, kidnapped or taken in such man-

ner as to constitute abduction may have been carried. [O. C. 204.]

Art. 205. [253] [242] Conspiracy.—Conspiracy may be prosecuted in the county where the conspiracy was entered into, or in the county where the same was agreed to be executed; and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.

Art. 206. Bigamy.—Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife. [Acts 1921, p. 139.]

Art. 207. [254] Rape.—Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and, if his court be in session, but the grand jury has been discharged, he shall immediately recall said grand jury to investigate the accusation. Prosecutions for rape shall take precedence in all cases in all courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial. [Acts 1st C. S. 1897, p. 16.]

Art. 208. [255] [243] Conviction or acquittal in another State.—When an act has been committed out of this State by an inhabitant thereof, and such act is an offense by the laws of this State, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this State. [O. C. 205.]

Art. 209. [256] [244] Jurisdiction in different counties.—Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county. [O. C. 206.]

Art. 210. [257] [245] Proof of venue.—In all cases mentioned in this chapter, the indictment or information, or any proceeding in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove that by reason of the facts in the case, the county where such prosecution is carried on has jurisdiction. [O. C. 207.]

Art. 211. [258] [246] Other offenses.—If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed. [O. C. 208.]

TITLE 5—ARREST, COMMITMENT AND BAIL

CHAPTER 1.—ARREST WITHOUT WARRANT

Article 212. [259] [247] Offense within view.—A peace officer or any other person, may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an "offense against the public peace." [O. C. 209.]

Art. 213. [260] [248] Within view of magistrate.—A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender. [O. C. 210.]

Art. 214. [261] [249] Authority of municipality.—The municipal authorities of towns and cities may establish rules authorizing the arrest, without warrant, of persons found in suspicious places, and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws. [O. C. 211.]

Art. 215. [262] [250] When felony has been committed.—Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused. [O. C. 212.]

Art. 216. [263] [251] Rights of officer.—In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant. [O. C. 213.]

Art. 217. [264] [252] Must take offender before magistrate.—In each case enumerated in this chapter, the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made without an order. [O. C. 214.]

CHAPTER 2.—ARREST UNDER WARRANT

Art.
242. May break door.
243. Authority to arrest must be made known.
244. Escaped prisoner.

Article 218. [265] [253] "Warrant of arrest."—A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law. [O. C. 215.]

Art. 219. [266] [254] Requisites of warrant.—It issues in the name of "The State of Texas," and shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known; if unknown, then some reasonably definite description must be given of him.

2. It must state that the person is accused of some offense against the laws of the State, naming the offense.

3. It must be signed by the magistrate, and his office be named in the body of the warrant, or in connection with his signature. [O. C. 216.]

Art. 220. [267] [255] Magistrate may issue warrant.—Magistrates may issue warrants of arrest:

1. In any case in which they are by law authorized to order verbally the arrest of an offender.

2. When any person shall make oath before such magistrate that another has committed some offense against the laws of the State.

3. In any case named in this Code where they are specially authorized to issue such warrants. [O. C. 217, 218.]

Art. 221. [268] [256] "Complaint."—The affidavit made before the magistrate or district or county attorney is called a complaint if it charges the commission of an offense. [O. C. 219.]

Art. 222. [269] [257] Requisites of complaint.—The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him.

2. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense.

3. It must state the time and place of the commission of the offense, as definitely as can be done by the affiant.

4. It must be signed by the affiant by writing his name or affixing his mark. [O. C. 220.]

Art. 223. [270] [258] Warrant extends to every part of the State.—A warrant of arrest, issued by any county or district clerk, or by any magistrate (except county commissioners or commissioners courts, mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State. [O. C. 221; Acts 1905, p. 385.]

Art. 224. [271] [259] Warrant issued by other magistrate.—When a warrant of arrest is issued by any county commissioner or commissioners court, mayor or recorder of an incorporated city or town, it can not be executed in another county than the one in which it issues, except:

1. It be indorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or

2. If it be indorsed by any magistrate in the county in which the accused is found, it may be executed in such county. The indorsement may be: "Let this warrant be executed in the county of ———." Or, if the indorsement is made by a judge of a court of record, then the indorsement may be: "Let this warrant be executed in any county of the State of Texas." Any other words of the same meaning will be sufficient. The indorsement shall be dated, and signed officially by the magistrate making it. [O. C. 222; Acts 1905, p. 385.]

Art. 225. [272] [260] Warrant may be telegraphed.—A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in article 223, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in article 223, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall indorse thereon, in substance, these words:

"Let this warrant be executed in the county of ———," which indorsement shall be dated and signed officially by the magistrate making the same. [Act April 17, 1871, p. 39.]

Art. 226. [273] [261] Complaint by telegraph.—A complaint in accordance with article 222, may be telegraphed, as provided in the preceding article, to any magistrate in the State; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this chapter in similar cases. [Id.]

Art. 227. [274] [262] Copy to be deposited.—A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded; and it shall be at once forwarded, taking precedence over other business, to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached. [Id.]

Art. 228. [275] [263] Duty of telegraph manager.—When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company and certified to by the manager of the telegraph office as being a true and correct copy of the warrant or complaint received at his office. [Id.]

Art. 229. [276] [264] Warrant or complaint must be under seal.—No manager of a telegraph office shall receive and forward a warrant or complaint unless the same shall be certified to under the seal of a court of record or by a justice of the peace, with the certificate under seal of the district or county clerk of his county that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to indorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with. [Id.]

Art. 230. [277] [265] Telegram prepaid.—Whoever presents a warrant or complaint to the manager of a telegraph office, to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent "collect." [Id.]

Art. 231. [278] [266] Warrant may be directed to any person.—If it is made known by satisfactory proof to the magistrate that a peace officer can not be procured to execute a warrant of arrest,

of that such delay will be occasioned in procuring the services of a peace officer that the accused will probably escape, such warrant may be directed to any suitable person who is willing to execute the same; and, in such case, his name shall be set forth in the warrant. [O. C. 223.]

Art. 232. [279] [267] Private person executing warrant.—No person other than a peace officer can be compelled to execute a warrant of arrest; but, if any person shall undertake its execution, he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights, and is governed by the same rules as apply to peace officers. [O. C. 224.]

Art. 233. [280] [268] How warrant is executed.—The officer, or person executing a warrant of arrest, shall take the person whom he is directed to arrest forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant. [O. C. 225.]

Art. 234. [281] [269] Arrest for out-county felony.—One arrested in one county for felony committed in another shall in all cases be taken before some magistrate of the county where it was alleged the offense was committed. [O. C. 226.]

Art. 235. [282] [270] Arrest for out-county misdemeanor.—One arrested for a misdemeanor shall be taken before a magistrate of the county where the arrest takes place who shall take bail and transmit immediately the bond so taken to the court having jurisdiction of the offense. [O. C. 226.]

Art. 236. [283] [271] Notice of arrest.—If the accused fails or refuses to give bail, as provided in the preceding article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall forthwith notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

Art. 237. [284] [272] Duty of sheriff receiving notice.—The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate.

Art. 238. [285] [273] Prisoner discharged if not timely demanded.—If the proper officer of the county where the offense is alleged to have been committed does not demand the prisoner and take charge of him within thirty days from the day he is committed, such prisoner shall be discharged from custody.

Art. 239. [286] [274] A person is said to be arrested, when.—A person is said to be arrested when he has been actually placed under restraint or taken into custody by the officer or person executing the warrant of arrest. [O. C. 227.]

Art. 240. [287] [275] Time of arrest.—An arrest may be made on any day or at any time of the day or night. [O. C. 228.]

Art. 241. [288] [276] What force may be used.—In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused. [O. C. 229.]

Art. 242. [289] [277] May break door.—In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose. [O. C. 230.]

Art. 243. [290] [278] Authority to arrest must be made known.—In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made; and, if requested, the warrant shall be exhibited to him. [O. C. 231.]

Art. 244. [291] [279] Escaped prisoner.—If a person arrested shall escape, or be rescued, he may be retaken without any other warrant; and, for this purpose, all the means may be used which are authorized in making the arrest in the first instance. [O. C. 232.]

CHAPTER 3.—THE COMMITMENT OR DISCHARGE OF THE ACCUSED

Art.
245. Examining trial.
246. Examination postponed.
247. Warning to accused.
248. Voluntary statement.
249. Witness placed under rule.
250. Counsel may examine witness.
251. Same rules of evidence as on final trial.
252. Presence of the accused.
253. Testimony reduced to writing.
254. Attachment for witness.
255. Attachment to another county.
256. Witness need not be tendered fees.
257. Attachment executed forthwith.
258. Postponing examination.
259. Capital offense; who may discharge.
260. If insufficient bail has been taken.
261. Decision of magistrate.
262. When no safe jail.
263. Warrant in such case.
264. Commitment.
265. Duty of sheriff as to prisoners.
266. Discharge not final.

Article 245. [292] [280] Examining trial.—When the accused has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. [O. C. 233.]

Art. 246. [293] [281] Examination postponed.—The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason. [O. C. 234.]

Art. 247. [294] [282] Warning to accused.—Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he can not be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him. [O. C. 235-241.]

Art. 248. [295] [283] Voluntary statement.—If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement. [O. C. 235, 242, 243.]

Art. 249. [296] [284] Witness placed under rule.—The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the

testimony given by any one witness shall not be heard by any of the others. [O. C. 235.]

Art. 250. [297] [285] Counsel may examine witness.—If any person appear to prosecute as counsel for the State, he shall have the right to question the witnesses on direct or cross-examination; and the accused or his counsel has the same right. Should no counsel appear, either for the State or for the defendant, the magistrate may examine the witnesses; and the accused has the same right. [O. C. 236.]

Art. 251. [298] [286] Same rules of evidence as on final trial.—The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Art. 252. [299] [287] Presence of the accused.—The examination of each witness shall be in the presence of the accused. [O. C. 240.]

Art. 253. [300] [288] Testimony reduced to writing.—The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. [O. C. 238.]

Art. 254. [301] [289] Attachment for witness.—The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpœna for that purpose. [O. C. 244.]

Art. 255. [302] [290] Attachment to another county.—The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and, if the facts set forth are not considered material by the magistrate, or, if they be admitted to be true by the adverse party, the attachment shall not issue. [O. C. 246.]

Art. 256. [303] [291] Witness need not be tendered fees.—A witness attached need not be tendered his witness fees or expenses. [O. C. 246.]

Art. 257. [304] [292] Attachment executed forthwith.—The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ. [O. C. 245.]

Art. 258. [305] [293] Postponing examination.—After examining the witnesses in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or, if the same be admitted to be true by the adverse party, the postponement shall be refused. [O. C. 239.]

Art. 259. [306] [294] Capital Offense; who may discharge.—Upon examination of one accused of a capital offense, no magistrate other than a judge of the Court of Criminal Appeals, district court or county court, shall have power to discharge the defendant. Any magistrate may admit to bail, except in capital cases where the proof is evident. [O. C. 248.]

Art. 260. [307] [295] If insufficient bail has been taken.—Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case. [O. C. 249.]

Art. 261. [308] [296] Decision of magistrate.—After the examining trial has been had, the magistrate shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. [O. C. 250.]

Art. 262. [309] [297] When no safe jail.—If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit to the nearest safe jail in any other county. [O. C. 251.]

Art. 263. [310] [298] Warrant in such case.—The commitment in the case mentioned in the preceding article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent. [O. C. 252.]

Art. 264. [311] [299] Commitment.—A commitment is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

1. That it run in the name of "The State of Texas."
2. That it be addressed to the sheriff of the county to the jail of which the defendant is committed.
3. That it state in plain language the offense for which the defendant is committed, and give his name, if it be known, or if unknown, contain an accurate description of the defendant.
4. That it state to what court and at what time the defendant is to be held to answer.
5. When the prisoner is sent out of the county where the prosecution arose, the warrant shall state that there is no safe jail in the proper county.
6. If bail has been granted, the amount of bail shall be stated in the warrant. [O. C. 253.]

Art. 265. [313] [301] Duty of sheriff as to prisoners.—Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner. [O. C. 255.]

Art. 266. [314] [302] Discharge not final.—A discharge by a magistrate upon an examination of any person accused of an offense shall not prevent a second arrest of the same person for the same offense. [O. C. 256.]

CHAPTER 4.—BAIL

1. GENERAL RULES AS TO BAIL

1. GENERAL RULES AS TO BAIL—Cont'd

2. RECOGNIZANCE AND BAIL BOND

3. SURRENDER OF THE PRINCIPAL

4. BAIL BEFORE THE EXAMINING COURT

5. BAIL BY WITNESSES

1. GENERAL RULES AS TO BAIL.

Article 267. [315] [303] Definition of "bail."—"Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him. [O. C. 257, 258.]

Art. 268. [316] [304] Definition of "recognizance."—A "recognizance" is an undertaking entered into, before a court of record in session, by the defendant in a criminal action, and his sureties, by which they bind themselves, respectively, in a sum fixed by the court, that the defendant will appear for trial before such court upon the accusation against him. Such undertaking is not signed, but is made a matter of record in the court where the same is entered into. [O. C. 259.]

Art. 269. [317] [305] Definition of "bail bond."—A "bail bond" is an undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; it is written out and signed by the defendant and his sureties. [O. C. 260.]

Art. 270. [318] [306] When a bail bond is given.—A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or commitment. [O. C. 261.]

Art. 271. [319] [307] What "bail" includes.—Wherever the word "bail" is used with reference to the security given by the defendant, it applies as well to recognizances as to bail bonds. When a defendant is said to be "on bail," or to have "given bail," it applies as well to recognizances as to bail bonds. [O. C. 262.]

Art. 271a. Corporation as surety.—Wherever in this Chapter, any person is required or authorized to give or execute any bail bond or recognizance, such bail bond or recognizance may be given or executed by such principal and any corporation authorized by Law to act as surety, subject to all the provisions of this Chapter regulating and governing the giving of bail bonds and recognizances by personal surety insofar as the same is applicable. [Acts 1929, 41st Leg., p. 422, ch. 193, § 1.]

Section 2 of this Act repeals all conflicting laws and parts of laws.

Art. 271b. Corporation to file with county clerk power of attorney designating agent.—Any corporation authorized by the Law of this State to act as a surety, shall before executing any bail bond or recognizance as authorized in the preceding Article, first file in the office of the County Clerk of the county where such bail bond or recognizance is given, a power of attorney designating and authorizing the named agent, agents or attorney of such corporation to execute such bail bonds and recognizances, and thereafter the execution of such bail bonds and recognizances by such agent, agents or attorney, shall be a valid and binding obligation of such corporation. [Acts 1929, 41st Leg., p. 422, ch. 193, § 1.]

Section 2 of this Act 1929, repeals all conflicting laws and parts of laws.

2. RECOGNIZANCE AND BAIL BOND

Art. 272. [320] [308] Requisites of a recognizance.—A recognizance shall be sufficient to bind the principal and sureties if it contain the following requisites:

1. If it be acknowledged that the defendant is indebted to the State of Texas in such sum as is fixed by the court, and the sureties are, in like manner, indebted in such sum.

2. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor.

3. That it state the time and place when the defendant is bound to appear and the court before which he is bound to appear. [O. C. 263, Acts 1899, p. 111.]

Art. 273. [321] [309] Requisites of a bail bond.—A bail bond shall be sufficient if it contains the following requisites:

1. That it be made payable to the State of Texas.

2. That the obligors thereto bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him.

3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor.

4. That the bond be signed by name or mark by the principal and sureties.

5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. In stating the time, it is sufficient to specify the term of the court; and in stating the place, it is sufficient to specify the name of the court or magistrate, and the county.

6. The bond shall also be conditioned that the principal and sureties will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the principal in the event

he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the bondsmen of the accused for expenses incurred by him, and not to the State for any fees earned by him in connection with the re-arresting of an accused who has violated the conditions of his bond. [O.C. 264, Acts 1899, p. 111; Acts 1933, 43rd Leg., p. 176, ch. 82.]

Art. 274. [322] [310] Rules applicable to all cases of bail.—The rules in this chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action. [O. C. 265.]

Art. 275. [323] [311] Bail bond and recognizance.—A recognizance or bail bond, entered into by a defendant, and which binds him to appear at a particular term of the district court, shall be construed to bind him and his sureties for his attendance upon the court from term to term, and from day to day, until discharged from further liability thereon, according to law. [O. C. 267.]

Art. 276. [324] [312] Disqualified sureties.—A minor or married woman can not be surety on a recognizance or bail bond, but, if either of these classes of persons be the accused party, the undertaking shall be binding both upon principal and surety. [O. C. 268.]

Art. 277. [325] [313] How bail taken.—Every court, judge, magistrate or other officer taking bail shall require evidence of the sufficiency of the security offered; but, in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other incumbrances; that he is a resident of this State, and has property therein liable to execution worth the sum for which he is bound. [O. C. 269.]

Art. 278. [326] [314] Exempt property.—The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of a recognizance or bail bond, either as to principal or sureties. [O. C. 270.]

Art. 279. [327] [315] Sufficiency of sureties ascertained.—To test the sufficiency of the security offered to any recognizance or bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in ——— county, and have property in this State liable to execution worth said amount or more."

(Dated ———, and attest by the judge of the court, clerk, magistrate or sheriff.)

Such affidavit shall be filed with the papers of the proceedings.

Art. 280. [328] [316] Affidavit not conclusive.—Such affidavit shall not be conclusive as to the sufficiency of the security; and, if the court or officer taking the recognizance or bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

Art. 281. [329] [317] Rules for fixing amount of bail.—The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point. [O. C. 272.]

3. SURRENDER OF THE PRINCIPAL

Art. 282. [330] [318] Surety may surrender his principal.—Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted. [O. C. 273.]

Art. 283. [331–334] When surrender is made during term.—If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and, if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

Art. 284. [332–335] Surrender in vacation.—When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

Art. 285. [333] [321] Surety may obtain a warrant.—Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases. [O. C. 274.]

Art. 286. [336] [324] Bail in misdemeanor.—The sheriff, or other peace officer, in cases of misdemeanor, has authority, whether during the term of the court or in vacation, where he has a defendant in custody under a warrant of commitment, warrant of arrest, or capias, or where the accused has been surrendered by his bail, to take of the defendant a bail bond. [O. C. 279.]

Art. 287. [337] [325] Bail in felony.—In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It

shall not be necessary for the defendant or his sureties to appear in court. [O. C. 280, Acts 1907, p. 148.]

Art. 288. [338] [326] May take bail in felony.—In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or, if no amount has been fixed, then in such amount as such officer may consider reasonable. [O. C. 281.]

Art. 289. [339] [327] Sureties severally bound.—In all recognizances, bail bonds or other bonds, taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged. [O. C. 281–283.]

4. BAIL BEFORE THE EXAMINING COURT

Art. 290. [340] [328] General rules applicable.—All general rules in this chapter are applicable to bail taken before an examining court. [O. C. 284.]

Art. 291. [341] [329] Proceedings when bail is granted.—After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court. [O. C. 285.]

Art. 292. [343] [331] Time given to procure bail.—Reasonable time shall be given the accused to procure security.

Art. 293. [344] [332] When bail is not given.—If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly. [O. C. 290.]

Art. 294. [345] [333] When ready to give bail.—If the party be ready to give bail, the magistrate shall cause to be prepared a bail bond, which shall be signed by the accused and his surety or sureties. [O. C. 291.]

Art. 295. [346] [334] Accused liberated.—When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty. [O. C. 293–294.]

Art. 296. [347] [335] Shall certify proceedings.—The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay. [O. C. 295.]

Art. 297. [348] [336] Duty of clerks who receive such proceedings.—If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.

Art. 298. [349] [337] In case of no arrest.—Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses. [O. C. 296.]

Art. 299. [350] [338] Waiving examination.—The accused may waive an examining trial in any bailable case and consent for the magistrate to require bail of him; but the prosecutor or magistrate may examine the witnesses for the State as in other cases. The magistrate shall send to the proper clerk with the other proceedings in the case a list of the witnesses for the State, their residence and whether examined.

5. BAIL BY WITNESSES

Art. 300. [351] [339] Witnesses to give bond.—Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. An individual bond shall be taken of a witness who makes oath that he is unable to give security or deposit a sufficient amount of money in lieu thereof. [O. C. 297.]

Art. 301. [352] [340] Security of witness.—The amount of security to be required of a witness is to be regulated by his pecuniary condition and the nature of the offense with respect to which he is a witness. [O. C. 298.]

Art. 302. [353] [341] Force of witness bond.—The bond given by a witness for his appearance shall have the same force and effect as a bail bond and may be forfeited and recovered upon in the same manner. [O. C. 299.]

Art. 303. [354] [342] Witness may be committed.—A witness required to give bail who fails or refuses to do so and fails to make the affidavit provided for in article 300 shall be committed to jail as in other cases of a failure to give bail when required; but shall be released from custody upon giving such bail or upon making said affidavit and giving his individual bond.

TITLE 6—SEARCH WARRANTS

1. GENERAL RULES

2. ISSUANCE OF SEARCH WARRANTS

3. EXECUTION OF SEARCH WARRANT

4. RETURN OF A SEARCH WARRANT

4. RETURN OF SEARCH WARRANT—Cont'd

1. GENERAL RULES

Article 304. [355] [343] "Search warrant."—A "search warrant" is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense. [O. C. 300.]

Art. 305. [356] [344] When it may issue.—A search warrant may be issued:

1. To discover property acquired by theft or in any other manner which makes its acquisition a penal offense.

2. To search suspected places where it is alleged property so illegally acquired is commonly kept or concealed.

3. To search places where it is alleged implements are kept for use in forging or counterfeiting.

4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot.

5. To seize and bring before a magistrate any such property, implements, arms and munitions. [O. C. 301.]

Art. 306. [357] [345] Its object.—A warrant to search for and seize stolen property is designed as a means of obtaining possession of the property for the purpose of restoring it to the true owner, and detecting any person guilty of stealing or concealing it. [O. C. 302.]

Art. 307. [358] [346] "Stolen."—The word "stolen," as used in this title, is intended to embrace also the acquisition of property by any means made penal by the law of the State.

Art. 308. [359] [347] For property not stolen.—When it is alleged that the property was acquired other than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant. [O. C. 304.]

Art. 309. [360] [348] Rules applicable.—The mode of proceeding, directed to be pursued in applying for a warrant to search for and seize stolen property, and the rules prescribed for officers in issuing such warrants and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired in any manner in violation of any provision of the Penal Code.

2. ISSUANCE OF SEARCH WARRANTS

Art. 310. [361] [349] When place is known.—A warrant to search for and seize property alleged to have been stolen and concealed at a particular place may be issued by a magistrate, whenever written sworn complaint is made to such magistrate, setting forth:

1. The name of the person accused of having stolen or concealed the property; or, if his name be unknown, giving a description of the accused, or stating that the person who stole or concealed the property is unknown.

2. The kind and value of the property alleged to be stolen or concealed.

3. The place where it is alleged to be concealed.

4. The time, as near as may be, when the property is alleged to have been stolen. [O. C. 307.]

Art. 311. [362] [350] General application.—A warrant to discover and seize property alleged to have been stolen or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever written sworn complaint is made setting forth:

1. The name of the person suspected of being the thief, or an accurate description of him, if his name be unknown, or that the thief is unknown.

2. An accurate description of the property, and its probable value.

3. The time, as near as may be, when the property is supposed to have been stolen.

4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief. [O. C. 306.]

This article, in so far as authorizing search of places without describing them, held in violation of Const. art. 1, § 9. See Chapin v. State, 107 Cr.R. 477, 296 S.W. 1095.

Art. 312. [363] [351] Application to search other places.—A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:

1. A description of the place suspected.

2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.

3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.

4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth. [O. C. 308.]

Art. 313. [364] [352] Warrant to arrest may issue with search warrant.—The magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge property concealed at a suspected place, or of having possession of implements designed for use in the commission of the offense of forgery, counterfeiting or burglary, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be, in any legal manner, accused of being accomplice or accessory to any offense above enumerated. [O. C. 309.]

Art. 314. [365] [353] Search warrant may order arrest.—The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the magistrate the person accused of having stolen or concealed the property.

Art. 315. [366] [354] To seize property.—A search warrant to seize property stolen and concealed shall be deemed sufficient if it contains the following requisites:

1. That it run in the name of "The State of Texas."

2. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the magistrate.

3. That it name the person accused of having stolen or concealed the property; or, if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the magistrate, or state that the person who stole or concealed the property is unknown.

4. That it be dated and signed by the magistrate, and directed to sheriff or other peace officer of the proper county.

Art. 316. [367] [355] To search suspected place.—A warrant to search a suspected place shall be sufficient if it contain the following requisites:

1. That it run in the name of "The State of Texas."
2. That it describe with accuracy the place suspected.
3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed.
4. That it name the person accused of having charge of the suspected place, if there be any such person, or, if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate.
5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county. [O. C. 312.]

3. EXECUTION OF SEARCH WARRANT

Art. 317. [368] [356] Warrant executed without delay.—Any peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate. [O. C. 313, 319.]

Art. 318. [369] [357] Days allowed for warrant to run.—The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution.

Art. 319. [370] [358] Officer to give notice of purpose.—The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of, the place, or who has possession of the property described in the warrant. [O. C. 315.]

Art. 320. [371] [359] Power of officer executing warrant.—In the execution of a search warrant, the officer may call to his aid any number of citizens in his county, who shall be bound to aid in the execution of the same. If he is resisted in the execution of the warrant, he may use such force as is necessary to overcome the resistance, but no greater. [O. C. 314, 316.]

Art. 321. [372] [360] When officer may enter by force.—In the execution of a search warrant, the officer may break down a door or a window of any house which he is ordered to search, if he can not effect an entrance by other less violent means; but, when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the penal law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same. [O. C. 317.]

Art. 322. [373] [361] Shall seize accused and property.—When the property, implements, arms or munitions which the officer is directed to search for and seize are found, he shall take possession of the same, and carry them before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and forthwith take such person before the magistrate. [O. C. 318.]

Art. 323. [374] [362] Receipt for property.—An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken. [O. C. 320.]

Art. 324. [375] [363] How return made.—Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the magistrate an inventory of the property, implements, arms or munitions taken in his possession under the warrant. [O. C. 321.]

Art. 325. [376] [364] Preventing consequences of theft.—All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay. [O. C. 94.]

4. RETURN OF A SEARCH WARRANT

Art. 326. [377] [365] Disposition of stolen property.—When property is taken under any provision of this title and delivered to a magistrate, he shall, if it appear that the same was acquired in violation of the penal law, dispose of it according to the rules prescribed in this Code with reference to the disposition of stolen property. [O. C. 322.]

Art. 327. [378] [366] Custody of property found.—When a warrant has been issued to search a suspected place, and there be found any such implements, arms, munitions or intoxicating liquors, etc., as are alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate. [O. C. 323.]

Art. 328. [379] [367] Magistrate shall investigate.—The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him. [O. C. 330.]

Art. 329. [380] [368] Shall discharge defendant.—If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant, and order restitution of the property taken from him, except implements which appear to be designed for forging, counterfeiting or burglary. In such case, the implements shall be kept by the sheriff, or officer who seized the same, subject to the order of the proper court. [O. C. 332.]

Art. 330. [381] [369] Schedule.—The officer who seizes any property under a search warrant shall furnish the magistrate to whom he returns the warrant with a certified schedule of the article so seized. [O. C. 324.]

Art. 331. [382] [370] Examining trial.—The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant. [O. C. 331.]

Art. 332. [383] [371] Certify record to proper court.—The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized. [O. C. 334.]

TITLE 7—AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER 1.—ORGANIZATION OF THE GRAND JURY

Art. 333. [384] [372] Appointment of jury commissioners.—The District Judge shall at each term of the District Court appoint not less than three (3), nor more than five (5) 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 Four Dollars ($4), 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. [Acts 1876, p. 79; Acts 1943, 48th Leg., p. 468, ch. 312, § 1; Acts 1947, 50th Leg., p. 141, ch. 83, § 2.]

Art. 334. [385] [373] Notified of appointment.—The judge shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear. [Id.]

Art. 335. [386] [374] Oath of commissioners.—When the appointees appear before the judge, he shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court, until after said cause may be tried or continued, or the jury discharged." [Id.]

Art. 336. [387] [375] Instructed.—The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire in charge of the sheriff to a suitable room to be secured by the sheriff for that purpose. The clerk shall furnish them the necessary stationery, the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury at each term, and the last assessment roll of the county. [Id.]

Art. 337. [388] [376] Kept free from intrusion.—The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate without leave of the court until they complete their duties. [Id.]

Art. 338. [389] [377] Shall select grand jurors.—The jury commissioners shall select sixteen men from the citizens of the different portions of the county to be summoned as grand jurors for the next term of the court. [Id.]

Art. 338a. Extension beyond term of period for which grand jurors shall sit in counties over 500,000.—In all counties having a population of more than five hundred thousand (500,000) according to the last preceding Federal Census, if, prior to the expiration of the term for which the grand jury was empaneled, it is made to appear by a declaration of the foreman or of a majority of the grand jurors in open court, that the investigation by the grand jury of the matters before it cannot be concluded before the expiration of the term, the Judge of the District Court in which said grand jury was empaneled may, by the entry of an order on the minutes of said Court, extend, from time to time, for the purpose of concluding the investigation of matters then before it, the period during which said grand jury shall sit, for not to exceed a total of ninety (90) days after the expiration of the term for which it was empaneled, and all indictments returned by the grand jury within said extended period shall be as valid as if returned before the expiration of the term. [Acts 1941, 47th Leg., p. 561, ch. 354, § 1; Acts 1943, 48th Leg., p. 7, ch. 7, § 1.]

Art. 339. [390] [378] Qualifications.—No person shall be selected or serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the State, and of the county in which he is to serve, and qualified under the Constitution and laws to vote in said county; but, whenever it shall be made to appear to the court that the requisite number of jurors who have paid their poll taxes can not be found within the county, the court shall not regard the payment of poll taxes as a qualification for service as a juror.

2. He must be a freeholder within the State, or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write.

5. He must not have been convicted of any felony.

6. He must not be under indictment or other legal accusation for theft or of any felony. [Acts 1876, p. 78; O. C. 289; Const. art. 16, sec. 19; Acts 1903, 1st C. S., p. 16.]

Art. 340. [391] [379] Names returned.—The names of those selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and indorse thereon the words, "The list of grand jurors selected at ——— term of the district court," the blank being for the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, direct the same to the district judge and deliver it to him in open court. [Id.]

Art. 341. [392] [380] List to clerk.—The judge shall deliver the envelope containing the list of grand jurors to the clerk or one of his deputies in open court without opening the same. [Id.]

Art. 342. [393] [381] Oath to clerk.—Before the list of grand jurors is delivered to the clerk, the judge shall administer to the clerk and each of his deputies in open court the following oath: "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term." [Id.]

Art. 343. [394] [382] Deputy clerk sworn.—Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment. [Id.]

Art. 344. [395] [383] Clerk shall open lists.—The grand jury may be convened on the first or any subsequent day of the term. The Judge shall designate the day on which the grand jury is to be impaneled and notify the Clerk of such date; and within thirty (30) days of such date, and not before, the Clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify to it under his official seal, note thereon the day for which they are to be summoned, and deliver it to the Sheriff. [Acts 1876, p. 78; O.C. 289; Const. Art. 16, § 19; Acts 1903, 1st C.S., p. 16; Acts 1943, 48th Leg., p. 468, ch. 312, § 1.]

Art. 345. [396] [384] Summoning.—The Sheriff shall summon the persons named in the list at least three (3) days, exclusive of the day of service, prior to the day on which the grand jury is to be impaneled, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen (16) years old, a written notice to such juror that he has been selected as a grand juror, and the time and place when and where he is to attend; or the Judge, at his election, may direct the Sheriff to summon the grand jurors by registered mail. [Acts 1876, p. 78; O.C. 289; Const. Art. 16, § 19; Acts 1903, 1st C.S., p. 16; Acts 1943, 48th Leg., p. 468, ch. 312, § 1.]

Art. 346. [397] [385] Return of officer.—The officer executing such summons shall return the list on the day on which the grand jury is to be impaneled, with a certificate thereon of the date and manner of service upon each juror. If any of said jurors have not been summoned, he shall also state in his certificate the reason why they have not been summoned. [Acts 1876, p. 78; O.C. 289; Const. Art. 16, § 19; Acts 1903, 1st C.S., p. 16; Acts 1943, 48th Leg., p. 468, ch. 312, § 1.]

Art. 347. [398] [386] Absent juror fined.—A juror legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten nor more than one hundred dollars. [Acts 1876, p. 78; O.C. 289; Const. Art. 16, § 19; Acts 1903, 1st C.S., p. 16.]

Art. 348. [399] [387] Failure to select.—If there should be a failure from any cause to select and summon a Grand Jury, as herein directed, or, when none of those summoned shall attend, the District Court shall, on the first day or at any time thereafter at the discretion of said court, direct a writ to be issued to the Sheriff commanding him to summon a Jury Commission, selected by the court, which commission shall select not less than twelve nor more than sixteen persons, as provided by law, who shall serve as Grand Jurors. [O.C. 347; Acts 1933, 43rd Leg., p. 56, ch. 27.]

Art. 349. [400] [388] If less than twelve attend.—When less than twelve of those summoned to serve as grand jurors are found to be in attendance and qualified to so serve, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve men. [O. C. 354.]

Art. 350. [401] [389] Jurors to attend forthwith.—The jurors provided for in the two preceding articles shall be summoned in person to attend before the court forthwith.

Art. 351. [402] [390] To summon qualified men.—Upon directing the sheriff to summon grand jurors not selected by the jury commissioners, the court shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed by law.

Art. 352. [403] [391] To test qualifications.—When as many as twelve men summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such. [O. C. 345.]

Art. 353. [404] [392] Interrogated.—Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated on oath by the court or under his direction, touching his qualifications. [O. C. 349.]

Art. 354. [405] [393] Mode of test.—In trying the qualifications of any person to serve as a grand juror, he shall be asked:

1. Are you a citizen of this State and county, and qualified to vote in this county, under the Constitution and laws of this State?

2. Are you a freeholder in this State or a householder in this county?

3. Are you able to read and write? [O. C. 350; Acts 1st C. S. 1903, p. 16.]

Art. 355. [406] [394] Qualified juror accepted.—When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror. [O. C. 351; Id.]

Art. 356. [407] [395] Excused if disqualified.—Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. [O. C. 352.]

Art. 357. [408] [396] Jury impaneled.—When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror. [O. C. 353.]

Art. 358. [409] [397] Any person may challenge.—Before the grand jury has been impaneled, any person may challenge the array of jurors or any person presented as a grand juror. In no other way shall objections to the qualifications and legality of the grand jury be heard. Any person confined in jail in the county shall upon his request be brought into court to make such challenge. [O. C. 362.]

Art. 359. [410] [398] "Array."—By the array of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled. [O. C. 368.]

Art. 360. [411] [399] "Impaneled" and "panel."—A grand juror is said to be "impaneled" after his qualifications have been tried and he has been sworn. By "panel" is meant the whole body of grand jurors. [O. C. 360.]

Art. 361. [412] [400] Challenge to array.—A challenge to the array shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the jury commissioners.

2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

Art. 362. [413] [401] Challenge to juror.—A challenge to a particular grand juror may be made orally for the following causes only:

1. That he is not a qualified grand juror.

2. That he is the prosecutor upon an accusation against the person making the challenge.

3. That he is related by consanguinity or affinity to one who has been held to bail or who is in confinement upon a criminal accusation. [O. C. 364.]

Art. 363. [414] [402] Summarily decided.—When a challenge to the array or to any individual has been made, the court shall hear proof and decide in a summary manner whether the challenge be well founded or not. [O. C. 365.]

Art. 364. [415] [403] Other jurors summoned.—The court shall order another grand jury to be summoned if the challenge to the array be sustained, or order the panel to be completed if by challenge to any particular grand juror their number be reduced below twelve.

Art. 365. [416] [404] Oath of grand jurors.—When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to the jurors: "You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God." [Acts 1875, p. 166.]

Art. 366. [417] [405] To instruct jury.—The court shall instruct the grand jury as to their duty.

Art. 367. [418] [406] Bailiffs appointed.—The court may appoint one or more bailiffs to attend upon the grand jury, and, at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so held you God."

See note to Article 367b, post.

Art. 367a. Compensation of bailiff.—That each grand jury bailiff appointed as such bailiff by the court shall receive as compensation for his services the sum of $3.00 for each day that he may serve as a grand jury bailiff,—provided, however, that each grand jury bailiff appointed as such bailiff by the court in counties of a population of 150,000 or more according to the 1920 census of the United States shall receive as compensation for his services the sum of $5.00 for each day that he may serve as a grand jury bailiff. Provided that the sheriff or deputy sheriff attending the Fourteenth, Forty-fourth, Sixty-eighth, Ninety-fifth and One Hundred and First Judicial District Courts of Dallas County, Texas, shall be paid the sum of five dollars for each and every day that he shall so serve as bailiff of each of the said courts. [Acts 1925, 39th Leg., ch. 98, p. 273, § 1.]

Art. 367b. Bailiffs appointed by District Attorney.—The District Attorney may appoint one or more bailiffs to attend upon the Grand Jury and at the time of the appointment the Court shall administer to each of them the following oath: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the Grand Jury, and that you will keep secret the proceedings of the Grand Jury, so help you God." Said bailiffs shall be paid the sum and in the manner now provided by law. [Acts 1927, 40th Leg., p. 93, ch. 67, § 6.]

Sections 1-5 and 7 of this Act are published as Rev.Civ. St. Art. 326f.

Section 7 makes the provisions of the act applicable to counties of a population of 150,000, or more.

Section 8 of this Act repeals the provision for appointment of bailiffs by the court.

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.]

Section 3 of the Act of 1937 repealed conflicting laws.

Art. 367c—1. Grand jury bailiffs in counties of 250 000 to 500,000; compensation.—The Judges of the Criminal District Courts in any county having a population of not less than two hundred and fifty thousand (250,000) inhabitants and not more than five hundred thousand (500,000) inhabitants according to the last preceding or any future Federal Census shall appoint grand jury bailiffs, not exceeding seven (7), whose compensation shall be Three Thousand Dollars ($3,000) per annum, each; such compensation to be paid out of the General Fund or Jury Fund in twelve (12) equal monthly installments.

Bailiffs thus appointed are subject to removal without cause at the will of the Judge (or Judges, if there be more than one) of any such Criminal District Court. [Acts 1941, 47th Leg., p. 784, ch. 487, § 1; Acts 1947, 50th Leg., p. 486, ch. 283, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws to the extent of the conflict.

Art. 367d. Bailiffs in certain counties with eight districts and four county courts; duties; compensation.—Section 1. In all counties having eight (8) District Courts, including two (2) Criminal District Courts, and four (4) County Courts, including two (2) County Courts at Law and one County Criminal Court, the District Judges of each such county shall appoint a bailiff to be in charge of the Central Jury Room and the general panel. Such bailiff is hereby authorized to summon jurors, whose names have been drawn from the jury wheel, and to serve notices upon absent jurors, as directed by the District Judges having supervision and control over the general jury panel. Such bailiff shall look after the said panel and perform such duties in connection with the general supervision of the Central Jury Room and the general panel as are required by the District Judges of such county. He shall serve for a term of two (2) years, from January first of the odd years, and his salary shall be set by the Commissioners Court upon recommendation of the District Judges.

Sec. 2. It is hereby declared to be the legislative intent that if any sentence of this Act shall be held to be invalid or unconstitutional, such invalidity shall not be held to affect the validity or constitutionality of any other paragraph or sentence of this Act. [Acts 1947, 50th Leg., p. 394, ch. 223.]

Art. 367e. Bailiffs in counties of 200,000 to 300,000; compensation and expenses.—In all counties of this State having a population of more than two hundred thousand (200,000) and less than three hundred thousand (300,000) inhabitants, according to the last preceding Federal Census, Grand Jury Bailiffs shall receive compensation of Seven Dollars and Fifty Cents ($7.50) per day, and in addition thereto One Dollar ($1) per day for the expenses of their automobile, or a total of Eight Dollars and Fifty Cents ($8.50) per day, which shall be paid on the basis of a six (6) day week. Such compensation may be paid out of the General Fund or the Jury Fund of such counties, as the Commissioners Court of such counties may determine. Said compensation and expenses shall be paid monthly. [Acts 1947, 50th Leg., p. 964, ch. 418, § 1.]

Section 2 of the Act of 1947 repealed conflicting laws.

Art. 368. [419] [407] Bailiff's duties.—A bailiff is to obey the instructions of the foreman, to summon all witnesses, and, generally, to perform all such duties as the foreman may require of him. One bailiff shall be always with the grand jury, if two or more are appointed.

Art. 369. [420] [408] Bailiff violating duty.—No bailiff shall take part in the discussions or deliberations of the grand jury nor be present when they are discussing or voting upon a question. The grand jury shall report to the court any violation of duty by a bailiff and the court may punish him for such violation as for contempt.

Art. 370. [421] [409] Another foreman appointed.—If the foreman of the grand jury is from any cause absent or unable or disqualified to act, the court shall appoint in his place some other member of the body.

Art. 371. [422] [410] Quorum.—Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

Art. 372. [423] [411] Reassembled.—A grand jury discharged by the court for the term may be reassembled by the court at any time during the term. If one or more of them fail to reassemble, the court may complete the panel by impaneling other men in their stead in accordance with the rules provided in this chapter for completing the grand jury in the first instance.

CHAPTER 2.—DUTIES AND POWERS OF THE GRAND JURY

Art.

Article 373. [424] [412] Grand jury room.—After the grand jury is organized they shall proceed to the discharge of their duties in a suitable place which the sheriff shall prepare for their sessions. [O. C. 371.]

Art. 374. [425] [413] Deliberations secret.—The deliberations of the grand jury shall be secret. Any grand juror or bailiff who divulges anything transpiring before them in the course of their official duties shall be liable to a fine as for contempt of the court, not exceeding one hundred dollars, and to imprisonment not exceeding five days. [O. C. 372.]

Art. 375. [426] [414] State's attorney may go before.—The attorney representing the State may go before the grand jury at any time except when they are discussing the propriety of finding an indictment or voting upon the same. [O. C. 373.]

Art. 376. [427] [415] Attorney may examine witnesses.—The attorney representing the State may examine the witnesses before the grand jury and may advise as to the proper mode of interrogating them. [O. C. 375.]

Art. 377. [428] [416] May send for attorney.—It is the right of the grand jury to send for the

State's attorney and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties. [O. C. 374.]

Art. 378. [429] [417] Advice from court.—The grand jury may also seek and receive advice from the court touching any matter before them, and, for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing. [O. C. 276.]

Art. 379. [430] [418] Foreman shall preside.—The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more members of the body to act as clerks for the grand jury.

Art. 380. [431] [419] Adjournments—The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court. With the consent of the court, they may adjourn for a longer time, and shall as near as may be, conform their adjournments to those of the court. [O. C. 377.]

Art. 381. [432] [420] Duties of grand jury.—The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person. [O. C. 378.]

Art. 382. [433] [421] Foreman may issue process.—The foreman may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation. [O. C. 379, Act Aug. 15, 1870.]

Art. 383. [434] [422] Attachment for out-county witness.—The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire. Such attachment shall command the sheriff or any constable of the county where such witness resides to arrest such witness, and have him before the grand jury at the time and place specified in the writ. [Act Aug. 15, 1870.]

Art. 384. [435] [423] Attachment in vacation.—The district or county attorney may cause an attachment for a witness to be issued, as provided in the preceding article, either in term time or in vacation. [Id.]

Art. 385. [436] [424] Execution of process.—The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and, if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

Art. 386. [437] [425] Evasion of process.—If it be made to appear satisfactorily to the court that a witness for whom an attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding one hundred dollars.

Art. 387. [438] [426] When witness refuses to testify.—When a witness, brought in any manner before a grand jury, refuses to testify, such fact shall be made known to the attorney representing the State or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one, by imposing a fine not exceeding one hundred dollars, and by committing the party to jail until he is willing to testify. [O. C. 381.]

Art. 388. [439] [427] Oaths to witnesses.—The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." [Acts 1875, p. 108.]

Art. 389. [440] [428] How witness questioned.—The grand jury, in propounding questions to a witness, shall direct the examination to the person accused or suspected, shall state the offense with which he is charged, the county where the offense is said to have been committed, and, as nearly as may be, the time of the commission of the offense; but should the jury think it necessary, they may ask the witness in general terms whether he has knowledge of the violation of any particular law by any person, and, if so, by what person. [O. C. 383.]

Art. 390. [441] [429] Felony by one unknown.—When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the offender is unknown, or where it is uncertain by whom the same was committed, the grand jury may ask any pertinent question relative to the transaction in such manner as to ascertain who is the guilty party. [O. C. 383a.]

Art. 391. [442–443] Grand jury shall vote.—After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of an indictment, and, if nine members concur in finding the bill, the foreman shall make a memorandum of the same with such data as will enable the attorney who represents the State to write the indictment. [O. C. 385.]

Art. 392. [444] [432] Indictment prepared.—The attorney representing the State shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman, who shall sign the same officially, and said attorney shall indorse thereon the names of the witnesses upon whose testimony the same was found. [O. C. 387.]

Art. 393. [445] [433] Indictment presented.—When the indictment is ready to be presented, the grand jury shall go in a body into open court, and, through their foreman, deliver the indictment to the judge of the court. At least nine members of the grand jury must be present on such occasion. [O. C. 388.]

Art. 394. [446] [434] Presentment entered of record.—The fact of a presentment of indictment in open court by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond. [Acts 1876, p. 8.]

CHAPTER 3.—INDICTMENT AND INFORMATION

Article 395. [450] [438] "Indictment."—An indictment is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense. [O. C. 394.]

Art. 396. [451] [439] Requisites of an indictment.—An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas."

2. It must appear that the same was presented in the district court of the county where the grand jury is in session.

3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the State."

9. It shall be signed officially by the foreman of the grand jury. [O. C. 395.]

Art. 397. [452] [440] What should be stated.—Everything should be stated in an indictment which is necessary to prove. [O. C. 396.]

Art. 398. [453] [441] The certainty required.—The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense. [O. C. 398.]

Art. 399. [454] [442] Particular intent; intent to defraud.—Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but, in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded. [O. C. 399.]

Art. 400. [455] [443] Allegation of venue.—When the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed. [O. C. 400.]

Art. 401. [456] [444] Allegation of name.—In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and, if it be the accused, a reasonably accurate description of him shall be given in the indictment.

Art. 402. [457] [445] Allegation of ownership.—Where one person owns the property, and another person has the possession of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where it is the separate property of a married woman, the ownership may be alleged to be in her, or in her husband. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

Art. 403. [458] [446] Description of property.—When it becomes necessary to describe property of any kind in an indictment, a general description of the same by name, kind, quality, number and ownership, if known, shall be sufficient. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

Art. 404. [459] [447] "Felonious" and "feloniously."—It is not necessary to use the words "felonious" or "feloniously" in any indictment.

Art. 405. [460] [448] Certainty; what sufficient.—An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary. [Acts 1881, p. 60.]

Art. 406. [461] [449] Special and general terms.—When a statute defining any offense uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the special term. To charge an unlawful sale, it is necessary to name the purchaser.

Art. 407. [463] [451] Act with intent to commit an offense.—An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense. [Id.]

Art. 408. [465] [453] Perjury and false swearing.—An indictment for perjury or false swearing need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before

whom the false statement was made; but it is sufficient to state the name of the court or officer by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or false swearing is assigned. [Acts 1881, p. 60; Acts 1923, p. 83.]

Art. 409. [470] [458] Certain forms of indictments.—The following forms of indictments are sufficient:

Form No. 1—General form: In the name and by authority of the State of Texas: The grand jury of ——— county, State of Texas, duly organized at the ——— term, A. D. ———, of the district court of said county, in said court at said term, do present that ———, (defendant) on the ——— day of ——— A. D. ———, in said county and State, did ——— (description of offense) against the peace and dignity of the State.

———, Foreman of the grand jury.

Form No. 2—Murder: "A B did with malice aforethought kill C D by shooting him with a gun;" or, "by cutting him with a knife."

Art. 410. [474] [462] Following statutory words.—Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words. [Acts 1881, p. 60.]

Art. 411. [475] [463] Matters of judicial notice.—Presumptions of law and matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the general laws of this State) need not be stated in an indictment. [Id.]

Art. 412. [476] [464] Defects of form.—An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant. [Id.]

Art. 413. [477] [465] "Information."—An "Information" is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted. [O. C. 402.]

Art. 414. [478] [466] Requisites of an information.—An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas."
2. That it appear to have been presented in a court having jurisdiction of the offense set forth.
3. That it appear to have been presented by the proper officer.
4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.
5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed.
6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation.
7. That the offense be set forth in plain and intelligible words.
8. That it conclude, "Against the peace and dignity of the State."
9. It must be signed by the district or county attorney, officially. [O. C. 403.]

Art. 415. [479] [467] Information based upon complaint.—No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths. [O. C. 404.]

Art. 416. [480] [468] Rules as to indictment apply to information.—The rules with respect to allegations in an indictment and the certainty required apply also to an information.

Art. 417. [481] [469] May contain several counts.—An indictment or information may contain as many counts, charging the same offense, as the attorney who prepares it may think necessary to insert. An indictment or information shall be sufficient if any one of its counts be sufficient.

Art. 418. [482] [470] When indictment has been lost, etc.—When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court. In such case, another indictment or information may be substituted, upon the written statement of such attorney that it is substantially the same as that which has been lost, mislaid, mutilated or obliterated. Or another indictment may be presented, as in the first instance; and, in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry.

Art. 419. [483] [471] Order transferring cases.—Upon the filing of an indictment in the district court which charges an offense over which such court has no jurisdiction, the judge of such court shall make an order transferring the same to such inferior court as may have jurisdiction, stating in such order the cause transferred and to what court transferred. [Const., art. 5, sec. 17; Act Aug. 12, 1876, p. 135; Acts 1879, p. 71; Acts 1881, p. 2.]

Art. 420. [484] [472] Causes transferred to justice court.—Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or, in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum indorsed by the grand jury on the indictment or otherwise. If it appear to the judge that the offense has been committed in any incorporated town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice to whom such cause may be transferred shall have jurisdiction to try the same. [Const., art. 5, sec. 16; Act April 3, 1879, p. 71; Acts 1876, p. 135.]

Art. 421. [485] [473] Duty on transfer.—The clerk of the court, without delay, shall deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice, as directed in the order of transfer; and shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and with a bill of the costs that have accrued therein in the district court. The said costs shall be taxed in the court in which said cause is tried, in the event of a conviction. [Acts 1876, p. 135.]

Art. 422. [486] [474] Proceedings of inferior court.—Any case so transferred shall be entered on the docket of the court to which it is transferred. All process thereon shall be issued and the defendant tried as if the case had originated in the court to which it was transferred. [Id.]

Art. 423. [487] [475] Cause improvidently transferred.—When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferred to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to

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1. FORFEITURE OF BAIL

Article 424. [488] [476] Bail forfeited, when.—Whenever a defendant is bound by recognizance or bail bond to appear at any term of a court, and fails to appear on the day set apart for taking up the criminal docket, or any subsequent day when his case comes up for trial, a forfeiture of his recognizance or bail bond shall be taken. [O. C. 407.]

Art. 425. [489] [477] Manner of taking a forfeiture.—Recognizances and bail bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the court house door, and, if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown at the next term of the court why the defendant did not appear.

Art. 426. [490] [478] Citation to sureties.—After the adjournment of the court, a citation shall issue notifying the sureties of the defendant that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the court and show cause why the same should not be made final. It shall not be necessary to give notice to the defendant. [O. C. 409.]

Art. 427. [491] [479] Requisites of citation.—A citation shall be sufficient if it contain the following requisites:

1. It shall run, "In the name of the State of Texas."

2. It shall be directed to the sheriff or any constable of the county where the surety resides or is to be found.

3. It shall state the name of the principal in such recognizance or bail bond and the names of his sureties.

4. It shall state the offense with which the principal is charged as set out in the bond or recognizance, and state the date of such obligation.

5. It shall state that such recognizance or bail bond has been declared forfeited, naming the court before which the forfeiture was taken, the time when taken, and the amount for which it was taken against each party thereto.

6. It shall notify the surety to appear at the next term of the court and show cause why the forfeiture should not be made final.

7. It shall be signed and attested officially by the court or clerk issuing the same.

Art. 428. [492] [480] Citation as in civil actions.—Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. [O. C. 412.]

Art. 429. [493] [481] Citation by publication.—Where the surety is a non-resident of the State, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk, stating the facts, obtain a citation to be served by publication; and the same shall be served by publication and returned as in civil actions.

Art. 430. [494] [482] Cost of publication.—When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs thereof, to be taxed as costs in the case.

Art. 431. [495] [483] Service out of the State.—Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this State by any person competent to make oath of the fact; and the affidavit of such person, stating the facts of such service, shall be a sufficient return.

Art. 432. [496] [484] When surety is dead.—If the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. The final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken, unless his executor, administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

Art. 433. [497] [485] Scire facias docket.—When a forfeiture has been declared upon a recognizance or bail bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

Art. 434. [498] [486] Sureties may answer at next term.—At the next term of the court, after the forfeiture of the recognizance or bond, if the sureties have been duly notified, or at the first term of the court after the service of such notice, the sureties may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions. [O. C. 410.]

Art. 435. [499] [487] Proceedings not set aside for defect of form.—The recognizance or bail bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but such defect of form may, at any time, be amended under the direction of the court.

Art. 436. [500] [488] Causes which will exonerate.—The following causes, and no other, will exonerate the defendant and his sureties from liability upon the forfeiture taken:

1. That the recognizance or bail bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, they shall not be exonerated from liability because of it being invalid and not binding as to another surety or sureties. If it be invalid and not binding as to the principal, each of the sureties shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, the principal shall not be exonerated, but the sureties shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties unless such principal appear before final judgment on the recognizance or bail bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court. [O. C. 414.]

Art. 437. [501] [489] Judgment final.—When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one. [O. C. 417.]

Art. 438. [502] [490] Judgment final by default.—When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

Art. 439. [503] [491] The court may remit.—If, before final judgment is entered against the bail, the principal appear or be arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance. [O. C. 415.]

Art. 440. [504] [492] Forfeiture set aside.—When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance. [O. C. 416.]

2. THE CAPIAS

Art. 441. [505] [493] Definition of a "capias."—A "capias" is a writ issued by the court or clerk, and directed "To any sheriff of the State of Texas," commanding him to arrest a person accused of an offense and bring him before that court forthwith, or on a day or at a term stated in the writ.

Art. 442. [506] [494] Its requisites.—A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of the "State of Texas."

2. That it name the person whose arrest is ordered, or, if unknown, describe him.

3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal law of the State.

4. That it name the court to which and the time when it is returnable.

5. That it be dated and attested officially by the authority issuing the same. [O. C. 421.]

Art. 443. [507] [495] Capias in felony.—A capias shall be immediately issued by the district clerk upon each indictment for felony presented, and shall be delivered by the clerk or mailed to the sheriff of the county where the sheriff resides or is to be found.

Art. 444. [508] [496] In misdemeanor case.—In misdemeanor cases the capias shall issue from the court having jurisdiction of the same. A capias need not issue for a defendant in custody or under bail.

Art. 445. [509] [497] Capias after forfeiture.—Where a forfeiture is declared upon a recognizance or bail bond, a capias shall be immediately issued for the arrest of the defendant, and when arrested, he shall be required to enter into a new recognizance or bail bond, unless the forfeiture taken has been set aside under the third subdivision of article 436, in which case the defendant and his sureties shall remain bound under his present recognizance or bail bond.

Art. 446. [510] [498] New bail in felony case.—When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties shall be released by such arrest, and he shall be required to give new bail.

Art. 447. [511] [499] Capias does not lose its force.—A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. [O. C. 423.]

Art. 448. [512] [500] Reasons for retaining capias.—When the capias is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.

Art. 449. [513] [501] Capias to several counties.—Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

Art. 450. [514] [502] Bail in felony.—In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the arrest may take bail as provided in article 287. [Acts 1907, p. 148.]

Art. 451. [513] [503] Sheriff may take bail in felony.—In cases of arrest for felony less than capital, made during vacation or made in another county than the one in which the prosecution is pending, the Sheriff may take bail; in such cases the amount of the bail shall be the same as is endorsed upon the capias; and if no amount be endorsed on the capias, the Sheriff shall require a reasonable amount of bail. If it be made to appear by affidavit, made by any District Attorney, County Attorney, or the Sheriff approving said bail bond, to a Judge of the Court of Criminal Appeals, District or County Court, that the bail taken in any case after indictment is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such Judge shall issue a warrant of arrest and require of the defendant sufficient bond and security, according to the nature of the case. [O.C. 426–432; Acts 1933, 43rd Leg., p. 381, ch. 152.]

Art. 452. [516] [504] Court shall fix bail in felony.—In felony cases which are bailable, the

court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall indorse upon the capias the amount of bail required. In case of neglect to so comply with this article, the arrest of the defendant, and the bail bond taken by the sheriff, shall be as legal as if there had been no such omission. [O. C. 424.]

Art. 453. [517] [505] Who may arrest under capias.—A capias may be executed by any constable or other peace officer. In felony cases, the defendant must be delivered forthwith to the sheriff of the county where the arrest is made, togther [together] with the writ under which he was taken. [O. C. 425.]

Art. 454. [518] [506] Bail in misdemeanor.—Any officer making an arrest under a capias in a misdemeanor may in term time or vacation take bail of the defendant. [O. C. 426.]

Art. 455. [519] [507] Arrest in capital case.—Where an arrest is made under a capias in a capital case, the sheriff shall confine the defendant in jail, and the capias shall, for that purpose, be a sufficient commitment. This article is applicable when the arrest is made in the county where the prosecution is pending.

Art. 456. [520] [508] Arrest in capital case in another county.—In each capital case where a defendant is arrested under a capias in a county other than that in which the case is pending the sheriff who arrests or to whom the defendant is delivered, shall convey him forthwith to the county from which the capias issued and deliver him to the sheriff of such county.

Art. 457. [521] [509] Return of bail bond and capias.—When an arrest has been made and a bail bond taken, such bond, together with the capias, shall be returned forthwith to the proper court. [O. C. 422.]

Art. 458. [522] [510] Detaining accused in out-county jail.—If a defendant be placed in jail out of the county of the prosecution, on a felony, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of sixty days from the day of his commitment. If the charge is a misdemeanor, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of ten days from the day of his commitment. [O. C. 434.]

Art. 459. [523] [511] Unsafe jail.—The preceding article shall not apply if the defendant has been placed in jail out of the county for the want of a safe jail in the proper county.

Art. 460. [524] [512] Return of capias.—The return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts.

3. SUBPŒNA AND ATTACHMENT

Art. 461. [525] [513] Definition of "subpœna."—A "subpœna" is a writ issued to the sheriff or other proper officer commanding him to summon one or more persons therein named to appear at a certain term of the court, or on a certain day, to testify in a criminal action, or before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal.

Art. 462. [526] [514] Subpœna duces tecum.—If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpœna may specify such evidence and direct that the witness bring the same with him and produce it in court.

Art. 463. [526–529] Subpœna and application therefor.—Before the clerk or his deputy shall be required or permitted to issue a subpœna in any felony case pending in any District or Criminal District Court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said witness is material to the State or to the defense. As far as is practical such clerk shall include in one subpœna the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are summoned for the State or for the defendant. When a witness has been served with a subpœna, attached or placed under recognizance at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpœna, no further subpœna shall be issued for said witness. [Acts 1889, p. 145; Acts 1st C.S. 1897, p. 5; Acts 1913, p. 319; Acts 1931, 42nd Leg., p. 239, ch. 143, § 4.]

Art. 464. [527] [515] Service and return of subpœna.—A subpœna is served by reading the same in the hearing of the witness. The officer having the subpœna shall make due return thereof, showing the time and manner of service, if served, and, if not served, he shall show in his return the cause of his failure to serve it; and, if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

Art. 465. [528] [516] Refusing to obey.—If a witness refuse to obey a subpœna, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars; in a misdemeanor case, not exceeding one hundred dollars. [O. C. 444–445.]

Art. 466. [530] [518] What is disobedience of a subpœna.—It shall be held that a witness refuses to obey a subpœna:

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness.
2. If he is not in attendance at any other time named in a writ.
3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce. [O. C. 441.]

Art. 467. [531] [519] Fine against witness conditional.—When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length

of time prescribed for citations in civil cases. [O. C. 447, Acts 1895, p. 95.]

Art. 468. [532] [520] Witness may show cause.—A witness cited to show cause, as provided in the preceding article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but, if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him. [O. C. 448; Id.]

Art. 469. [533] [521] Court may remit fine.—It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and, upon the hearing the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right. Said fine shall be collected as fines in misdemeanor cases. [O. C. 452; Id.]

Art. 470. [534] [522] When witness appears and testifies.—When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend. [O. C. 449.]

Art. 471. [535] [523] Requisites of an attachment.—An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it. [O. C. 439.]

Art. 472. [536] [524] When attachment may issue.—When a witness who resides in the county of the prosecution has been duly served with a subpœna to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness. [O. C. 436–440.]

Art. 473. [537] [524a] Attachment for resident witness.—When a witness resides in the county of the prosecution, whether he has disobeyed a subpœna or not, either in term time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond. [Acts 1897, p. 30.]

Art. 474. [538] [525a] To secure attendance before grand jury.—At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpœna for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned or attached, who shall fail or refuse to obey a subpœna or attachment, shall be punished by the court by a fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases. [Acts 1899, p. 245.]

Art. 475. [539] Application for out-county witness.—Where a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term time or in vacation, to a subpœna to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in article 463. [Acts 1st C. S. 1897, p. 58.]

Art. 476. [540] Duty of officer receiving said subpœna.—The officer receiving said subpœna shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpœna, showing therein the time and manner of executing the same, and, if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness. [Id.]

Art. 477. [541] Subpœna returnable forthwith.—When a subpœna is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpœna, the officer executing the same shall provide said witness, if said subpœna be issued in a felony case, with the necessary funds or means to appear in obedience to said subpœna, taking his receipt therefor, and showing in his return on said subpœna, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpœna. [Id.]

Art. 478. [542] Certificate to officer.—The clerk, magistrate, or foreman of the grand jury, issuing said process, immediately upon the return of said subpœna, if issued in a felony case, shall issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the district judge and recorded by the district clerk in a book kept for that purpose; and said certificate transmitted to the officer executing such subpœna, which amount shall be paid by the State, as costs are paid in other criminal matters. [Id.]

Art. 479. [543] Subpœna returnable at future day.—If the subpœna be returnable at some future date, the officer shall have authority to take a good bail bond of such witness for his appearance under said subpœna, which bond shall be returned with such subpœna, and shall be made payable to the State of Texas, in the amount in which the witness and his surety shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpœna, and shall be signed by the witness and his sureties. If said witness refuse to give bond, he shall be kept in custody until such time as he starts in obedience to said subpœna, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience to said subpœna. [Id.]

Art. 480. [544] Stating bail in subpœna.—The court or magistrate issuing said subpœna may direct therein the amount of the bond to be required. The officer may fix the amount if not specified, and, in either case, shall require sufficient security, to be approved by himself. [Id.]

Art. 481. [545] Witness fined and attached.—If a witness summoned from without the county

refuse to obey a subpœna, he shall be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default. The court may cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness may receive the same pay as if he had not been attached. Said fine when made final and all costs thereon shall be collected as in other criminal cases. Said fine and judgment may be set aside in vacation or at the same or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged. The following words shall be written or printed on the face of such subpœna for out-county witnesses: "A disobedience of this subpœna is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases." [Id.]

Art. 482. [546] [535] Witness released.—A witness who is in custody for failing to give bond shall be at once released upon giving the bond required.

Art. 483. [547] [536] Witness recognized.—Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into recognizance in an amount to be fixed by the court to appear and testify in a criminal action; but, if it shall appear to the court that any witness is unable to give security upon such recognizance, he shall be recognized without security.

Art. 484. [548] [537] Personal recognizance of witness.—When it appears to the satisfaction of the court that personal recognizance of the witness will insure his attendance, no security need be required of him; but no bail shall be taken by any officer without security.

Art. 485. [549] [538] Enforcing forfeiture.—The recognizance or bail bond of a witness may be enforced against him and his sureties in the manner pointed out in this Code for enforcing the recognizance or bail bond of a defendant in a criminal case. [O. C. 437b.]

Art. 486. [550] [539] No surrender after forfeiture.—The sureties of a witness have no right in any case, to discharge themselves by the surrender of such witness, after the forfeiture of their recognizance or bond. [O. C. 453.]

4. SERVICE OF A COPY OF THE INDICTMENT

Art. 487. [551] [540] In felony.—In every case of felony, when the accused is in custody, or as soon as he may be arrested, the clerk of the court where an indictment has been presented shall immediately make a certified copy of the same, and deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the accused. [O. C. 458.]

Art. 488. [552] [541] Service and return.—Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the accused and return the writ to the clerk issuing the same, with his return thereon, showing when and how the same was executed.

Art. 489. [553] [542] If on bail in felony.—When the accused, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall on request deliver a copy of the same to the accused or his counsel, at the earliest possible time. [O. C. 460.]

Art. 490. [554] [543] In misdemeanor.—In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible.

5. ARRAIGNMENT

Art. 491. [555] [544] No arraignment.—There shall be no arraignment of a defendant except upon an indictment for a capital offense. [O. C. 461.]

Art. 492. [556] [545] Purpose of arraignment.—An arraignment takes place for the purpose of fixing his identity and hearing his plea. [O. C. 462.]

Art. 493. [557] [446] [1] Time of arraignment.—No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail. [O. C. 463.]

[1] So in enrolled bill. Article "[446]" should be "[546]".

Art. 494. [558] [547] Court shall appoint counsel.—When the accused is brought into court for the purpose of being arraigned, if it appear that he has no counsel and is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him. The counsel so appointed shall have at least one day to prepare for trial. [O. C. 466.]

Art. 495. [559] [548] Name as stated in indictment.—When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and, unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

Art. 496. [560] [549] If defendant suggests different name.—If the defendant, or his counsel for him, suggest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself, the style of the cause changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment. [O. C. 469.]

Art. 497. [561] [550] If accused refuses to give his real name.—If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense. [O. C. 470.]

Art. 498. [562] [551] Where name is unknown.—A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

Art. 499. [563] [552] Indictment read.—The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding articles, be made, or, being made, is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged. [O. C. 472.]

Art. 500. [564] [553] Plea of not guilty entered.—If the defendant answer that he is not guilty, the same shall be entered upon the minutes of

the court; if he refuse to answer, the plea of not guilty shall in like manner be entered. [O. C. 473.]

Art. 501. [565] [554] Plea of guilty.—If the defendant plead guilty, he shall be admonished by the court of the consequences; and no such plea shall be received unless it plainly appear that he is sane, and is uninfluenced by any consideration of fear, by any persuasion or delusive hope of pardon prompting him to confess his guilt. [O. C. 474.]

Art. 502. [566] [555] Jury on plea of guilty.—Where a defendant in a case of felony persists in pleading guilty, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment, and evidence submitted to enable them to decide thereupon. [O. C. 476.]

Art. 503. [567] [556] Correcting name.—In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases. [O. C. 479.]

6. THE PLEADINGS IN CRIMINAL ACTIONS

Art. 504. [568] [557] Indictment or information.—The primary pleading in a criminal action on the part of the State is the indictment or information. [O. C. 481.]

Art. 505. [569] [558] Defendant's pleading.—On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information.
2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him.
3. An exception to the indictment or information for some matter of form or substance.
4. A plea of guilty.
5. A plea of not guilty. [O. C. 482.]

Art. 506. [570] [559] Motion to set aside indictment.—A motion to set aside an indictment or information shall be based on one or more of the following causes, and no other:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not based upon a valid complaint.
2. That some person not authorized by law was present when the grand jury were deliberating upon the accusation against the defendant, or were voting upon the same. [O. C. 483.]

Art. 507. [571] [560] Motion tried by judge.—An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury. [O. C. 483.]

Art. 508. [572] [561] Special pleas for defendant.—The only special pleas which can be heard for the defendant are:

1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense.
2. That he has been before acquitted by a jury of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular. [O. C. 484.]

Art. 509. [573] [562] Special plea verified.—Every special plea shall be verified by the affidavit of the defendant.

Art. 510. [574] [563] Special plea tried by jury.—All issues of fact presented by a special plea shall be tried by a jury.

Art. 511. [575] [564] Exception to substance of indictment.—There is no exception to the substance of an indictment or information, except:

1. That it does not appear therefrom that an offense against the law was committed by the defendant.
2. That it appears from the face thereof that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment.
3. That it contains matter which is a legal defense or bar to the prosecution.
4. That it shows upon its face that the court trying the case has no jurisdiction thereof. [O. C. 487.]

Art. 512. [576] [565] Exception to form of indictment.—Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That it does not appear to have been presented in the proper court, as required by law.
2. The want of any other requisite or form prescribed by articles 396 and 414, except the want of the signature of the foreman of the grand jury, or in the case of an information, of the signature of the State's attorney. [O. C. 488.]

Art. 513. [577] [566] Written pleadings.—All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing. [O. C. 489.]

Art. 514. [578] [567] Two days allowed for filing pleadings.—In all cases the defendant shall be allowed two entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

Art. 515. [579] [568] Time after service.—In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the two days' time mentioned in the preceding article to file written pleadings after such service.

Art. 516. [580] [569] May file written pleadings at any time.—The two preceding articles shall not be construed so as to preclude the defendant from filing written pleadings at any time before the case is called for trial, except in case of change of venue. [O. C. 496a.]

Art. 517. [581] [570] Plea of guilty in felony.—A plea of guilty in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in articles 501 and 502.

Art. 518. [582] [571] Plea of guilty in misdemeanor.—A plea of guilty in a misdemeanor case may be made either by the defendant or his counsel in open court. In such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court, either upon or without evidence, at the discretion of the court.

Art. 519. Change of venue to plead guilty.—When in any county which is located in a judicial discharged with a felony and the maximum punishment trict composed of more than one county, a party is therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty to said charge in said court to which the venue has been changed. [Acts 1917, p. 350.]

Art. 520. [584] [573] Plea of not guilty, how made.—The plea of not guilty may be made orally by the defendant or by his counsel in open court. If

the defendant refuses to plead, the plea of not guilty shall be entered for him by the court. [O. C. 480.]

Art. 521. [585] [574] Plea of not guilty construed.—The plea of "not guilty" shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under article 508. [O. C. 497.]

7. MOTIONS, PLEAS AND EXCEPTIONS

Art. 522. [587] [576] Motions heard without delay.—The motion to set aside an indictment or information, and all exceptions, shall be heard together and decided without delay.

Art. 523. [588] [577] Time of hearing.—The court, at its discretion, may hear and determine such motions and exceptions at any time before a trial has been entered upon, but not afterward.

Art. 524. [589] [578] Order of argument.—The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant presented for the decision of the judge.

Art. 525. [590] [579] Special pleas setting forth matters of fact.—Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted and tried with a plea of "not guilty." [O. C. 503.]

Art. 526. [591] [580] Process for testimony on pleadings.—Where the matters involved in any written pleading depend in whole or in part upon testimony, and not altogether upon the record of the court, every process known to the law may be obtained on behalf of either party to procure such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same.

Art. 527. [592] [581] Quashing charge in misdemeanor.—If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law. [O. C. 504.]

Art. 528. [593] [582] Quashing indictment in felony.—If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefor be discharged, but may immediately by recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced. [O. C. 505.]

Art. 529. [594] [583] Shall be fully discharged, when.—Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented, he shall be fully discharged. [O. C. 506.]

Art. 530. [595] [584] If exception is that no offense is charged.—If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of a penal offense. [O. C. 507.]

Art. 531. [596] [585] When defendant is held by order of court.—If the motion to set aside the indictment or any exception thereto is sustained, but the court refuses to discharge the defendant, then at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint has been made before a magistrate charging him with an offense, or unless another indictment has been presented against him for such offense.

Art. 532. [597] [586] Exception on account of form.—If the exception to an indictment or information is only on account of form, it shall be amended, if defective, and the cause proceed upon such amended charge. [O. C. 508.]

Art. 533. [598] [587] Amendment of indictment or information.—Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

Art. 534. [599] [588] How amended.—All amendments of an indictment or information shall be made with the leave of the court and under its direction.

Art. 535. [600] [589] State may except to plea.—When a special plea is filed by the defendant, the State may except to it for substantial defects. If the exception be sustained, the plea may be amended If the plea be not excepted to, it shall be considered that issue has been taken upon the same. [O. C. 509, 510.]

Art. 536. [601] [590] Former acquittal or conviction.—A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction, unless such judgment was had upon indictment or information, in which case the prosecution shall be barred for all grades of the offense.

Art. 537. [602] [591] Plea allowed.—Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but in all cases the plea of not guilty may be made by or for him. [O. C. 512.]

8. CONTINUANCE

Art. 538. [603] [592] By operation of law.—Criminal actions are continued by operation of law if the accused has not been arrested or if there is not sufficient time for trial at that term of court. [O. C. 513.]

Art. 539. [604] [593] By agreement.—A criminal action may be continued by consent of the parties thereto, in open court, at any time.

Art. 540. [605] [594] For sufficient cause shown.—A criminal action may be continued on the written application of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the application. [O. C. 514, 517, 520.]

Art. 541. [606] [595] First application by State.—It shall be sufficient, upon the first application by the State for a continuance, if the same be for the want of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is unknown.
2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpœna, in cases where the law authorized an attachment to issue.
3. That the testimony of the witness is believed by the applicant to be material for the State. [O. C. 515.]

Art. 542. [607] [596] Subsequent application by State.—On any subsequent application for a continuance by the State, for the want of a witness, the application, in addition to the requisites in the preceding article, must show:

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material.

2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court.

3. That the testimony can not be procured from any other source during the present term of the court. [O. C. 516.]

Art. 543. [608] [597] First application by defendant.—In the first application by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is not known.

2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpœna, in cases where the law authorized an attachment to issue.

3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.

4. That the witness is not absent by the procurement or consent of the defendant.

5. That the application is not made for delay.

6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term. The truth of the first, or any subsequent application, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right. If an application for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the application was of a material character, and that the facts set forth in said application were probably true, a new trial should be granted, and the cause continued or postponed to a future day of the same term.

Art. 544. [609] [598] Subsequent application by defendant.—Subsequent applications for continuance on the part of the defendant shall, in addition to the requisites in the preceding article, state also:

1. That the testimony can not be procured from any other source known to the defendant.

2. That the defendant has reasonable expectation of procuring the same at the next term of the court. [O. C. 516.]

Art. 545. [610] [599] Application sworn to.—All applications for continuance on the part of the defendant must be sworn to by himself. [O. C. 521.]

Art. 546. [611] [600] Written motion not necessary.—No written motion for continuance is necessary; the motion, based upon the application, may be made orally. [O. C. 522.]

Art. 547. [612] [601] Controverting application.—Any material fact stated, affecting diligence, in an application for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such application.

Art. 548. [613] [602] When denial is filed.—When such denial is filed, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

Art. 549. [614] [603] Argument.—No argument shall be heard on an application for a continuance, unless requested by the judge; and, when argument is heard, the applicant shall have the right to open and conclude it.

Art. 550. [615] [604] Bail resulting from continuance.—If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, unless it be made to appear to the satisfaction of the court that a material witness of the State had been prevented from attendance by the procurement of the defendant or some person acting in his behalf.

Art. 551. [616] [605] Continuance after trial is begun.—A continuance or postponement may be granted on the application of the State or defendant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial can not be had. [O. C. 526.]

9. DISQUALIFICATION OF THE JUDGE

Art. 552. [617] [606] Causes which disqualify.—No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree.

Art. 553. [618] [607] District judge disqualified.—Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the same, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case. The Governor shall notify both judges of such order, and said judges shall exchange districts for the purpose of disposing of such case. In case of sickness or other reasons rendering it impossible to exchange, then the parties or their counsels shall have the right to agree upon an attorney of the court for the trial thereof. If said judges shall be prevented from exchanging districts and the parties and their counsels shall fail to agree upon an attorney of the court for a trial thereof, that fact shall be certified to the Governor by either judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. [Acts 1st C. S. 1897, p. 39, Acts 1915, p. 86.]

Art. 554. [621] County judge disqualified.—When the judge of the county court or county court at law is disqualified in any criminal case pending in the court of which he is judge, the parties may, by consent, agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the judge presiding shall forthwith certify that fact to the Governor, who shall forthwith appoint some practicing attorney to try such case. [Acts 1893, p. 83.]

Art. 555. [620–622] Special judge to take oath.—The attorney agreed upon or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

Art. 556. [620–622] Record made by clerk.—When a special judge is agreed upon by the parties or appointed by the Governor, as above provided, the clerk shall enter in the minutes as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause.

2. That such special judge (naming him) was by consent of the parties agreed upon or was appointed by the Governor to try the cause.

3. That the oath of office prescribed by law has been duly administered to such special judge. [Acts 1st C. S. 1897, p. 39.]

Art. 557. [623] [610b] Compensation.—A special judge selected or appointed in accordance with the preceding articles shall receive the same compensation as provided by law for regular judges in similar cases. [Id.]

Art. 558. [624] [611] Justice disqualified.—If a justice of the peace be disqualified from sitting in any criminal action pending before him, he shall transfer the same to the nearest justice of the peace of the county who is not disqualified to try it.

Art. 559. [625] [612] Order of transfer.—In cases provided for in the preceding article, the order of transfer shall state the cause of the transfer, and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court. The rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the preceding article.

10. CHANGE OF VENUE

Art. 560. [626] [613] On court's own motion.—Whenever in any case of felony the judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the State, can not, from any cause, be had in the county in which the case is pending, he may, upon his own motion, order a change of venue to any county in his own, or in an adjoining district, stating in his order the grounds for such change of venue. [Acts 1876, p. 274; Const. art. 5, sec. 45.[1]]

[1] So in enrolled bill. Should be "Const. art. 3, sec. 45".

Art. 561. [627] [614] State may have.—Whenever the district or county attorney shall represent in writing to the district court before which any felony case is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the State can not be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any witness, would be jeopardized by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and, if satisfied that such representation is well founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in his own, or in an adjoining district. [Acts 1876, p. 274.]

Art. 562. [628] [615] Granted on application of defendant.—A change of venue may be granted on the written application of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he can not obtain a fair and impartial trial.

2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial. [O. C. 527.]

Art. 563. [629] [616] Where jury can not be procured.—When an unsuccessful effort has been once made in any county to procure a jury for the trial of a felony and all reasonable means have been used, if it be made to appear to the court by the affidavit of the attorney for the State, or any other credible person, that no jury can probably be had in that county, the court may order a change of venue, and cause the reasons therefor to be placed upon the minutes of the proceedings. [O. C. 528.]

Art. 564. [630] [617] Time to make application.—An application for a change of venue may be heard and determined before either party has announced ready for trial; but, in all cases before a change of venue is ordered, all motions to set aside the indictment, and all special pleas and exceptions which are to be determined by the judge, and which have been filed, shall be disposed of by the court, and, if overruled, the plea of not guilty entered. [O. C. 592.]

Art. 565. [631] [618] Changed to nearest county.—Upon the grant of a change of venue, the cause shall be removed to some adjoining county, the court house of which is nearest to the court house of the county where the prosecution is pending, unless it be made to appear to the satisfaction of the court that such nearest county is subject to some objection sufficient to authorize a change of venue in the first instance. [O. C. 530.]

Art. 566. [632] [619] If adjoining counties objectionable.—If it be shown in the application or otherwise that all the counties adjoining that in which the prosecution is pending are subject to some valid objection, the cause may be removed to such county as the court may think proper. [O. C. 531.]

Art. 567. [633] [620] Application may be controverted.—The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person. The issue thus formed shall be tried by the judge, and the application granted or refused, as the law and facts shall warrant.

Art. 568. [Repealed by Acts 1926, 39th Leg., 1st C.S., p. 12, ch. 8, § 3.]

Art. 569. Changed for militiamen.—If the accused is an officer or member of the military forces of this State and is indicted for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by the laws governing such forces, the court in which such indictment is pending, upon the application of the accused, supported by the affidavit of two credible persons to the effect that they have good reason to believe that such accused cannot have a fair and impartial trial before such court, shall change the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification. [Acts 1905, p. 204.]

Art. 570. [635–636] Clerk's duties on change of venue.—Where an order for a change of venue of any Court in any Criminal cause in this State has been made the Clerk of the Court where the prosecution is pending shall make out a certified copy of the Court's order directing such change of venue, together with a certified copy of the defendant's recognizance, if any, together with all the original papers in said cause and also a certificate of the said Clerk under his official seal that such papers are the papers; and all the papers on file in said Court in said cause; and he shall transmit the same to the Clerk of the Court to which the venue has been changed. [As amended Acts 1929, 41st Leg., 2nd C.S., p. 10, ch. 8, § 1.]

Art. 571. [637] [624] Recognizance of defendant.—When a change of venue is ordered and the defendant is on bail, he shall be required to enter into recognizance forthwith, conditioned for his appearance before the proper court at the next succeeding term thereof; or, if the court of the county to which the cause is taken be then in session, he shall be recognized to appear before said court on a day fixed, and from day to day and term to term until discharged. [O. C. 534.]

Art. 572. [638] [625] Failure to give recognizance.—A defendant who fails to give recognizance shall be safely kept in custody by the sheriff.

Art. 573. [639] [626] If defendant be in custody.—When the venue is changed in any criminal action, if the defendant be in custody, an order shall be made for his removal to the proper county, and his delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order. [O. C. 535.]

Art. 574. [640] [627] If court be in session.—If the court of the county to which the case is removed be then in session, the defendant shall be forthwith delivered to the sheriff of such county. [O. C. 536.]

Art. 575. [641] [628] Witness need not again be summoned.—When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpœnaed, attached or recognized, but all the witnesses who have been subpœnaed, attached or recognized to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

11. DISMISSING PROSECUTIONS

Art. 576. [642] [629] Defendant in custody and no indictment presented.—When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail. [O. C. 537.]

Art. 577. [37–643] Dismissal by State's attorney.—The district or county attorney may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

TITLE 8—TRIAL AND ITS INCIDENTS

CHAPTER 1.—THE MODE OF TRIAL

Article 578. [645] [632] Jury; when of twelve, when of six.—In the district court, the jury shall consist of twelve men; in the county court and inferior courts, the jury shall consist of six men.

Art. 579. Failure to pay poll tax.—Failure to pay poll tax shall not disqualify any person from jury service. [Acts 1905, p. 207.]

Art. 580. [646] [633] Presence of defendant.—In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. [Acts 1907, p. 31.]

Art. 581. [647] [634] May appear by counsel.—In other misdemeanor cases, the defendant may, by consent of the State's attorney, appear by counsel, and the trial may proceed without his personal presence. [O. C. 541.]

Art. 582. [648–900] On bail during trial.—Where the accused is on bail when the trial commences, such bail shall not thereby be considered as discharged until the jury shall return into court a verdict of guilty or not guilty. He shall have the same right to have and remain on bail during the trial of his case and up to the return into court of such verdict as under the law he has before the trial commences; but immediately upon the return into court of a verdict of guilty, he shall be placed in the custody of the sheriff, and his bail considered discharged. Where the accused is convicted in a misdemeanor case and is on bail when the trial commences, such bail shall not thereby be considered discharged until the defendant's motion for a new trial has been overruled by the court. [Acts 1907, p. 31, Acts 1917, p. 300.]

Art. 583. [649] [636] Sureties bound in case of mistrial.—If there be a mistrial in a felony case, the original sureties of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code. [O. C. 543.]

Art. 584. [650] [637] Criminal docket.—Each clerk of a court of record having criminal jurisdiction shall keep a docket in which shall be set down the style and file number of each criminal action, the nature of the offense, the names of counsel, the proceedings had therein, and the date of each proceeding. [O. C. 544.]

Art. 585. [651] [638] To fix day for criminal docket.—The district court shall, on the first day of its organization at each term, fix a day for taking up the criminal docket, which shall be noted on the minutes. In case of failure to make such order, the criminal docket may be taken up on any day not earlier than the third day of the term. [O. C. 545.]

Art. 586. [652] [639] Term of county court.—Each county court shall hold a term for criminal business on the first Monday in every month, or at such other time as may have been fixed in accordance with law. [Acts 1876, p. 17.]

CHAPTER 2.—SPECIAL VENIRE IN CAPITAL CASES

Article 587. [655] [642] "Special venire." —A "special venire" is a writ issued in a capital case by order of the district court, commanding the sheriff to summon such a number of persons, not less than thirty-six, as the court may order, to appear before the court on a day named in the writ; from whom the jury for the trial of such case is to be selected. [O. C. 548.]

Art. 588. [656–657] Order for special venire.—At any time after his arrest upon an indictment, the defendant may obtain an order for a special venire upon a written motion supported by the affidavit of himself or counsel, stating that he expects to be ready for the trial of his case at the present term of the court. The State's attorney may also obtain such order upon oral or written motion.

Art. 589. [658] [645] Order of court.—The order of court for the issuance of the writ shall specify the number of persons required to be summoned, and the time when they shall attend, and the time when such writ shall be returnable. The clerk shall forthwith issue the writ in accordance with such order.

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 1935, 44th Leg., p. 502, ch. 212, § 1; Acts 1937, 45th Leg., p. 1494, ch. 505, § 1.]

Art. 591. [660] [647] Special venire in certain counties.—In all counties having a population of at least fifty-eight thousand, or having therein a city of twenty thousand or more population, as shown by the preceding Federal Census, whenever a special venire is ordered, the District Clerk, in the presence of and under the direction of the Judge, shall draw from the wheel containing the names of the jurors the number of names required for such special venire, and prepare a list of such names in the order in which drawn from the wheel, and attach said list to the writ and deliver same to the sheriff. The cards bearing such names shall be sealed in an envelope and kept by said Clerk for distribution, as herein provided. If from the names so drawn, any of the men are impaneled on the jury and serve as many as four days, the cards bearing their names shall be put by the Clerk in the box provided for that purpose, and the cards bearing the names of the men not impaneled shall again be put by the Clerk in the wheel containing the names of eligible jurors. [Acts 1907, p. 271; Acts 1911, p. 150; Acts 1929, 41st Leg., p. 84, ch. 41, § 1; Acts 1931, 42nd Leg., p. 786, ch. 315, § 1.]

Art. 592. Venire in other counties.—Whenever a special venire is ordered in counties not included within the provisions of the preceding article, the name of each person selected by the jury commissioners to do jury service for the term at which such venire is required shall be placed upon tickets of similar size and color of paper and the tickets placed in a box and well shaken up; and from this box the clerk, in the presence of the judge, in open court, shall draw the number of names required for such special venire, and shall prepare a list of such names in the order in which they are drawn from the box, and attach such list to the writ and deliver the same to the sheriff. [Acts 1905, p. 17; Acts 1919, p. 62.]

Art. 593. Special venire list.—The jury commissioners shall select one man for every one hundred of population in any county, or a greater or less number if so directed by the court, and these shall constitute a special venire list from which shall be drawn the names of those who shall answer summons to the special venire facias, after the petit jurors for the term have been drawn on any venire one time during such term. The drawing of the veniremen from the special venire list shall be done in the same manner prescribed for other jurors. No citizen who has served as a petit juror for one week during any term of court shall during said term be compelled to answer summons to more than one special venire; nor shall any citizen be compelled to answer summons to a special venire more than twice during any one term of court. The provisions of this and the succeeding article shall not apply in counties having a population of less than two thousand, nor to counties under the Jury Wheel Law. [Acts 1905, p. 17.]

Article repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17, as to counties of 16,775 and not more than 17,000 population.

Art. 594. [661] Further venire service.— Whenever the names of the persons selected by the jury commissioners to do jury service for the term shall have been drawn one time to answer summons to a special venire, then the names of the persons selected by said commissioners, and which form the special venire list, shall be placed upon tickets and drawn in the same manner as provided in the second preceding article; and the clerk shall prevent the name of any person from appearing more than twice on all of such lists. [Id.]

Art. 595. [666] [648] Venire ordered by court.—When, from any cause, no jurors have been selected by the jury commissioners for the term, or when there shall not be a sufficient number of those selected to make the number required for the special venire, the court shall order the sheriff to summon a sufficient number of citizens who are qualified jurors in the county to make the number required by the special venire.

Article repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17, as to counties of 16,775 and not more than 17,000 population.

Art. 596. [667] [649] Ordering talesmen.— On failure from any cause to select a jury from those summoned upon the special venire, the court shall order the sheriff to summon any number of men that it may deem advisable, for the formation of the jury.

Art. 597. [668] [650] Service of writ.—The officer executing the writ shall summon the men whose names are upon the list attached to the writ to be before the court at the time named in the writ to serve as veniremen. Such summons shall be made verbally upon each juror in person. [Acts 1905, p. 17.]

Art. 598. [669] [651] Return of writ.—The officer executing such writ shall return the same promptly on or before the time it is returnable. The return shall state the names of those summoned, and as to those not summoned, it shall state the diligence used to summon them and the cause of the failure to summon them.

Art. 599. [670] [652] Instructions to sheriff.—When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected under the Jury Wheel Law or the special venire list, the court shall, in every case, caution and direct the sheriff to summon such men as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall direct him, as far as he may be able to summon men of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of such bias or prejudice. [O. C. 553.]

Art. 600. [671] [653] Jury list served on defendant.—The clerk, immediately upon receiving the list of names of persons summoned under a special venire, shall make a certified copy thereof, and issue a writ commanding the sheriff to deliver such certified copy to the defendant. The sheriff shall immediately deliver such copy to the defendant, and return the writ, indorsing thereon the manner and time of its execution.

Art. 601. [672] [654] Time of service.—No defendant in a capital case shall be brought to trial until he has had one day's service of a copy of the names of persons summoned under a special venire, except where he waives the right or is on bail. When such defendant is on bail, he shall not be brought to trial until after one day from the time the list of persons so summoned have been returned to the clerk of the court in which said case is pending; but the clerk shall furnish the defendant or his counsel a list of the persons so summoned, upon their application therefor. [O. C. 554; Acts 1887, p. 5.]

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. [Added Acts 1937, 45th Leg., p. 477, ch. 241.]

CHAPTER 3.—FORMATION OF THE JURY IN CAPITAL CASES

Article 602. [673] [655] Jurors called.—When a capital case is called for trial, and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called. Those not present may be fined not exceeding fifty dollars. An attachment may issue on request of either party for any absent summoned juror, to have him brought forthwith before the court. [O. C. 555.]

Art. 603. [674] [656] Sworn to answer questions.—To those present the court shall cause to be administered this oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its direction, touching your service and qualification as a juror, so help you God."

Art. 604. [675] [657] Excuses.—The court shall then hear and determine excuses offered for not serving as a juror, and if he deems the excuse sufficient, he shall discharge the juror.

Art. 605. [676] Claiming exemption.—Any person summoned as a juror who is exempt by law from jury service, may, if he desires to claim his exemption, make an affidavit stating his exemption, and file it at any time before the convening of said court with the clerk thereof, which shall be sufficient excuse without appearing in person. The affidavit may be sworn to before the officer summoning such juror. [Acts 1907, p. 216.]

Art. 606. [677] [658] Excused by consent.—One summoned upon a special venire may by consent of both parties be excused from attendance by the court at any time before he is impaneled.

Art. 607. [678] [659] Challenge to array first heard.—The court shall hear and determine a challenge to the array before trying those summoned as to their qualifications.

Art. 608. [679–683] Challenge to the array.—Either party may challenge the array only on the ground that the officer summoning the jury has wilfully summoned jurors with a view to securing a conviction or an acquittal. All such challenges must be in writing setting forth distinctly the grounds of such challenge. When made by the defendant, it must be supported by his affidavit or the affidavit of any credible person. When such challenge is made, the judge shall hear evidence and decide without delay whether or not the challenge shall be sustained. This article does not apply when the jurors summoned have been selected by jury commissioners.

Art. 609. [684] [665] When challenge is sustained.—The array of jurors summoned shall be discharged if the challenge be sustained, and the court shall order other jurors to be summoned in their stead, and direct that the officer who summoned those so discharged, and on account of whose misconduct the challenge has been sustained shall not summon any other jurors in the case.

Art. 610. [685] [666] List of new venire.—When a challenge to the array has been sustained, the defendant shall be entitled, as in the first instance, to service of a copy of the list of names of those summoned by order of the court.

Art. 611. [686] [667] Court to try qualifications.—When no challenge to the array has been

made, or if made, has been overruled, the court shall proceed to try the qualifications of those present who have been summoned to serve as jurors.

Art. 612. [687] [668] Mode of testing.—In testing the qualifications of a juror after he has been sworn, he shall be asked by the court, or under its direction:

1. Are you a qualified voter in this county and State, under the Constitution and laws of this State?

2. Are you a householder in the county, or a freeholder in the State?

If he answers both questions in the affirmative, the court shall hold him to be a qualified juror until the contrary be shown by further examination or other proof. [Acts 1st C. S. 1903, p. 16; Acts 1905, p. 207.]

Art. 613. [688–689] Passing juror for challenge.—A juror held to be qualified shall be passed for acceptance or challenge first to the State and then to the defendant. Challenges to jurors are either peremptory or for cause.

Art. 614. [690] [671] A peremptory challenge.—A peremptory challenge is made to a juror without assigning any reason therefor. [O. C. 571.]

Art. 615. [691] [672] Number of challenges.—In capital cases, both the State and defendant shall be entitled to fifteen peremptory challenges. Where two or more defendants are tried together, the State shall be entitled to eight peremptory challenges for each defendant; and each defendant shall be entitled to eight peremptory challenges. [Acts 1897, p. 12.]

Art. 616. [692] [673] Reasons for challenge for cause.—A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. It may be made for any one of the following reasons:

1. That he is not a qualified voter in the State and county, under the Constitution and laws of the State.

2. That he is neither a householder in the county nor a freeholder in the State.

3. That he has been convicted of theft or any felony.

4. That he is under indictment or other legal accusation for theft or any felony.

5. That he is insane or has such defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service.

6. That he is a witness in the case.

7. That he served on the grand jury which found the indictment.

8. That he served on a petit jury in a former trial of the same case.

9. That he is related within the third degree of consanguinity or affinity to the defendant.

10. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to the private prosecutor, if there be one.

11. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime.

12. That he has a bias or prejudice in favor of or against the defendant.

13. That from hearsay or otherwise there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as will influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged; if he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged.

14. That he cannot read and write. This cause of challenge shall not be sustained when it appears to the court that the requisite number of jurors who are able to read and write cannot be found in the county. [O. C. 575; Acts 1st C. S. 1903, p. 16; Acts 1905, p. 207.]

Art. 617. [693] [674] Other evidence on challenge.—Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge. [O. C. 577.]

Art. 618. [694] [675] Certain questions not to be asked.—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by some legal accusation with theft or any felony. [O. C. 577.]

Art. 619. [695] [676] Absolute disqualification.—No juror shall be impaneled when it appears that he is subject to the third, fourth or fifth clause of challenge in article 616, tho both parties may consent.

Art. 620. [696] [677] Names called in order.—In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant. Each juror shall be tried and passed upon separately. A person who has been summoned, but who is not present, may, upon his appearance before the jury is completed, be tried as to his qualifications and impaneled as a juror, unless challenged; but no cause shall be unreasonably delayed on account of such absence. [O. C. 556–558.]

Art. 621. [697] [678] Judge to decide qualifications.—The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon. [O. C. 579.]

Art. 622. [698] [679] Oath to each juror.—As each juror is selected for the trial of the case, the following oath shall be administered to him by the court, or under its direction: "You solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render, according to the law and the evidence, so help you God." [O. C. 563.]

Art. 623. [699] [680] Jurors shall not separate.—The court may adjourn veniremen to any day of the term; but when jurors have been sworn in a case, those so sworn shall be kept together and not permitted to separate until a verdict has been rendered or the jury finally discharged, unless by permission of the court, with the consent of each party and in charge of an officer. [O. C. 605.]

Art. 624. [700] [681] Persons not selected.—When a jury of twelve men has been completed, the others in attendance under a summons to appear as jurors in the case shall be discharged from further attendance therein.

Art. 625. [701] Special pay for veniremen.—Veniremen summoned on special venire who have been challenged on their voir dire, shall each be paid out of the jury fund Two Dollars ($2) for each day he

attends court on said summons. If the regular venire shall be exhausted, and talesmen summoned as provided by law, the talesmen challenged on their voir dire shall each be paid out of the jury fund Two Dollars ($2) for each day he attends court on said summons, and no greater sum shall be paid challenged venireman and talesman regardless of the number of cases to which they shall be summoned in any one day. All veniremen and talesmen taken on trial juries shall receive the same per diem paid petit jurors. [Acts 1907, p. 214; Acts 1939, 46th Leg., p. 142, § 1; Acts 1945, 49th Leg., p. 371, ch. 239, § 1.]

Section 3 of the amendatory act of 1945 amends Rev. Civ.St., art. 2122.

Section 4 repealed art. 1057.

Section 2 of the Act of 1939 provided that the Act should not apply to any county of 290,000 to 355,000.

CHAPTER 4.—JURY IN CASES NOT CAPITAL

Art.
626. Jury list in certain counties.
627. Preparing jury list.
628. Delivery of jury list.
629. Summoning talesmen.
630. Challenge for cause.
631. Number reduced by challenge.
632. Grounds of challenge.
633. Peremptory challenges made.
634. Number of challenges.
635. Number in misdemeanors.
636. Making peremptory challenge.
637. Lists returned to clerk.
638. If jury is incomplete.
639. Oath to jury.
640. When no regular jurors.
641. Challenge to array.

Article 626. Jury list in certain counties.—In counties having three or more district courts, the trial judge, upon the demand of the defendant or his attorney, or of the State's counsel, in a case not capital, shall cause the names of all the members of the general panel available for service as jurors in such case to be placed in a receptacle and well shaken, and said judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be written, in the order drawn, on the jury list from which the jury is to be selected to try such case. Within the meaning of this article, a criminal court with jurisdiction in felony cases shall be considered a district court. (Acts 1917, p. 147; Acts 1919, p. 6.]

Art. 627. [702] [682] Preparing jury list.—When the parties have announced ready for trial in a case not capital, the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. [Acts 1876, p. 82.]

Art. 628. [703] [683] Delivery of jury list.—The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors, if in the county court, or so many as there may be, if there be a less number in the box, and write the names as drawn upon two slips of paper and deliver one slip to the State's counsel and the other to the defendant or his attorney. [Id.]

Art. 629. [704] [684] Summoning talesmen.—When there are not as many as twelve names drawn from the box, if in the district court, or, if in the county court, as many as six, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding articles.

Article repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17, as to counties of 16,775 and not more than 17,000 population.

Art. 630. [705] [685] Challenge for cause.—When twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall now be made, and the procedure in such case shall be the same as in capital cases.

Art. 631. [706] [686] Number reduced by challenge.—If the challenges reduce the number of jurors to less than will constitute a legal jury, the court shall order other jurors to be drawn or summoned and their names written upon the list instead of those set aside for cause.

Art. 632. [707] [687] Grounds of challenge.—Challenges for cause in all criminal actions are the same as provided in capital cases in article 616, except cause 11 in said article.

Art. 633. [708] [688] Peremptory challenges made.—When a juror has been set aside for cause, his name shall be erased from the lists furnished the parties, and when there are twelve names remaining on the lists not subject to challenge for cause, if in the district court, or six names, if in the county court, the parties may proceed to make their peremptory challenges.

Art. 634. [709] [689] Number of challenges.—In noncapital felonies the State and the defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together, each defendant shall be entitled to five peremptory challenges, and the State to five for each defendant. [O. C. 573; Acts 1897, p. 13.]

Art. 635. [710] [690] Number in misdemeanors.—The State and the defendant shall each be entitled to five peremptory challenges in a misdemeanor tried in the district court and to three in the county court or county court at law. If two or more defendants are tried together, each defendant shall be entitled to three such challenges in either court. [O. C. 574.]

Art. 636. [711] [691] Making peremptory challenge.—The party desiring to challenge any juror peremptorily shall erase the name of such juror from the list furnished him by the clerk.

Art. 637. [712] [692] Lists returned to clerk.—When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and, if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury. [Id.]

Art. 638. [713] [693] If jury is incomplete.—When, by peremptory challenges, the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance.

Article repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17, as to counties of 16,775 and not more than 17,000 population.

Art. 639. [714] [694] Oath to jury.—When the jury has been selected, the following oath shall be administered to them by the court, or under its direction: "You, and each of you, solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God." [O. C. 563.]

Art. 640. [715] [695] When no regular jurors.—When, from any cause, there are no regular

jurors for the week from whom to select a jury, the court shall order the sheriff to summon forthwith such number of qualified persons as it may deem sufficient; and, from those summoned, a jury shall be formed.

Article repealed by Acts 1929, 41st Leg., 1st C.S., p. 176, ch. 67, § 17, as to counties of 16,775 and not more than 17,000 population.

Art. 641. [716] [696] Challenge to array.—The array of jurors may be challenged by either party for the causes and in the manner provided in capital cases.

CHAPTER 5.—THE TRIAL BEFORE THE JURY

Art.
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676. Jury may communicate with court.
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678. Jury may have witness re-examined.
679. Presence of defendant.
680. If a juror becomes sick.
681. Discharging jury in misdemeanor.
682. Disagreement of jury.
683. Final adjournment discharges jury.
684. Discharge without verdict.
685. Court open for jury.

Article 642. [717] [697] Order of proceeding in trial.—A jury being impaneled in any criminal action, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party. [O. C. 580.]

Art. 643. [718] [698] Testimony at any time.—The court shall allow testimony to be introduced at any tim before the argument of a cause is concluded, if it appear that it is necessary to a due administration of justice. [O. C. 581.]

Art. 644. [719] [699] Witnesses placed under rule.—At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the court room to some place where they can not hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule. [O. C. 582.]

Art. 645. [720–721] Part of witnesses under rule.—The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court.

Art. 646. [722] [702] Not to hear testimony.—Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

Art. 647. [723] [703] Instructed by the court.—Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions; and the party violating the same shall be punished for contempt of court.

Art. 648. [724] [704] Order of argument.—The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury. [O. C. 585.]

Art. 649. [725] [705] Number of arguments.—The court shall never restrict the argument in felony cases to a number of addresses less than two on each side. [O. C. 586.]

Art. 650. [726] [706] Severance.—Two or more defendants jointly prosecuted may sever in the trial upon the request of either. [O. C. 587.]

Art. 651. [727] [707] Severance on separate indictments.—Where two or more defendants are prosecuted for an offense growing out of the same transaction, by separate indictments, either defendant may file his affidavit so stating, and that the evidence of such other party or parties is material for the defense of the affiant, and that affiant believes that there is not sufficient evidence against said party or parties to secure his or their conviction; and such party whose evidence is so sought shall be tried first. Such affidavit shall not, without other sufficient cause, operate as a continuance to either party. [Acts 1887, p. 33.]

Art. 652. [728] [708] Order of trial.—If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

Art. 653. [729] [709] May dismiss to use witness.—The State's attorney may, at any time, under the rules provided in this Code, dismiss a prosecution as to one or more defendants jointly indicted with others; and the person so discharged may be used as a witness by either party. [O. C. 588.]

Art. 654. [730] [710] Lack of evidence against joint defendant.—When it is apparent that there is no evidence against a defendant jointly prosecuted with others, the jury shall be directed to find a verdict as to such defendant; and, if they acquit, he may be introduced as a witness in the case.

Art. 655. [731–733] Discharge before verdict.—If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged; but such discharge shall be no bar in any case to a prosecution before the proper court for any offense.

Art. 656. [732] [712] Court may commit.—If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or, if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture. [O. C. 591.]

Art. 657. [734] Jury are judges of fact.—The jury are the exclusive judges of the facts, but they are bound to receive the law from the court and be governed thereby. [O. C. 593.]

Art. 658. [735–736] Charge of court.—In each felony case the Judge shall before the argument begins, deliver to the Jury, except in pleas of guilty where a Jury has been waived, a written charge, distinctly setting forth the Law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the Jury. Before said charge is read to the Jury, the defendant or his Counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. [Acts 1913, p. 278; Acts 1931, 42nd Leg., p. 65, ch. 43, § 5.]

Section 6 of Acts 1931, repeals all conflicting laws and parts of laws. Section 7 provides that if any provision is held invalid, such decision shall not affect the remainder.

Art. 659. [737] [717] Requested special charges.—Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The court shall give or refuse these charges with or without modification, and certify thereto; and, when the court shall modify a charge it shall be done in writing and in such manner as to show clearly what the modification is. [Acts 1913, p. 278.]

Art. 660. Final charge.—After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in article 658, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 658. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court. [Id.]

Art. 661. [738] [718] Charge certified by judge.—The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause. [O. C. 595.]

Art. 662. [739] [719] Charge in misdemeanor.—The court is not required to charge the jury in a misdemeanor case, except at the request of counsel on either side. When so requested he shall give or refuse such charges, with or without modification, as are asked in writing. [O. C. 598.]

Art. 663. [740] [720] Verbal charge.—A verbal charge shall be given only in a misdemeanor case, and then only by consent of the parties.

Art. 664. [741] [721] Reading special charges.—The judge shall read to the jury only such special charges as he gives.

Art. 665. [742] [722] Jury may take charge.—The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give. [O. C. 601.]

Art. 666. [743] [723] Review of charge on appeal.—Whenever it appears by the record in any criminal action upon appeal that any requirement of the eight preceding articles has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal or modification of special charges shall be made at the time of the trial. [O. C. 602; Acts 1897, p. 17; Acts 1913, p. 278.]

Art. 667. [744] [724] Bill of exceptions.—The defendant, by himself or counsel, may tender his bill of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bill of exceptions, under the rules prescribed in civil suits, in order that such decision, opinion, order or charge may be revised upon appeal.

Art. 668. [745] [725] Separation of jury.—After the jury has been sworn and impaneled to try any felony case, they shall not be permitted to separate until they have returned a verdict, unless by permission of the court, with the consent of the attorney representing the State and the defendant, and in charge of an officer. [O. C. 605.]

Art. 669. [746] [726] Separation in misdemeanor.—In misdemeanor cases the court may, at its discretion, permit the jury to separate before the verdict, after giving them proper instructions in regard to their conduct as jurors while so separated.

Art. 670. [747] [727] To provide jury room.—The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. [O. C. 606.]

Art. 671. [748] [728] Conversing with jury.—No person shall be permitted to be with a jury while they are deliberating upon a case, nor be per-

mitted to converse with a juror after he has been impaneled, except in the presence and by the permission of the court, or except in a case of misdemeanor where the jury have been permitted by the court to separate. No person shall be permitted to converse with the juror about the case on trial.

Art. 672. [749] [729] Violation of preceding article.—Any juror or other person violating the preceding article shall be punished for contempt of court by fine not exceeding one hundred dollars.

Art. 673. [750] [730] Officer shall attend jury.—To supply all the reasonable wants of the jury, and to keep them together and to prevent intercourse with any other person, the sheriff shall see that they are constantly attended by a proper officer, who shall always remain sufficiently near the jury to answer any call made upon him, but shall not be with them while they are discussing the case; nor shall such officer, at any time while the case is on trial before them, converse about the case with any of them, nor in the presence of any of them. [O. C. 608, 609.]

Art. 674. [751] [731] Written evidence.—The jury may take with them any writing used as evidence. [O. C. 610.]

Art. 675. [752] [732] Foreman of jury.—Each jury shall appoint one of their body foreman. [O. C. 611.]

Art. 676. [753] [733] Jury may communicate with court.—When the jury wish to communicate with the court, they shall so notify the sheriff, who shall inform the court thereof; and they may be brought before the court, and through their foreman shall state to the court verbally or in writing, what they desire to communicate. [O. C. 612, 613.]

Art. 677. [754] [734] Jury may ask further instruction.—The jury, after having retired, may ask further instruction of the judge as to any matter of law. For this purpose the jury shall appear before the judge in open court in a body, and through their foreman shall state to the court, verbally or in writing, the particular point of law upon which they desire further instruction; and the court shall give such instruction in writing, but no instruction shall be given except upon the particular point on which it is asked. [O. C. 614.]

Art. 678. [755] [735] Jury may have witness re-examined.—If the jury disagree as to the statement of any witness, they may, upon applying to the court, have such witness recalled, and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, and as nearly as he can in the language he used on the trial. [O. C. 615.]

Art. 679. [756] [736] Presence of defendant.—In felony but not in misdemeanor cases, the defendant shall be present in the court when any such proceeding is had as mentioned in the three preceding articles, and his counsel shall also be called.

Art. 680. [757] [737] If a juror becomes sick.—After the retirement of the jury in a felony case, if any one of them becomes so sick as to prevent the continuance of his duty, or any accident or circumstance occurs to prevent their being kept together, the jury may be discharged. [O. C. 618.]

Art. 681. [758] [738] Discharging jury in misdemeanor.—If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged. [Acts 1876, p. 82.]

Art. 682. [759] [739] Disagreement of jury.—After the cause is submitted to the jury, they may be discharged when they can not agree and both parties consent to their discharge; or the court may in its discretion discharge them where they have been kept together for such time as to render it altogether improbable that they can agree. [O. C. 619.]

Art. 683. [760] [740] Final adjournment discharges jury.—A final adjournment of the court before the jury have agreed upon a verdict discharges them. [O. C. 620.]

Art. 684. [761] [741] Discharge without verdict.—When a jury has been discharged, as provided in the four preceding articles, without having rendered a verdict, the cause may be again tried at the same or another term. [O. C. 621.]

Art. 685. [762] [742] Court open for jury.—The court during the deliberations of the jury may proceed with other business or adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

CHAPTER 6.—THE VERDICT

Article 686. [763] [743] "Verdict."—A verdict is a written declaration by a jury of their decision of the issues submitted to them in the case.

Art. 687. [764] [744] Verdict in felony.—Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman.

Art. 688. [765] [745] Verdict by nine jurors.—In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but, in such case, the verdict must be signed by each juror rendering it. [Acts 1876, p. 82.]

Art. 689. [766] [746] In county court.—In the county court the verdict must be concurred in by each juror.

Art. 690. [767] [747] When jury have agreed.—When the jury agree upon a verdict, they shall be brought into court by the proper officer; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court. [O. C. 623.]

Art. 691. [768] [748] Polling the jury.—The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if it is his verdict. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but, if any juror answer in the negative, the jury shall retire again to consider of their verdict. [O. C. 624.]

Art. 692. [769] [749] Presence of defendant.—In felony cases the defendant must be present

when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of defendant. [Acts 1907, p. 31.]

Art. 693. [770] [750] Verdict must be general.—The verdict in every criminal action must be general. Where there are special pleas upon which the jury are to find, they must say in their verdict that the allegations in such pleas are true or untrue. If the plea is not guilty, they must find that the defendant is either "guilty" or "not guilty," and they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty. [O. C. 626.]

Art. 694. [771] [751] Offenses of different degree charged.—In a prosecution for an offense including lower offenses, the jury may find the defendant not guilty of the higher offense, but guilty of any lower offense included. [O. C. 630.]

Art. 695. [772] [752] Offenses consisting of degrees.—The following offenses include different degrees:

1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder.
2. An assault with intent to commit any felony, which includes all assaults of an inferior degree.
3. Maiming, which includes aggravated and simple assault and battery.
4. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary.
5. Riot, which includes unlawful assembly.
6. Kidnapping or abduction, which includes false imprisonment.
7. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt is a violation of the penal law. [O. C. 631.]

Art. 696. [773–774] Informal verdict.—If the verdict of the jury is informal, their attention shall be called to it, and, with their consent the verdict may, under the direction of the court, be reduced to the proper form. If the jury refuse to have the verdict altered, they shall again retire to their room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and, in that case, the judgment shall be rendered accordingly, discharging the defendant.

Art. 697. [775–776] Defendants tried jointly.—Where several defendants are tried together, the jury may convict each defendant they find guilty and acquit others. If they agree to a verdict as to one or more, they may find a verdict in accordance with such agreement, and if they cannot agree as to others, a mistrial may be entered as to them.

Art. 698. [777–778] Judgment on verdict.—On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the Court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the Court; but in no event shall the judgment be deferred for a longer period of time than six (6) months. On expiration of the time fixed by the order of the Court, the Court or Judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 4, Title 9, of the Code of Criminal Procedure of the State of Texas. Provided further, that the Court or Judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his own recognizance, or may require him to enter into bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 4, Title 9 of the Code of Criminal Procedure of the State of Texas; and for the enforcement of any judgment entered, all writs, processes and remedies of the Code of Criminal Procedure are made applicable so far as necessary to carry out the provisions of this Article. [As amended Acts 1931, 42nd Leg., p. 59, ch. 39, § 1.]

Art. 699. [779] [759] Verdict of guilty in felony.—When a verdict of guilty is rendered in a felony case, the defendant shall remain in custody to await the further action of the court thereon. [O. C. 634.]

Art. 700. [780] [760] Acquitted for insanity.—When the defendant is acquitted on the grounds of insanity the jury shall so state in their verdict. [O. C. 636.]

Art. 701. [781] [761] If jury believes accused insane.—When a jury has been impaneled to assess the punishment upon a plea of "guilty" they shall say in their verdict what the punishment is which they assess; but if they are of opinion that a person pleading guilty is insane they shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as directed in cases where a defendant becomes insane after conviction. [O. C. 637.]

Art. 702. [782] [762] Acquittal of higher offense as jeopardy.—If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto. [O. C. 642.]

CHAPTER 7.—EVIDENCE IN CRIMINAL ACTIONS

1. GENERAL RULES

2. PERSONS WHO MAY TESTIFY

3. EVIDENCE AS TO PARTICULAR OFFENSES

4. DYING DECLARATIONS AND CONFESSIONS

5. MISCELLANEOUS PROVISIONS

1. GENERAL RULES

Article 703. [783] [763] Rules of common law.—The rules of evidence known to the common law of England, both in civil and criminal cases shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some other statute of the State. [O. C. 638.]

Art. 704. [784] [764] Rules of civil statute.—The rules of evidence prescribed in the statute law of this State in civil suits shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code. [O. C. 639.]

Art. 705. [785] [765] Presumption of innocence.—The defendant in a criminal case is presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt, and in case of reasonable doubt as to his guilt he is entitled to be acquitted. [O. C. 640.]

Art. 706. [786] [766] Jury are judges of facts.—The jury, in all cases, are the exclusive judges of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence. [O. C. 643.]

Art. 707. [787] [767] [729] Judge shall not discuss evidence.—In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceedings previous to the return of a verdict, make any remark calculated to convey to the jury his opinion of the case.

2. PERSONS WHO MAY TESTIFY

Art. 708. Persons competent to testify.—All persons are competent to testify in Criminal Cases except the following:

1. Insane persons who are in an insane condition of mind at the time when they are offered as a witness, or who were in that condition when the events happened of which they are called to testify.

2. Children or other persons who, after being examined by the court appear not to possess sufficient intellect to relate transaction with respect to which they are interrogated, or who do not understand the obligation of an oath.

3. All persons who have been or may be convicted of a felony in the State, and who are confined in the penitentiary or any jail in this State shall be permitted to testify in person in any court for the State and the defendant as to any offense committed on a prison farm owned by the State or of which it is lessee, or in any jail in the State, or on any railroad, train or highway along which prisoners are being transported under guard, and in all such cases compulsory process may issue for the attendance of all such witnesses when directed by the presiding judge, when, in his opinion, the ends of justice require their attendance. Providing further that the defendant may take the depositions of any such witnesses in the manner and form as in civil cases provided by law, and when so taken shall be admitted in evidence. Provided that the provisions of this Act shall apply only when the offense is committed on a prison farm owned by the State, or on which it is a lessee; or is committed in one of the prisons of the State; or, where it is committed on a railroad train; or a public highway along which prisoners are being transported under guard; or is committed in some jail. [Acts 1925, 39th Leg., ch. 27, p. 145, § 1; Acts 1926, 39th Leg., 1st C. S., p. 20, ch. 13, § 1.]

Art. 709. [789] [769] Female alleged to be seduced.—In prosecutions for seduction the female alleged to have been seduced shall be permitted to testify; but no conviction shall be had upon her testimony unless the same is corroborated by other evidence tending to connect the defendant with the offense charged. [Acts 1891, p. 34.]

Art. 710. [790] [770] Defendant may testify.—Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause; provided, that where there are two or more persons jointly charged or indicted, and a severance is had, the privilege of testifying shall be extended only to the party on trial. [Acts 1889, p. 37.]

Art. 711. [791] [771] Principals, accomplices or accessories.—Persons charged as principals, accomplices or accessories, whether in the same or different indictments, cannot be introduced as witnesses for one another, but they may claim a severance; and, if any one or more be acquitted, or the prosecution against them be dismissed, they may testify in behalf of the others. [O. C. 230.]

Art. 712. [792] [772] Court may determine competency.—The court may, upon suggestion made, or of its own option, interrogate a person who is offered as a witness, to ascertain whether he is competent to testify, or the competency or incompetency of the witness may be shown by evidence. [O. C. 645.]

Art. 713. [793] [773] All others competent witnesses.—All other persons, except those enumerated in articles 708 and 714, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship. [O. C. 646.]

Art. 714. [794–795] Husband or wife as witness.—Neither husband nor wife shall, in any case, testify as to communications made by one to the other, while married; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation existed, except in a case where one or the other is prosecuted for an offense; and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offense for which either is on trial. The husband and wife may, in all criminal actions, be witnesses for each other; but they shall in no case testify against each other except in a criminal prosecution for an offense committed by one against the other. [O. C. 648.]

Art. 715. [796] [776] [736] Religious opinion.—No person is incompetent to testify on account of his religious opinion or for the want of any religious belief. [Bill of Rights, sec. 5.]

Art. 716. [797] [777] [737] Defendant jointly indicted.—A defendant jointly indicted with others, and who has been tried and convicted, and whose punishment was fine only, may testify for the other defendant after he has paid the fine and costs.

Art. 717. [798–9–800] Judge as a witness.—The trial judge is a competent witness for either the State or the accused, and may be sworn by the clerk of his court and examined, but he is not required to testify if he declares that there is no fact within his knowledge important in the case.

Art. 718. [801] [781] Testimony of accomplice.—A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense. [O. C. 653.]

Art. 719. [802] [782] Injured party.—In trials for forgery, the person whose name is alleged to have been forged is a competent witness; and unless otherwise specially provided for, the person injured, or attempted to be injured, is a competent witness. [O. C. 658.]

3. EVIDENCE AS TO PARTICULAR OFFENSES

Art. 720. [803] [783] Two witnesses in treason.—No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court. [O. C. 654.]

Art. 721. [804] [784] Evidence in treason.—Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein. [O. C. 655.]

Art. 722. [805] [785] Two witnesses required.—In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction. [O. C. 656.]

Art. 723. [806] [786] Perjury and false swearing.—In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court. [O. C. 657.]

Art. 724. [807] [787] Intent to defraud in forgery.—In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of forgery in the Penal Code. [O. C. 659.]

4. DYING DECLARATIONS AND CONFESSIONS

Art. 725. [808] [788] Dying declarations.—The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery.
2. That such declaration was voluntarily made, and not through the persuasion of any person.
3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement.
4. That he was of sane mind at the time of making the declaration. [O. C. 660.]

Art. 726. [809] [789] Confession.—The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed. [O. C. 661.]

Art. 727. [810] [790] When confession shall not be used.—The confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him; which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed. If the defendant is unable to write his name, and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness. [O. C. 662; Acts 1907, p. 219.]

Art. 727a. Evidence not to be used.—No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case. [Acts 1925, 39th Leg., p. 186, ch. 49, § 1; Acts 1929, 41st Leg., 2nd C.S., p. 79, ch. 45, § 1.]

5. MISCELLANEOUS PROVISIONS

Art. 728. [811] [791] Part of an act, declaration, etc.—When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as, when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence. [O. C. 664.]

Art. 729. [812] [792] Written part of instrument controls.—When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent. [O. C. 665.]

Art. 730. [813] [793] If subscribing witness denies execution.—When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence. [O. C. 666.]

Art. 731. [814] [794] Evidence of handwriting.—It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient

to establish the handwriting of a witness who denies his signature under oath. [O. C. 667.]

Art. 732. [815] [795] Attacking testimony of his own witness.—The rule that a party introducing a witness shall not attack his testimony is so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in other manner, except by proving the bad character of the witness. [O. C. 668.]

Art. 733. [816] [796] Interpreter.—When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpœnaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. Such interpreters shall receive the same pay as interpreters receive in civil suits.

CHAPTER 8.—DEPOSITIONS

Art.
734. In examining court.
735. Aged, infirm or non-resident.
736. Within the State.
737. Without the State.
738. Of temporary resident.
739. Taken as in civil cases.
740. Objections to depositions.
741. Affidavit of defendant.
742. Written interrogatories.
743. Certificate.
744. By two officers.
745. Without interrogatories.
746. Taken without commission.
747. Officer shall take.
748. Return.
749. Predicate to read.
750. Reproducing testimony.

Article 734. [817] [797] In examining court.—When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers named in this chapter. The defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State on the trial of the case. [O. C. 764.]

Art. 735. [818] [798] Aged, infirm or non-resident.—Depositions of witnesses may also, at the request of the defendant, be taken when the witness resides out of the State, or when the witness is aged or infirm. [O. C. 765.]

Art. 736. [819] [799] Within the State.—Depositions of witnesses within the State may be taken by a supreme or district judge, or before any two or more of the following officers: a county judge, notary public, district clerk and county clerk. [O. C. 766.]

Art. 737. [820] [800] Without the State.—Depositions of a witness residing out of the State may be taken before the judge or chancellor of a supreme court of law or equity, or before a commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken. [O. C. 767.]

Art. 738. [821] [801] Of temporary resident.—The deposition of a non-resident witness who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State. [O. C. 768.]

Art. 739. [822] [802] Taken as in civil cases.—The rule prescribed in civil cases for taking the depositions of witnesses shall, as to the manner and form of taking and returning the same, govern in criminal actions, when not in conflict with this Code. [O. C. 769.]

Art. 740. [823] [803] Objections to depositions.—The rules of procedure as to objections to depositions in civil actions shall govern in criminal actions when not in conflict with this Code. [O. C. 770.]

Art. 741. [824] [804] Affidavit of defendant.—When the defendant desires to take the deposition of a witness at any other time than before the examining court, he shall by himself or counsel file with the clerk of the court in which the case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same; and also state in his affidavit that he has no other witness whose attendance on the trial can be procured, by whom he can prove the facts he desires to establish by the deposition. [O. C. 771.]

Art. 742. [825] [805] Written interrogatories.—In cases arising under the preceding article, written interrogatories shall be filed with the clerk of the court, and a copy of the same served on the proper attorney for the State the length of time required for service of interrogatories in civil actions. [O. C. 765.]

Art. 743. [826] [806] Certificate.—Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission, and is a credible person; or, if they can not certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them, and is worthy of credit. [O. C. 773.]

Art. 744. [827] [807] By two officers.—Where it is required that two officers shall act in executing a commission to take depositions, the official seal and signature of each shall be attached to the certificate authenticating the deposition. [O. C. 774.]

Art. 745. [828] [808] Without interrogatories.—The deposition of a witness taken before an examining court may be taken without interrogatories; but whenever a deposition is so taken it shall be done by the proper officer or officers; and each party shall be allowed full liberty of cross-examination. [O. C. 775.]

Art. 746. [829] [809] Taken without commission.—The depositions of witnesses taken before an examining court may be taken without a commission. If such examining court be held by a supreme or district judge, he shall, upon request, proceed to take depositions of the witnesses. [O. C. 776.]

Art. 747. [830] [810] Officer shall take.—Where any of the officers, other than a supreme or district judge, are called upon to take a deposition before an examining court, it is their duty to attend and take the same. [O. C. 777.]

Art. 748. [831] [811] Return.—A deposition taken in an examining court shall be sealed up and delivered by the officer to the clerk of the court having jurisdiction to try the offense; in all other cases the return of depositions may be made as provided in civil actions. [O. C. 778.]

Art. 749. [832–833] Predicate to read.—Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of

any person whose object was to deprive the defendant of the benefit of the testimony; or that, by reason of age or bodily infirmity, such witness can not attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

Art. 750. [834] [814] Reproducing testimony.—The deposition of a witness taken before an examining court or a jury of inquest, and reduced to writing, and certified according to law, in cases where the defendant was present when such testimony was taken, and had the privilege afforded him of cross-examining the witness, may be read in evidence as is provided in the preceding article for the reading in evidence of depositions.

TITLE 9—PROCEEDINGS AFTER VERDICT

CHAPTER 1.—NEW TRIALS

Article 751. [835] [815] Definition of "new trial."—A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury. [O. C. 669.]

Art. 752. [836] [816] Granted only to accused.—A new trial can in no case be granted where the verdict or judgment has been rendered for the accused. [O. C. 670.]

Art. 753. [837] [817] Grounds for new trial in felony.—New trials, in cases of felony, shall be granted for the following causes, and for no other:

1. Where the defendant has been tried in his absence, or has been denied counsel.

2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors.

4. Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct.

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial.

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits.

7. Where the jury, after having retired to deliberate upon a case, have received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere drinking of liquor by a juror shall not be sufficient ground for a new trial.

8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit.

9. Where the verdict is contrary to law and evidence.—A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved. [O. C. 672.]

Art. 754. [838] [818] In misdemeanors.—New trials in misdemeanor cases may be granted for any cause specified in the preceding article, except that contained in subdivision one of said article.

Art. 755. [839] [819] Time to apply for new trials.—A new trial must be applied for within two (2) days after the conviction; but for good cause shown, the Court may allow the motion to be made at any time before adjournment of the term at which the conviction was had. When the Court adjourns before the expiration of two (2) days after the conviction, the motion shall be made before the adjournment. [As amended Acts 1935, 44th Leg., p. 714, ch. 308, § 1.]

Art. 756. [840] [820] Motion to be in writing.—All motions for new trials shall set forth distinctly in writing the grounds upon which the new trial is asked.

Art. 757. [841] [821] State may controvert motion.—The State may take issue with the defendant upon the truth of any cause set forth in the motion for a new trial: and, in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

Art. 758. [842] [822] Judge not to discuss evidence.—In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse the motion, without prejudice to either party.

Art. 759. [843] [823] Effect of a new trial.—The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former conviction shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument. [O. C. 674.]

Art. 760. [844–5–6] Statement of facts and bills of exception.—1. Where the defendant in a criminal case appeals, he is entitled to a statement of facts certified by the trial judge and sent up with the record; provided that said statement of facts shall be in narrative form. [As amended Acts 1931, 42nd Leg., 1st C.S., p. 75, ch. 34, § 7.]

2. To accompany Transcript.—The Statement of Facts in felony or misdemeanor cases shall not be copied in The Transcript of the Clerk, but when agreed to by the parties and approved by the Judge, shall be filed in duplicate with the Clerk, and the original sent up as a part of the record of the cause on appeal; and like procedure shall be followed if the Statement of Facts is prepared by the parties or by the Judge, on the failure of the parties to agree. [As amended Acts 1931, 42nd Leg., p. 12, ch. 11, § 1.]

3. Failure to agree.—In all felony cases appealed, whenever the State and defendant can not agree as to the testimony of any witness, then so much of the transcript of the official court reporter's report with reference to each such disputed fact shall be inserted in the statement of facts as is necessary to show what the witness testified to in regard to the same, and constitute a part of the statement of facts, and the same shall apply to the preparation of bills of excep-

tion. Such stenographer's report, when carried into the statement of facts or bills of exception, shall be condensed so as not to contain the questions and answers except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved.

4. Statement prepared by judge.—When the duty devolves upon the court to prepare the statement of facts, he shall have such time in which to do so as he deems necessary, not to exceed forty days after he receives the defendant's statement of facts.

5. Time to file.—The term "statement of facts," as used in this subdivision, includes only the facts adduced upon the trial upon the issue of guilt. A statement of facts in a felony case filed within ninety days from the date the notice of appeal is given shall be considered as having been filed within the time allowed by law for filing same, notwithstanding the succeeding provisions of this subdivision. When an appeal is taken from the judgment rendered in any criminal action in any district court, criminal district court, county court, or county court at law, the defendant shall be entitled, with or without an order of court, to thirty days after the day of adjournment of court in which to prepare or cause to be prepared and filed a statement of facts and bills of exception; and upon good cause shown, the judge trying the cause may extend the time in which to file a statement of facts and bills of exception, and shall have the power in term time or vacation, upon the application of either party for good cause, to extend the several times for the preparation and filing of the statement of facts and bills of exception, but the same shall not be so extended as to delay the filing thereof within ninety days from the date the notice of appeal is given. If the term of any of said courts may by law continue more than eight weeks, said statement of facts and bills of exception shall be filed within thirty days after final judgment shall be rendered, unless the court shall by order entered of record in said cause extend the time for filing such statement and bills of exception.

6. When defendant cannot pay.—When any felony case is appealed and the defendant is not able to pay for a transcript of the testimony or give security therefor, he may make affidavit of such fact, and upon the making of such affidavit, the court shall order the official court reporter to make a narrative statement of facts and deliver it to such defendant. In all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, such reporter shall be required to furnish the attorney for said defendant, if convicted and where an appeal is prosecuted, with a transcript of his notes. For each said service he shall be paid by the State of Texas, upon the certificate of the trial judge, one-half of the rate provided by law in civil cases.

7. Independent statement.—Nothing in this chapter shall be so construed as to prevent parties from preparing a statement of facts on appeal in a felony or misdemeanor case independent of the transcript of the notes of the official reporter, or from buying a narrative statement of facts from such reporter, and agreeing thereto, without having to order or pay for a question and answer statement.

Acts 1931, 42nd Leg., 1st C.S., p. 75, ch. 34, § 7, amended subdivision 1 of this article. Acts 1931, 42nd Leg., p. 12, ch. 11, § 1, amended subdivision 2.

Section 5 of Acts 1931, 42nd Leg., 1st C.S., p. 75, ch. 34, provides that "this Act is not intended to and shall not be construed as repealing, modifying or amending Article 760 of the Code of Criminal Procedure, Revision of 1925." See Rev.Civ.St. Arts. 2237–2239.

Section 8 of the Act of 1931, made the provisions of this act "cumulative of the present laws and rules of procedure, except where they are in conflict with such present laws and rules, and where any such conflict exists all present laws and parts of laws so in conflict herewith are hereby now expressly repealed." See notes Rev.Civ.St. Art. 2237.

Art. 760a. Filing of statements of fact and bills of exception.—In all criminal cases tried in any court in this State, statements of facts or bills of exception as to the action of the court in overruling an application for change of venue, or as to other matters and things occurring before the beginning of the actual trial of the case, shall not be required to be filed during the term of the court at which such case is tried, nor shall such statements of facts or bills of exception pertaining to misconduct of the jury or other matters or things happening or occurring after the submission of the case to the jury, be required to be filed during such term of court; but all such statements of facts and bills of exception pertaining to any and all of such matters shall be filed within the same time as is prescribed by law for the filing of statements of facts and bills of exception pertaining to matters or things happening or occurring during the actual trial of the case. [Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, § 1.]

Section 4 of this Act repealed all laws and parts of laws in conflict with the act.

Art. 760b. Consideration in Appellate Court.—All statements of facts and bills of exception when filed in compliance with Section 1 hereof shall be entitled to consideration in any appellate court in this State, provided this law has become effective when the case is heard by such appellate court. [Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, § 2.]

Art. 760c. Application of Civil Statutes.—The provisions of Title 42, Chapter 11, Revised Civil Statutes of 1925, insofar as the same are applicable, shall govern appeals to the Court of Criminal Appeals. [Acts 1931, 42nd Leg., 1st C.S., p. 75, ch. 34, § 6.]

CHAPTER 2.—ARREST OF JUDGMENT

Article 761. [847] [825] "Motion in arrest of judgment."—A motion in arrest of judgment is an oral or written suggestion to the court on the part of defendant that judgment has not been legally rendered against him. The record must show the grounds of the motion. [O. C. 675.]

Art. 762. [848] [826] Time to make motion.—The motion must be made within two days after the conviction; or if the court adjourns before the expiration of such time, then it may be made at any time before final adjournment for the term. [O. C. 676.]

Art. 763. [849] [827] Granted for substantial defect.—Such motion shall be granted upon any ground which may be good upon exception to an indictment or information for any substantial defect therein. [O. C. 678.]

Art. 764. [850] [828] Want of form.—No judgment shall be arrested for want of form.

Art. 765. [851–852] Effect of arresting judgment.—The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody or bailed. If not so satisfied, the defendant shall be discharged.

CHAPTER 3.—JUDGMENT AND SENTENCE

1. IN CASES OF FELONY

1. IN CASES OF FELONY—Cont'd

1. IN CASES OF FELONY—Cont'd

2. JUDGMENT IN CASES OF MISDEMEANOR

1. IN CASES OF FELONY

Article 766. [853] [831] "Judgment."—A judgment is the declaration of the court entered of record, showing:

1. The title and number of the case.
2. That the case was called for trial and that the parties appeared.
3. The plea of the defendant.
4. The selection, impaneling and swearing of the jury.
5. The submission of the evidence.
6. That the jury was charged by the court.
7. The return of the verdict.
8. The verdict.
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or, in case of acquittal, that the defendant be discharged.
10. That the defendant be punished as has been determined by the jury.

Art. 767. [854] [832] "Sentence."—A "sentence" is the order of the court, made in the presence of the defendant, and entered of record, pronouncing the judgment, and ordering the same to be carried into execution in the manner prescribed by law.

Art. 768. [855] [833] Pronouncing sentence; time; credit for time spent in jail between arrest and sentence or pending appeal.—If a new trial is not granted, nor judgment arrested in felony cases, the sentence shall be pronounced in the presence of the defendant at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment; provided that in all criminal cases the judge of the court in which defendant was convicted, may within his discretion, give the defendant credit on his sentence for the time, or any part thereof, which said defendant has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court; and provided further that in all cases where the defendant has been tried for any violation of the laws of the State of Texas, and has been convicted and has appealed from said judgment and/or sentence of conviction, and where said cause has been affirmed by the Court of Criminal Appeals, and after receipt of the mandate by the Clerk of the trial court, the judge is authorized to again call said defendant before him, and if, pending appeal, the defendant has not made bond or entered into recognizance and has remained in jail pending the time of such appeal, said trial judge may then in his discretion re-sentence the defendant, and may subtract from the original sentence pronounced upon the defendant, the length of time the defendant has lain in jail pending such appeal; provided, however, that the provisions of this Act shall not apply after conviction and sentence in felony cases in which bond or recognizance is not permitted by law. [O.C. 682; Acts 1931, 42nd Leg., p. 129, ch. 86, § 1; Acts 1941, 47th Leg., p. 193, ch. 139, § 1.]

Section 2 of the Act of 1941 repealed all conflicting laws.

Art. 769. [856] [834] Sentence when appeal is taken.—When an appeal is taken from a death penalty, sentence shall not be pronounced, but shall be suspended until the decision of the Court of Criminal Appeals has been received. In all other cases of felony, sentence shall be pronounced before the appeal is taken. Upon the affirmance of the judgment by the appellate court, the clerk shall at once send its mandate to the clerk of the court from which the appeal was taken, there to be duly recorded. [O. C. 683.]

Art. 770. [857] [835] If court is about to adjourn.—If a conviction takes place so late in the term of the court as not to allow two days' time for making a motion for a new trial or in arrest of judgment, the sentence may be pronounced at any time before the court finally adjourns; provided, that in every case at least six hours shall be allowed for making either of these motions. [O. C. 684.]

Art. 771. [858] [836] Shall grant time to prepare appeal.—If, at the time a verdict is returned into court, there be less than six hours remaining, before the court, by law, must adjourn, the district judge shall sit during the whole of Saturday night and Sunday for the purpose of enabling the defendant to move for a new trial or in arrest of judgment, and prepare his cause for the Court of Criminal Appeals. This article shall not require the district judge to sit longer than six hours after verdict rendered, if a motion for a new trial or in arrest of judgment shall not have been filed. [O. C. 685.]

Art. 772. [859] [837] Sentence nunc pro tunc.—If there is a failure from any cause whatever to enter judgment and pronounce sentence during the term, the judgment may be entered and sentence pronounced at any succeeding term of the court, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. [O. C. 686.]

Art. 773. [860–861] Reasons to prevent sentence.—Before pronouncing sentence in a case of a felony, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence can not be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.
2. That the defendant is insane; and, if sufficient proof be shown to satisfy the court that the allegation is well founded, no sentence shall be pronounced. Where there is sufficient time left, a jury may be impaneled to try the issue. Where sufficient time does not remain, the court shall order the defendant to be confined safely until the next term of the court, and shall then cause a jury to be impaneled to try such issue.
3. Where there has not been a motion for a new trial, or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than two days may have elapsed since the rendition of the verdict.
4. When a person who has been convicted of felony escapes after conviction and before sentence, and an individual supposed to be the same has been arrested, he may, before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity. [O. C. 688.]

Art. 774. [840] [862] Cumulative or concurrent sentence.—When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in the penitentiary or the jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly. [Acts 1883, p. 8; Acts 1919, p. 25.]

Art. 775. Indeterminate sentence.—If the verdict fixes the punishment at confinement in the penitentiary for more than the minimum term, the Judge in passing sentence shall pronounce an indeterminate sentence, fixing in such sentence as the minimum the time provided by law as the lowest term in the penitentiary and as the maximum the term stated in the verdict. In cases where no appeal is taken, the sentence shall begin to run on the day same is pronounced, but where an appeal is taken and the defendant is in jail or the penitentiary his sentence shall begin to run with the date of the mandate, and in every such case the commitment shall so state. Where an appeal is taken and the defendant is at large on bond or recognizance, when the case is affirmed the clerk of the trial court, on receipt of the mandate from the Clerk of the Court of Criminal Appeals, shall issue a commitment, and when the defendant is taken into custody under such commitment, the officer executing same shall endorse thereon the date the defendant was taken into custody, and the endorsement on this commitment shall constitute the date on which the sentence shall begin to run, and such defendant named in the commitment shall be admitted to the penitentiary by virtue of such commitment. [As amended Acts 1931, 42nd Leg., p. 349, ch. 207, § 1.]

Art. 775a. Parole.—Where the maximum sentence is not four times as great as the minimum sentence, and the convict has served the minimum sentence and has a perfect prison record or where the maximum sentence is greater than four times the minimum sentence, and the convict has served one-fourth of the maximum sentence and has a perfect prison record, such convict shall be paroled during good behavior for the balance of the term imposed upon him; provided that before a parole shall be granted the board of pardons shall examine and approve the convict's record and said board may consider the past record as well as the prison record of convicts. [Acts 1925, p. 377.]

Art. 776. Suspended sentence.—Where there is a conviction of any felony in any district or criminal district court of this State, except murder, perjury, burglary of a private residence at night, robbery, arson, incest, bigamy, seduction, and abortion, and the punishment assessed by the jury shall not exceed five years, the court shall suspend sentence upon written sworn application made therefor by the defendant, filed before the trial begins. When the defendant has no counsel, the court shall inform the defendant of his right to make such application, and the court shall appoint counsel to prepare and present same if desired by defendant. In no case shall sentence be suspended except when the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or in any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. [Acts 1913, p. 8.]

Saved From Repeal. Acts 1947, 50th Leg., p. 1049, ch. 452, known as the Adult Probation and Parole Law, incorporated in art. 781b, provides, in § 34 thereof, that nothing therein shall be construed as repealing arts. 776 through 781.

Art. 776a. Additional provision as to suspended sentence.—When a defendant has entered a plea of guilty and has waived his right of a trial by Jury, and has consented to be tried by the Court and

there is a conviction of any felony, except murder, perjury, burglary of a private residence at night, robbery, arson, incest, bigamy, seduction and abortion, and the punishment assessed by the court shall not exceed five years, the Court shall have the right and power to suspend the sentence of the defendant during his good behavior; provided, however, that in no case shall the sentence be suspended except when the proof shall show that the defendant has never before been convicted of a felony in this or in any other State. The Court shall permit testimony as to whether or not the defendant has theretofore been convicted of any felony in this or in any other State, and testimony as to the general reputation of the defendant; such testimony, however, shall be heard only upon the request in writing by the defendant, in which he shall be required to state upon oath that he has never before been convicted of a felony in this or in any other State, and that his general reputation is good. When the defendant has no Counsel, it shall be the duty of the Court to inform him of his right to make such application and shall appoint Counsel to prepare and present the same if requested by the defendant.

This Act is not to be construed as repealing what is now known as the Suspended Sentence Act, but is to be construed as in addition thereto; and in the event this Act or any part thereof is held to be invalid, such invalidity shall not in any manner affect what is now known as the Suspended Sentence Act. [Acts 1931, 42nd Leg., p. 65, ch. 43, § 4.]

Art. 777. Judgment suspending sentence; good behavior defined.—1. When sentence is suspended, the judgment shall be that sentence of the judgment of conviction shall be suspended during the good behavior of the defendant.

2. By "good behavior" is meant that the defendant shall not be convicted of any felony, or any character or grade of the offenses of theft, embezzlement, swindling, conversion, theft by bailee, or any fraudulent acquisitions of personal property. [Acts 1913, p. 8; Acts 1941, 47th Leg., p. 1334, ch. 602, § 1.]

Section 3 of the Act of 1941 provided that partial invalidity shall not affect the remaining portions.

Art. 778. Procedure as to suspended sentence.—The court shall permit testimony as to the general reputation of defendant to enable the jury to determine whether to recommend the suspension of sentence, and submit the question as to whether the defendant has ever before been convicted of a felony; such testimony shall be heard and such question submitted only upon the request in writing by the defendant; provided, that in all cases sentence shall be suspended if the jury recommends it in their verdict. In such cases, neither the verdict of conviction nor the judgment entered thereon shall become final, except in the manner and at the time provided by the succeeding article. [Acts 1913, p. 8.]

Art. 779. Suspended sentence made final.—1. Upon the final conviction of the defendant of any other felony, pending the suspension of sentence, the court granting such suspension shall cause a capias to issue for the arrest of the defendant if he is not then in the custody of such court, and during a term of the court, shall pronounce sentence upon the original judgment of conviction, and shall cumulate the punishment of the first with the punishment of any subsequent conviction or convictions, and in such cases no new trial shall be granted in the first conviction, nor shall the validity or finality of the first conviction be attacked by appeal or otherwise, and no right of appeal shall exist to test the validity of the judgment of conviction, sentence upon which was suspended.

2. Upon the final conviction of the defendant of any character or grade of the offenses of theft, embezzlement, swindling, conversion, theft by bailee, or any fraudulent acquisition of personal property, pending the suspension of sentence, the court granting such suspension may cause a capias to issue for the arrest of the defendant, if he is not then in the custody of such court, and during the term of the court may pronounce sentence upon the original judgment of conviction, and may cumulate the punishment of the first with the punishment of any such subsequent conviction or convictions, and in such cases no new trial shall be granted in the first conviction. The term "may," as herein used, shall not be construed to be mandatory. [Acts 1913, p. 8; Acts 1941, 47th Leg., p. 1334, ch. 602, § 2.]

Art. 780. Dismissal of charges.—In any case of suspended sentence, at any time after the expiration of the time assessed as punishment by the jury, the defendant may make his written sworn motion for a new trial and dismissal of such case, stating therein that since such former trial and conviction he has not been convicted of any felony, which motion shall be heard by the court during the first term time after same is filed. If it appears to the court, upon such hearing, that the defendant has not been convicted of any other felony, the court shall enter an order reciting the fact, and shall grant the defendant a new trial and shall then dismiss said cause. After the setting aside and dismissal of any judgment of conviction as herein provided for, the fact of such conviction shall not be shown or inquired into for any purpose except in cases where the defendant has been again indicted for a felony and invokes the benefit of this law. [Acts 1913, p. 8.]

Art. 781. Defendant recognized.—When sentence is suspended, the defendant shall be released upon his recognizance in such sum as the court may fix. [Id.]

Art. 781a. Satisfaction of judgment as in misdemeanor convictions.—When a person is convicted of a felony, and the punishment assessed is only a fine or a term in jail, or both, the judgment may be satisfied in the same manner as a conviction for a misdemeanor is by law satisfied. [Acts 1929, 41st Leg., p. 236, ch. 101, § 1.]

Art. 781b. Adult Probation and Parole Law.

Authority to suspend sentence and place on parole

Section 1. The courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty for any crime or offense except murder, rape, and offenses against morals, decency, and chastity where the maximum punishment assessed the defendant does not exceed ten (10) years imprisonment, and where the defendant has not been previously convicted of a felony, to suspend the imposition or the execution of sentence and may place the defendant on probation for the maximum period of the sentence imposed or if no sentence has been imposed for the maximum period for which the defendant might have been sentenced, or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Any such person placed on probation shall be under the supervision of such court and a probation and parole officer serving such court as hereinafter provided.

Investigation

Sec. 2. When directed by the court a probation and parole officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable,

such investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution the probation and parole officer shall send a report of such investigation to the institution at the time of commitment.

Terms and conditions of probation

Sec. 3. Such court shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions and may include among them the following, or any other that the probationer shall:

(a) Commit no offense against the laws of this or any other State or the United States;

(b) Avoid injurious or vicious habits;

(c) Avoid persons or places of disreputable or harmful character;

(d) Report to the probation and parole officer as directed;

(e) Permit the probation and parole officer to visit him at his home or elsewhere;

(f) Work faithfully at suitable employment as far as possible;

(g) Remain within a specified place;

(h) Pay his fine, if one be assessed, in one or several sums, and make restitution or reparation in any sum that the court shall determine; and

(i) Support his dependents.

Period of probation; discharge

Sec. 4. The period of probation shall be determined by such courts and may at any time be modified or terminated by such courts. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, such courts, by order duly entered, shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty, and the courts have discharged the defendant hereunder, such courts may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of gullty shall be made known to the court should the defendant again be convicted of any criminal offense.

Arrest and detention; report; fugitives from justice; appeal from revocation

Sec. 5. At any time during the period of probation such courts may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation and parole officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the request of the judge of such courts. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such probation and parole officer shall forthwith report such arrest and detention to such courts and submit in writing a report showing in what manner the probationer has violated his probation. Thereupon, the court shall cause the defendant to be brought before it and, after a hearing without a jury, may continue or revoke the probation and shall in such case proceed to deal with the case as if there had been no probation. If the defendant is arrested in a county or district in the State of Texas other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish such courts a report concerning said probationer, and such courts shall have authority after a hearing to continue or revoke probation and shall in such case proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the order of revocation had been issued by the court of original jurisdiction. Any probationer who removes himself from the State of Texas without permission of the court placing him on probation or the court to which jurisdiction he has been transferred shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve. The right of the probationer to appeal to the Court of Criminal Appeals for a review of the trial and conviction, as provided by law shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a jail or penitentiary sentence he may appeal the revocation.

Change of residence

Sec. 6. If, for good and sufficient reasons, probationers desire to change their residence within or without the State, such transfer may be effected by application to their supervising probation and parole officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation and parole officer in the locality to which probationer is transferred.

Board of Pardons and Paroles; powers and duties

Sec. 7. The Board of Pardons and Paroles created by the Constitution of this State in Section 11, Article 4 thereof, shall administer the provisions of this Act and shall also act as the State Board of Probation as authorized by Section 11a, Article 4 of the Constitution of this State, and shall hereinafter be referred to as "the Board."

Appointment to Board; eligibility; revocation

Sec. 8. Only those persons who by reason of their knowledge of and/or experience in penal treatment, public welfare, and the administration of criminal justice, and who are prepared to discharge efficiently the duties of the Board shall be eligible for such appointment.

For the purpose of certifying to the appointing authorities that applicants for appointment to said Board are eligible for such appointment, there is hereby created a nomination Committee to be composed of five (5) members as follows: Chairman of the Board of Public Safety, Chairman of the Prison Board, Chairman of the State Board of Public Welfare, and two (2) persons appointed to such Committee having special knowledge of penal treatment and the administration of criminal justice, one (1) by the Attorney General and one (1) by the Governor. The members of the Committee shall elect one (1) of their number as chairman. The said Committee shall provide for the receiving of applications for the position of member of the Board and may give consideration to other persons who have not made formal application and shall devise a plan for the determination, by examination and investigation, of the qualification of those persons. From such examinations and investigations, said Committee shall compile a list of not more than ten persons eligible for said position of member of the Board and said list shall expire at the end of two (2) years. The Examining Board shall rank such eligibles on the list in the order of their relative fitness as determined by examination and investigation. The appointing authorities may make each appointment to the position of member of the

Board of Pardons and Paroles from not less than three (3) nor more than the five (5) eligibles having highest rank on said list and a member so appointed shall be eligible for re-appointment without further certification from said Committee.

Salaries of Board members; chairman; quorum

Sec. 9. The members of the Board shall give full time to the duties of their office and shall be paid a salary of Six Thousand Dollars ($6,000) annually. The members of the Board shall elect one (1) of their number as chairman, who shall serve for a period of two (2) years and until his successor is elected and qualified.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

Seal; decisions; record; report; minutes

Sec. 10. The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decisions relating to the persons who are to have been confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to parole, pardon and clemency shall be matters of public record and subject to public inspection at all reasonable times.

Office quarters

Sec. 11. The necessary office quarters shall be provided for the Board in the manner that the same are furnished to other departments, boards, commissioners, bureaus and offices of the State.

Release on parole

Sec. 12. The Board is hereby authorized to release on parole with the approval of the Governor any person confined in any penal or correctional institution in this State, except persons under sentence of death, who has served one-third (⅓) of the maximum sentence imposed, provided that in any case he may be paroled after serving fifteen (15) years. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

Within one year after his admission and at such intervals thereafter as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a law abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

The Board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings, or conditions to be imposed upon paroles. Whenever an order for parole is issued it shall recite the conditions thereof.

It shall be the duty of the Board at least ten (10) days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the Sheriff, the District Attorney and the District Judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

If no probation and parole officer has been assigned to the locality where a person is to be released on parole or executive clemency the Board shall notify the chairman of the Volunteer Parole Board of such county prior to the release of such person. The Board shall request such Volunteer Parole Board, in the absence of a probation and parole officer for information which would herein be required of such duly appointed probation and parole officer. This shall not however preclude the Board from requesting information from any agency in such locality.

Information on prisoners eligible for parole

Sec. 13. It shall be the duty of any Judge, District Attorney, County Attorney, police officer or other public official of the State, having information with reference to any prisoner eligible for parole, to send in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

Access to prisoner; reports

Sec. 14. It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner, to provide for the Board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled.

Submission of information or arguments

Sec. 15. The Board shall formulate rules as to the submission and presentation of information and/or arguments to the Board for and in behalf of any parolee under the jurisdiction of the Board.

All persons presenting information or arguments to the Board shall submit their statements in writing and not otherwise, and shall submit therewith an affidavit stating whether any fee had been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

Subpoenas; production of records etc.; false testimony

Sec. 16. The Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oath administered by any member of the Board. Subpoenas so issued may be served by any sheriff, constable, police, parole or probation officer, or other law enforcement officer, in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner

as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

Civilian clothing; transportation; advancement for maintenance

Sec. 17. When a prisoner is placed on parole or released through executive clemency he shall receive, if needed, civilian clothing and transportation to the place within the State in which he is to reside and at the discretion of the Board he may be paid not to exceed Twenty-five Dollars ($25) for his temporary maintenance. All such clothing, transportation and advancement for maintenance shall be paid out of the "Discharge Convicts Revolving Fund" of the Texas Prison System.

Rules

Sec. 18. The Board shall have the power and duty to make rules for the conduct of persons heretofore or hereafter placed on parole by the Board and for the investigation and supervision of such person.

Warrant for return of paroled prisoner; arrest without warrant

Sec. 19. The Board is hereby authorized, at any time in its discretion and upon a showing of probable violation of parole, to issue a warrant for the return of any paroled prisoner to the institution from which he was paroled. Such warrant shall authorize all officers named therein to return such paroled prisoner to actual custody in the penal institution from which he was paroled. Pending hearing, as hereinafter provided, upon any charge of parole violation, the prisoner shall remain incarcerated in such institution.

Any probation and parole officer or any other peace officer may arrest a parolee without a warrant when the parolee has, in the judgment of said parole and probation officer, or peace officer violated the conditions of his parole. The arresting officer shall present to the detaining authorities a statement in writing of the circumstances of violation. The arresting officer shall at once notify the Board of the arrest and detention of the parolee and shall submit in writing a report showing in what manner the parolee has violated the conditions of the parole.

A parolee for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the provisions of his parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Commission of felony while at large on parole

Sec. 20. Any prisoner who commits a felony while at large upon parole and who is convicted and sentenced therefor may be required by the Board to serve such sentence after the original sentence has been completed.

Whenever a paroled prisoner is accused of a violation of his parole or information and complaint by a law enforcement officer and/or probation and parole officer he shall be entitled to be heard on such charges before the Board under such rules and regulations as the Board may adopt, providing however, said hearing shall be held within forty-five (45) days of the date of arrest and at a time and place set by the Board. When the Board has determined the matter it may revoke such parole or continue the original order of parole, or enter such other order as may be recommended. When the prisoner's parole has been revoked, he may be required to serve the portion remaining of the sentence on which he was released on parole; such portion remaining to be calculated without audit for the time from the date of his release on parole to the date of his arrest or charge of parole violation.

Final order and certificate of discharge

Sec. 21. When any paroled prisoner has performed the obligations of his parole for such time as shall satisfy the Board that his final release is not incompatible with his welfare and that of society, the Board may make a final order of discharge and issue to the paroled prisoner a certificate of discharge; but no such order of discharge shall be made in any case within a period of less than one year after the date of release on parole except that when the period of the maximum sentence imposed shall expire at an earlier date, then a final order of discharge must be made and a certificate of discharge issued to the paroled prisoner not later than the date of expiration of the said maximum sentence.

Board to investigate and make recommendations at Governor's request

Sec. 22. On request of the Goyernor the Board shall investigate and report to the Governor with respect to any person being considered by the Governor for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture and make recommendations thereon.

Director of probation and parole; examinations; eligibility; powers and duties; assistants

Sec. 23. Appropriations permitting, the Board shall prepare and conduct, or cause to be prepared and conducted, examinations for the position of Director of Probation and Parole and shall establish rules and regulations covering admission to such examinations. The Director shall be a person with training and experience in probation and parole work or other related form of case work. After such examinations, such Board shall appoint one of the three (3) persons highest on the eligible list to serve as Director of Probation and Parole, and he shall serve until removed by the Board.

Said Director of Probation and Parole shall be the executive officer of the Board and shall have as his duty the supervision and direction of all adult probation and parole officers of the State and such other duties as are prescribed by this Act and by the Board. He shall, subject to the approval of the Board, divide the State into districts and assign probation and parole officers to serve in the various districts and courts. He shall direct the work of the probation and parole officers and other employees; shall formulate methods of investigation, supervision, record keeping and reports; shall conduct training courses for the staff; and shall develop policies of probation and parole work. He shall perform such other duties as are prescribed by the Board not inconsistent with this Act.

Said Director of Probation and Parole shall be furnished offices and such assistants and expenses for the operation of his office and the discharge of his duties as are deemed necessary by the Board.

Probation and parole officers

Sec. 24. Appropriations permitting, said Board shall prepare and conduct, or cause to be prepared and conducted, examinations for probation and parole officers and shall issue certificates showing that an applicant has passed the examinations and indicating his position on the eligible list. All appointments of probation and parole officers shall be made from the eligible list by the Director of Probation and Parole, subject to and with the approval of the said Board. Rank and salary of said probation and parole officers and other employees shall be determined by the said Director of Probation and Parole, subject to and with the approval of the said Board.

Salaries of such probation and parole officers and other employees of the Board shall be paid out of the General Fund of the State of Texas in like manner as the salaries of other State officers are paid, and the necessary and reasonable expense of all probation and parole officers and other employees incurred in the performances of their duties and in the conduct of their offices, together with clerical assistants when deemed necessary by the Director of Probation and Parole and approved by the said Board shall be paid in like manner after such statements of such expenses have been approved by the Director of Probation and Parole.

Said probation and parole officers shall be assigned to courts and/or districts by the Director of Probation and Parole subject to and with the approval of said Board, provided that in the opinion of said Board a necessity exists for the appointment of such probation and parole officers and money is available for salary and expenses of such probation and parole officers.

Such judges of courts to which probation and parole officers have been assigned shall have the power to request of the Board transfer or removal of such probation and parole officers from their courts for incompetency, misconduct, failure to carry out orders of the court, or neglect of duty. All removals and transfers shall be made by the Director of Probation and Parole for the same reasons herein above stated subject to the approval of the said Board.

Office space for probation and parole officer

Sec. 25. The Commissioners Court in each county in which a probation and parole officer serves shall, upon request of the Director of Probation and Parole, provide in or near the building housing the criminal courts office space for such officer.

Duties of probation and parole officers

Sec. 26. Said probation and parole officers shall investigate all cases referred to them for investigation by any court in which they are authorized to serve or by the Director of Probation and Parole or by the Board and shall report in writing thereon to the court, the Director of Probation and Parole or to the Board, as the case may be. They shall supervise persons who reside within the district served by them who are placed on probation by any court in which they are authorized to serve. They shall supervise persons who reside within the district who have been placed on parole or on conditional pardon, reprieve or furlough by the Governor or the Board.

They shall furnish to each person placed under their supervision information concerning the conditions of his release and shall instruct him regarding the same. Such officers shall keep informed concerning the conduct and condition of each person under their supervision by visiting, requiring report thereon in writing or orally as often as may be required.

Such officer shall use all practical and suitable methods, not inconsistent with the conditions imposed by the court or the Director of Probation and Parole or the Board, to aid and encourage persons on probation or parole to bring about improvement in their conduct and condition.

Two or more probation and parole officers in district; designation

Sec. 27. When there are two or more probation and parole officers appointed for one district, one may be designated by the appointing authority as "chief probation and parole officer" and the others as "assistant probation and parole officers." In addition to his duties as probation and parole officer such chief probation and parole officer shall direct the work of all probation and parole officers serving in such districts.

Power to perform duties of policemen and sheriffs; arrests

Sec. 28. Probation and parole officers duly appointed by the Board as herein provided are hereby vested with all the powers of police or sheriffs to make arrests or perform any other duties required of policemen or sheriffs which may be incident to such probation and parole officers' duties.

Information privileged; cooperation with law enforcement officers

Sec. 29. All information and data obtained in the discharge of official duty by any probation or parole officer or employee, or member of the Board shall be privileged information, shall not be receivable as evidence in any court as to the guilt or innocence of a defendant and shall not be disclosed directly or indirectly to anyone other than to the Judge or Board.

Nothing in this Section shall be construed to prevent a probation and parole officer from cooperating with all law enforcement officers, social agencies, and welfare departments, in furnishing information or receiving information concerning a probationer or parolee.

Retroactive effect

Sec. 30. The provisions of this Act are hereby extended to all persons who, at the effective date thereof are eligible to be placed on parole under the terms of this Act with the same force and effect as if this Act had been in operation at the time of such persons becoming eligible to be placed on parole.

Placing on probation as final disposition for fee purposes

Sec. 31. For the purpose of determining when fees are to be paid to any officer or office, the placing of the defendant or [1] probation shall be considered a final disposition of that case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

[1] So in enrolled bill. Probably should read "on."

Governor's powers of executive clemency not affected

Sec. 32. The provisions of this Act shall not be construed to prevent or limit the exercise by the Governor of powers of executive clemency vested in him by the Constitution of the State.

Inapplicable to parole from institutions for juveniles

Sec. 33. The provisions of this Act shall not apply to parole from institutions for juveniles.

Repeals

Sec. 34. Article 6203 of the Revised Civil Statutes of Texas of 1925 as amended is hereby repealed and all laws or parts of laws in conflict herewith are repealed in so far only as they conflict with the provisions of this Act.

However, nothing in this Act shall be construed as repealing Article 776, through 781 of Vernon's Annotated Statutes, Code of Criminal Procedure; commonly known as the Suspended Sentence Law.

Partial invalidity

Sec. 35. If any section, paragraph, part, sentence, clause or phrase of this Act shall be held unconstitutional, it shall not affect the validity of the remainder, and the Legislature, hereby declares that it would have passed each and every section, paragraph, part, sentence, clause and phrase of this Act severally.

Short title; definitions

Sec. 36. This Act shall be cited as the Adult Probation and Parole Law, and, when used in this Act, unless the context otherwise requires, the following definitions shall apply:

(a) The "courts" means the court of record having original criminal jurisdiction;

(b) The "judge" means the judge of a court of record having original criminal jurisdiction;
(c) The "board" means the Board of Pardons and Paroles;
(d) The "probation and parole officer" means the duly appointed officer of the Board of Pardons and Paroles;
(e) The "director" means the Director of Probation and Parole, duly appointed by the Board of Pardons and Paroles;
(f) A "probationer" means a defendant placed on probation by courts of record having original criminal jurisdiction;
(g) A "parolee" means a person released by the Board of Pardons and Paroles from confinement in any penal or correctional institution of the State of Texas under certain conditions and regulations;
(h) "Parole" means release of a prisoner granted by the Board after the prisoner has served a part but not all of his term to be served at liberty under the supervision of the Board;
(i) "Executive Clemency" means pardon, commutation of sentence, reprieve, remission of fine or forfeiture granted by the Governor or any of these, but not parole or any form of parole;
(j) "Probation" means release of convicted defendant by a court under conditions imposed by the Court;
(k) The singular includes the plural, the plural the singular, and the masculine, the feminine when consistent with the intent of the Act. [Acts 1947, 50th Leg., p. 1049, ch. 452.]

2. JUDGMENT IN CASES OF MISDEMEANOR

Art. 782. [866] [844] In absence of defendant.—The judgment in a misdemeanor case may be rendered in the absence of the defendant. [O. C. 691.]

Art. 783. [867] [845] As to fine.—When the defendant is only fined the judgment shall be that the State of Texas recover of the defendant the amount of such fine and all costs of the prosecution, and that the defendant, if present, be committed to jail until such fine and costs are paid; or if the defendant be not present, that a capias forthwith issue, commanding the sheriff to arrest the defendant and commit him to jail until such fine and costs are paid; also, that execution may issue against the property of such defendant for the amount of such fine and costs.

Art. 784. [868] [846] On other punishment.—If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.

CHAPTER 4.—EXECUTION OF JUDGMENT

1. IN MISDEMEANOR CASES

2. ENFORCING JUDGMENT IN CAPITAL CASES

2. ENFORCING JUDGMENT IN CAPITAL CASES—Cont'd

1. IN MISDEMEANOR CASES

Article 785. [869] [847] Discharging judgment for fine.—When the judgment against a defendant is for a fine and costs he shall be discharged from the same:
1. When the amount thereof has been fully paid.
2. When remitted by the proper authority.
3. When he has remained in custody for the time required by law to satisfy the amount thereof.

Art. 786. [870] [848] Payable in money.—All recognizances, bail bonds, and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only. [O. C. 702.]

Art. 787. [871] [849] Pay or jail.—When a judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment shall be sufficient to authorize such imprisonment. [O. C. 694, 695.]

Art. 788. [872] [850] If defendant is absent.—When a pecuniary fine has been adjudged against a defendant not present, a capias shall forthwith be issued for his arrest. The sheriff shall execute the same by placing the defendant in jail.

Art. 789. [873] [851] Capias shall recite what.—Where such capias issues, it shall state the rendition and amount of the judgment and the amount unpaid thereon, and command the sheriff to take the defendant and place him in jail until the amount due upon such judgment and the further costs of collecting the same are paid, or until the defendant is otherwise legally discharged. [O. C. 709.]

Art. 790. [874] [852] Capias may issue to any county.—The capias provided for in this chapter may be issued to any county in the State, and shall be executed and returned as in other cases, but no bail shall be taken in such cases.

Art. 791. [875–6] Execution for fine and costs.—In each case of pecuniary fine, an execution may issue for the fine and costs, tho a capias was issued for the defendant; and a capias may issue for the defendant tho an execution was issued against his property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

Art. 792. [877] [855] Further enforcement of judgment.—When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment shall be in accordance with the provisions of this Code.

Art. 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 ($3.00) Dollars for each day thereof; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county, or while he is serving his jail sentence, and in such instances he shall be entitled to a credit of Three ($3.00) Dollars for each day or fraction of a day that he has served and he shall only be required to pay the balance of the pecuniary fine assessed against him. [As amended Acts 1927, 40th Leg., 1st C.S., p. 194, ch. 68, § 1; Acts 1934, 43rd Leg., 2nd C.S., p. 85, ch. 33, § 1; Acts 1943, 48th Leg., p. 351, ch. 229, § 1.]

Amendment of 1937. Article 793 as amended by Acts 1937, 45th Leg., 1st C.S., p. 1808, ch. 30, § 1, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 793a. [Unconstitutional.]

This article which was Acts 1937, 45th Leg., 2nd C.S., p. 1889, ch. 18, § 1, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 794. To do manual labor.—Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted.

2. Such farms and workhouses shall be under the control and management of the commissioners court, and said court may adopt such rules and regulations not inconsistent with the laws as they deem necessary for the successful management and operation of said institutions and for effectively utilizing said labor.

3. Such overseers and guards may be employed under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as said court may prescribe.

4. Those so convicted shall be so guarded while at work as to prevent escape.

5. They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm.

6. They shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. No person shall ever be required to work for more than one year.

7. One who refuses to labor or is otherwise refractory or insubordinate may be punished by solitary confinement on bread and water or in such other manner as the commissioners court may direct.

8. When not at labor they may be confined in jail or the workhouse, as may be most convenient, or as the regulations of the commissioners court may prescribe.

9. A female shall in no case be required to do manual labor except in the workhouse.

10. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged according to law. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow.

11. One convicted of a misdemeanor whose punishment either in whole or in part is imprisonment in jail may avoid manual labor by payment into the county treasury of one dollar for each day of the term of his imprisonment, and the receipt of the county treasurer to that effect shall be sufficient authority for the sheriff to detain him in jail without labor.

Art. 794a. [Unconstitutional.]

This article was Acts 1937, 45th Leg., p. 206, ch. 109, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 794b. [Unconstitutional.]

This article was Acts 1937, 45th Leg., p. 657, ch. 325, § 1, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 794c. [Unconstitutional.]

This article was Acts 1937, 45th Leg., 1st C.S., p. 1751, ch. 7, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 794d. [Unconstitutional.]

This article was Acts 1937, 45th Leg., 2nd C.S., p. 1901, ch. 24, § 1, was declared unconstitutional in Ex parte Ferguson, 137 Cr.R. 494, 132 S.W.2d 408.

Art. 795. [879] [857] Authority for imprisonment.—When, by the judgment of the court, a defendant is to be imprisoned in jail, a certified copy of such judgment shall be sufficient authority for the sheriff to place such defendant in jail.

Art. 796. [880] [858] Capias for imprisonment.—A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is imprisonment in jail, shall recite the judgment and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to place such defendant in jail.

Art. 797. [881] [859] Discharge of defendant.—A defendant who has remained in jail the length of time required by the judgment shall be discharged. The sheriff shall return the copy of the judgment, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

2. ENFORCING JUDGMENT IN CAPITAL CASES

Art. 798. Execution of convict.—Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the date of sentence, as the court may adjudge, by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of such convict until such convict is dead. [Acts 2nd C. S. 1923, p. 111.]

Art. 799. Warrant of execution.—Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the warden of the State Penitentiary at Huntsville, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in the preceding article, and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said warden, together with the condemned person. [Id.]

Art. 800. Taken to penitentiary.—Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person to the State Penitentiary at Huntsville, and shall deliver him and the warrant aforesaid into the hands of the warden and shall

take from the warden his receipt for such person and such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgment of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure. [Id.]

Art. 801. Visitors.—Upon the receipt of such condemned person by the warden of the State Penitentiary, he shall be confined therein until the time for his execution arrives, and, while so confined, all persons outside of said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Prison Commissioners. [Id.]

Art. 802. Executioner.—The warden of the State Penitentiary at Huntsville, or in case of his death, disability or absence, his deputy, shall be the executioner. In the event of the death or disability or absence of both the warden and his deputy, the executioner shall be that person appointed by the Board of Prison Commissioners for that purpose. [Id.]

Art. 803. Place of execution.—The execution shall take place at the State Penitentiary at Huntsville, in a room arranged for that purpose. [Id.)

Art. 804. Present at execution.—The following persons may be present at the execution, and none other; the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Prison Commissioners, two physicians, including the prison physician, the spiritual advisor of the condemned; the chaplain of the penitentiary, the county judge and sheriff of the county in which the penitentiary is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution. [Id.]

Art. 805. Escape after sentence.—If the condemned escape after sentence and before his delivery to the warden, and be not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced, either in term time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the warden of the State Penitentiary and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the warden, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided. [Id.]

Art. 806. Escape from penitentiary.—If the condemned person escape after his delivery to the warden, and be not retaken before the time appointed for his execution, any person may arrest and commit him to the State Penitentiary whereupon the warden shall certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such appointment; and thereupon the clerk of such court shall certify such appointment to the warden, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure. [Id.]

Art. 807. Return of warden.—When the execution of sentence is suspended or respited to another date, the same shall be noted on the warrant and on the arrival of such date, the warden shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had, but in such case, as well as when the sentence is executed, the warden shall return the warrant and certificate, with a statement of any such act and with his proceedings endorsed thereon, together with the statement that the body of the convict was decently buried or delivered to his relatives or friends, naming them, or to some other person, by consent of the convict, naming such person, and naming two or more witnesses to the fact that the convict consented that his body might be delivered to such person to the clerk of the court in which the sentence was passed, who shall record said warrant and return in the minutes of the court, provided that the body of the person electrocuted may be returned to the county in which conviction was had at the expense of the county, when so requested by the convict's relatives. [Id.]

Art. 808. [888] Treatment of condemned.—No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law. [O. C. 713.]

Art. 809. [891] [869] Body of convict.—The body of a convict shall be decently buried, at the expense of the county in which the indictment which resulted in conviction was found, unless demanded by his relatives or friends, in which case, it shall be given to them, and shall never, unless by consent of the convict himself before execution, be delivered to any person for dissection. [O. C. 716.]

Art. 810. Fee for executing convict.—The warden, or other person, conducting the execution shall be allowed therefor twenty-five dollars to be paid by the county in which judgment of execution was rendered, and the commissioners court of such county shall approve such account and order it paid out of the general funds of the county, upon the certificate of the district clerk of the county, showing the return by the warden of the death warrant, with execution of sentence endorsed thereon.

Art. 811. Preventing rescue.—The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or any military or militia company, to aid in preventing the rescue of a prisoner. [Id.]

TITLE 10—APPEAL AND WRIT OF ERROR

Article 812. [893] [871] State cannot appeal.—The State shall have no right of appeal in criminal actions. [Const., art. 5, sec. 26.]

Art. 813. [894] [872] Defendant may appeal.—A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed.

Art. 814. [898] [875] Presence in appellate court.—The defendant need not be personally present upon the hearing of his cause in the Court of Criminal Appeals, but if not in jail he may appear in person. [Acts 1892, p. 38.]

Art. 815. [901] [876] Felony recognizance pending appeal.—Where the punishment of the defendant has been assessed at confinement in the penitentiary for any period of fifteen years or less, and such conviction is appealed from, by entering into a recognizance in said court the defendant thus convicted shall have the right to remain on bail while such appeal is pending and until the judgment appealed from is affirmed by the appellate court and the mandate thereof filed with the clerk of the trial court. [Acts 1907, p. 31.]

Art. 816. [902] Jail or recognizance.—Where the defendant appeals from a conviction in any felony case and where bail is allowed by the provisions of the preceding article, he shall, if he be in custody, be committed to jail unless he duly enters into a recognizance to appear. If he be in custody his notice of appeal shall have no effect to release him from such custody until he enters into recognizance. No recognizance shall be taken if the defendant is not in custody of the sheriff at the time thereof. [Id.]

Art. 817. [903] Form for recognizances in felony appeal.—In all appeals from convictions for felonies where bail is allowed by law, the following form of recognizance shall be considered sufficient when substantially followed:

"The State of Texas,
No. vs.
A. B.

This day came into open court A. B. defendant in the above entitled cause, who, together with C. D. and E. F. sureties, acknowledged themselves severally indebted to the State of Texas in the sum of $———, conditioned that the said A. B., who has been convicted of a felony in this court, as more fully appears by the judgment of conviction duly entered in this cause, shall appear before this court from day to day and from term to term of the same, and not depart therefrom without leave of this court, in order to abide the judgment of the Court of Criminal Appeals of the State of Texas." [Id.]

Art. 818. [904] Bail pending appeal.—If for any cause the defendant fails to enter into such recognizance, but gave notice of and took an appeal from such conviction during such term, he may give bail and obtain his release from custody by giving, after the expiration of such term of court, his bail bond to the sheriff, with two or more good and sufficient sureties, in which the defendant, together with his sureties, shall acknowledge themselves severally indebted to the State of Texas in the sum fixed by the court, upon the conditions as are provided for in such recognizances. Before such bail bond shall be accepted and the defendant released from custody by reason thereof, the same must be approved by such sheriff and the court trying said cause, or his successor in office. When said bond is so given and approved, the defendant shall be released from custody. [Id.]

Art. 819. [906] Receipt of mandate.—When the clerk of any court from whose judgment an appeal has been taken in felony cases wherein bail has been allowed shall receive the mandate of the Court of Criminal Appeals affirming such judgment, he shall immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction; setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper penitentiary authorities, as directed by said sentence. The sheriff shall forthwith execute such capias as directed. [Id.]

Art. 820. [907] Capias may issue to any county.—Such capias may issue to any county of this State, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases. [Id.]

Art. 821. [908] Right of appeal not abridged.—The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this chapter. [Id.]

Art. 822. [910] [878] Appeal prosecuted immediately.—An appeal may be prosecuted immediately to the Court of Criminal Appeals, and the clerk shall without delay make out and forward the record to the Court of Criminal Appeals.

Art. 823. [911] [879] When transcript may be filed.—The transcript may be filed in the Court of Criminal Appeals, and the case tried in said court while the court in which the conviction was had is yet in session. Upon an affirmance of the judgment by the appellate court, sentence may be pronounced by the trial court at the same term at which the conviction was had. [Acts 1st C. S. 1891, p. 38.]

Art. 824. [912] [880] Escape pending appeal.—If the defendant, pending an appeal in a felony case, makes his escape from custody, the jurisdiction of the Court of Criminal Appeals shall no longer attach in the case. Upon the fact of such escape being made to appear, the court shall, on motion of the State's attorney, dismiss the appeal; but the order dismissing the appeal shall be set aside if it is made to appear that the defendant has voluntarily returned within ten days to the custody of the officer from whom he escaped; and in cases where the punishment inflicted by the jury is death or confinement in the penitentiary for life, the court may in its discretion reinstate the appeal if the defendant is recaptured or voluntarily surrenders within thirty days after such escape. [Acts 1st C.S. 1891, p. 38; Acts 1933, 43rd Leg., p. 64, ch. 34.]

Art. 825. [913] [881] Sheriff to report escape.—When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State Prosecuting Attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

Art. 826. [914] [882] May appeal during term.—An appeal may be taken by the defendant at any time during the term of the court at which the conviction is had. [O. C. 725.]

Art. 827. [915] Notice of appeal.—An appeal is taken by giving notice thereof in open court at the term of court at which conviction is had, and having the same entered of record. If notice of appeal is given at the term at which the conviction is had and the same is not entered of record, then by making proof of the fact, the judge of the court trying the cause shall order the same entered of record either in term time or vacation by entering in the minutes of his court an order to that effect. Said entry when so made shall bear date as of date when notice of appeal was actually given in open court. [Acts 1915, p. 159.]

Art. 828. [916] [884] Effect of appeal.—The effect of an appeal is to suspend and arrest all further proceedings in the case in the court in which the conviction was had, until the judgment of the appellate court is received by the court from which the appeal was taken. In cases where, after notice of appeal has been given, the record or any portion thereof, is lost or destroyed, it may be substituted in the lower court, if said court be then in session; and, when so substituted, the transcript may be prepared and sent up as in other cases. In case the court from which the appeal was taken be not then in session, the appellate court shall postpone the consideration of such appeal until the next term of said court from which said appeal was taken; and the said record shall be substituted at said term as in other cases. [O. C. 727.]

Art. 829. [917] [885] Appeal after sentence.—Where the defendant in a felony case fails to appeal until after sentence has been pronounced, the appeal shall, nevertheless, be allowed, if demanded, and has the effect of superseding the execution of the sentence and all other proceedings as fully as if taken at the proper time. [O. C. 728.]

Art. 830. [918] Bail pending misdemeanor appeal.—When the defendant appeals in any misdemeanor case to the Court of Criminal Appeals, he shall, if he be in custody, be committed to jail unless he enter into recognizance as provided by law. If for any cause the defendant fails to enter into recognizance during the term at which he was tried, but gave notice and took an appeal from such conviction, he shall be permitted to give bail and obtain his release from custody by giving, after the expiration of such term of court, his bail bond to the sheriff with two or more good and sufficient sureties, in which the defendant and his sureties shall acknowledge themselves severally indebted to the State of Texas in the sum conditioned as provided in recognizance on appeal. Before the defendant shall be released on such bail bond the same must be approved by the sheriff or the judge trying the cause or his successor in office. When such bail bond is so given and approved, the defendant shall be released from custody. [Acts 1919, p. 23.]

Art. 831. [919–920] Form of misdemeanor recognizance.—In appeal cases of misdemeanor, the following form of recognizance shall be sufficient, and, when substantially complied with, shall confer jurisdiction upon the Court of Criminal Appeals, of such appeals:

"State of Texas,
No. vs.
A. B.

This day came into open court A. B., defendant in the above entitled cause, who, together with C. D. and E. F., his sureties, acknowledge themselves severally indebted to the State of Texas in the sum of ——— dollars; conditioned, that the said A. B., who has been convicted in this cause of a misdemeanor, as more fully appears by the judgment of conviction duly entered in this cause, shall appear before this court from day to day, and from term to term of the same, and not depart, without leave of this court, in order to abide the judgment of the Court of Criminal Appeals of the State of Texas." [Acts 1897, p. 5.]

Art. 832. [905–919] Procedure as to bail pending appeal.—The amount of any recognizance or bail bond given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Criminal Appeals shall be fixed by the court in which the judgment appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases of recognizances and bail bonds. [Acts 1st C. S. 1892, p. 38; Acts 1897, p. 5.]

Art. 833. [921] [889] Appeals from justice and corporation courts.—In appeals from the judgments of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he give bond with sufficient security, to be approved by the court from whose judgment the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided said bond shall not in any case be for a less sum than fifty dollars. Said bond shall recite that in said cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court. [Acts 1876, p. 167, Acts 1901, p. 291, Acts 4th C. S. 1918, p. 34.]

Art. 834. [922] Filing bond perfects appeal.—In appeals from justice and corporation courts, when the appeal bond provided for in the preceding article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript. [Acts 1899, p. 233.]

Art. 835. [923] Appellate court may allow new bond.—When an appeal is taken from the judgment of any court of this State, by filing a bond or

entering into a recognizance within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond or recognizance is defective in form or substance, such appellate court may allow the appellant to amend such bond or recognizance by filing a new bond, on such terms as the court may prescribe. [Acts 1905, p. 224.]

Art. 836. [924] [890] Appeal bond given within what time.—If the defendant is not in custody, a notice of appeal shall have no effect whatever until the required appeal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the judgment of the court refusing a new trial has been rendered, and not afterward.

Art. 837. [925] [891] Trials de novo.—In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the county court, the same as if the prosecution had been originally commenced in that court. [Const., art. 5, sec. 16.]

Art. 838. [926] [892] Original papers sent up.—In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

Art. 839. [927] [893] Witnesses not again summoned.—In the cases mentioned in the preceding article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

Art. 840. [928] [894] Rules governing appeal bonds.—The rules governing the taking and forfeiture of bail bonds shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

Art. 841. [929] [895] Clerk to prepare transcript.—The Clerk of a Court from which an appeal is taken shall prepare as soon as practicable, a transcript in duplicate, in every case in which an appeal has been taken, which shall contain all the proceedings had in the case and conform to the rules governing transcripts in civil cases, the copy of such transcript to be filed in the trial court with the original papers in the case, and the original to be forwarded to the Clerk of the Court of Criminal Appeals as provided in Article 843 of the Code of Criminal Procedure of the State of Texas, 1925. Provided the Clerk shall not charge for the extra copy. [O.C. 729; Acts 1933, 43rd Leg., p. 408, ch. 161.]

Art. 842. [930] [896] Transcript in felony prepared first.—The clerk shall prepare transcripts in felony cases, that have been appealed in preference to misdemeanor cases and shall prepare transcripts in all criminal cases appealed in preference to civil cases. [O. C. 729.]

Art. 843. [931] [897] Forwarding transcript.—As soon as prepared, the clerk shall forward the transcript by safe conveyance, charges paid, inclosed in a securely sealed envelope, directed to the clerk of the Court of Criminal Appeals. [Acts 1st C. S. 1892, p. 39.]

Art. 844. [932–933] Clerk to make list of cases.—The clerk, immediately after the adjournment of the court at which appeals were taken, shall make out a certificate under his seal showing a list of each cause appealed. This certificate shall show the style of the cause, the offense, the date judgment was rendered, and the date the appeal was taken; and the clerk shall send it to the clerk of the appellate court. [Id.]

Art. 845. [934–935] Failure to receipt transcript.—When it appears by the clerk's certificate that an appeal has been taken but that the transcript has not been received by the clerk of the Court of Criminal Appeals within the time required by law for filing transcripts in civil actions, such clerk shall immediately notify the clerk of the proper court that the same has not been received, and such clerk without delay shall prepare and forward another transcript as in the first instance, and notify the clerk of the appellate court by letter of the fact that such transcript has been forwarded and how and when it was forwarded. [Id.]

Art. 846. [937] [903] Appeals, when determined.—The Court of Criminal Appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. [Id.]

Art. 847. [938] [904] Presumptions on appeal.—The Court of Criminal Appeals may affirm the judgment of the court below, or may reverse and remand for a new trial, or may reverse and dismiss the case, or may reform and correct the judgment, as the law and nature of the case may require. The court shall presume that the venue was proven in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment; that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, and it affirmatively appears to the contrary by a bill of exceptions approved by the judge of the court below, or proven up by by-standers, as provided by law, and duly incorporated in the transcript. In each case by it decided, the Court of Criminal Appeals shall deliver a written opinion, setting forth the reason for such decision. [Acts 1897, p. 11.]

Art. 848. [939] [905] Cases remanded.—The Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts. A cause reversed because the verdict is contrary to the evidence shall be remanded for new trial. [Acts 1st C. S. 1892, p. 39.]

Art. 849. [940] [906] Duty of clerk after judgment.—When the judgment of the Court of Criminal Appeals is final, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and mail the same to the clerk of the proper court. [Id.]

Art. 850. [941] [907] Mandate to be filed.—When the mandate of the Court of Criminal Appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket. [Id.]

Art. 851. [944] [910] When misdemeanor is affirmed.—In misdemeanor cases where the judgment has been affirmed, no proceedings need be had after filing the mandate, except to forfeit the recognizance of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken. [O. C. 749.]

Art. 852. [945] [911] Effect of reversal.—Where the Court of Criminal Appeals awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below. [Acts 1st C. S. 1892, p. 40.]

Art. 853. [946] [912] Motion in arrest of judgment.—Where the motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the appellate court directs the cause to be dismissed. [Id.]

Art. 854. [947] [913] Defendant discharged, when.—When the Court of Criminal Appeals reverses a judgment and orders the cause to be dismissed, the defendant, if in custody, must be discharged. The clerk of the appellate court shall at once transmit to the officer having custody of defendant an order by telegraph or mail. [Id.]

Art. 855. [948] [914] Bail after reversal.—When a felony case is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect. [Id.]

Art. 856. [949] [915] Hearing in appellate court.—The Court of Criminal Appeals may make rules of procedure as to the hearing of criminal actions upon appeal. In every case at least two counsel for the appellant shall be heard, if they desire it, either by brief or by oral or written argument, or both. [Id.]

Art. 857. [950] [916] Appeal in habeas corpus.—When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a transcript of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Court of Criminal Appeals for revision. This transcript, when the proceedings take place before the court in session, shall be prepared and certified by the clerk thereof; but when had before a judge in vacation, the transcript may be prepared by any person, under direction of the judge, and certified by such judge.

Art. 857a. Bail pending appeal.—In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an Appellate Court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be ground for a dismissal of the appeal except in capital cases where the proof is evident. [Acts 1927, 40th Leg., p. 66, ch. 43, § 1.]

Art. 858. [951–952–953] Hearing habeas corpus.—Cases of habeas corpus, taken to the Court of Criminal Appeals by appeal, shall be heard at the earliest practicable time. The defendant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be revised. The only design of the appeal is to do substantial justice to the party appealing.

Art. 859. [954] [920] Orders on appeal.—The Court of Criminal Appeals shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all. [Acts 1st C. S. 1892, p. 40.]

Art. 860. [955] [921] Judgment conclusive.—The judgment of the Court of Criminal Appeals in appeals under habeas corpus shall be final and conclusive; and no further application in the same case can be made for the writ, except in cases specially provided for by law. [Id.]

Art. 861. [957] [923] Appellant detained by other than officer.—If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff shall upon receiving the mandate of the Court of Criminal Appeals, immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor. [Id.]

Art. 862. [958] [924] Judgment to be certified.—The judgment of the Court of Criminal Appeals shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county. [Id.]

Art. 863. [959] [925] Who shall take bail bond.—When, by the judgment of the Court of Criminal Appeals upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and, if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond shall have the same force and effect as a recognizance, and may be forfeited and enforced in the same manner. [Id.]

Art. 864. [960] [926] Appeal on forfeitures.—An appeal may be taken by the defendant from every final judgment rendered upon a recognizance, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for twenty dollars or more, exclusive of costs, but not otherwise.

Art. 865. [961] [927] Writ of error.—The defendant may also have any such judgment as is mentioned in the preceding article, and which may have been rendered in courts other than the justice and corporation courts, revised upon writ of error.

Art. 866. [962] [928] Rules in forfeitures.—In the cases provided for in the two preceding articles, the proceedings shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

TITLE 11—JUSTICE AND CORPORATION COURTS

1. CORPORATION COURTS

2. JUSTICE COURTS

2. JUSTICE COURTS—Cont'd

3. TRIAL IN JUSTICE COURT

4. JUDGMENT IN JUSTICE COURT

1. CORPORATION COURTS

Article 867. Complaint.—Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the name and by authority of the State of Texas," and shall conclude, "Against the peace and dignity of the State," and if the offense is only covered by an ordinance, it may also conclude "Contrary to the said ordinance." The recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths. [Acts 1899, p. 42.]

Art. 868. Seal.—The said court shall have a seal with a star of five points in the center and the words "Corporation Court in ———, Texas" the impress of which shall be attached to all papers issued out of said court except subpœnas, and shall be used to authenticate the official acts of the clerk and of the recorder. [Id.]

Art. 869. Prosecutions.—All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder. [Id.]

Art. 870. Service of process.—All process issuing out of a corporation court shall be served by a policeman or marshal of the city, town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded. [Id.]

Art. 871. Commitment.—When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court. [Id.]

Art. 872. Fines and costs, etc.—The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all costs and fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines shall be paid into the city treasury for the use and benefit of the city, town or village. [Id.]

Art. 873. Collection of costs.—Such costs as may be provided for by ordinance shall be taxed against each defendant convicted, but in no case shall the ordinance prescribe the collection of greater costs than are prescribed by law to be collected of one convicted in a justice court. [Id.]

Art. 874. Jury fees, etc.—The provisions of this Code regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried in the justice court shall, so far as applicable, govern such corporation court. [Id.]

Art. 875. Officers' fees.—Unless provided by special charter, the governing body of each city, town or village by ordinance shall prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, to be paid out of the municipal treasury. [Id.]

Art. 876. Appeal.—Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable. [Id.]

Art. 877. Disposition of fees.—The fine imposed on appeal and the costs imposed on appeal and in the corporation court shall be collected of the defendant, and such fine and the cost of the corporation court when collected shall be paid into the municipal treasury. [Id.]

Art. 878. Contempt and bail.—The recorder may punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to take recognizances, admit to bail, and forfeit recognizances and bail bonds under such rules as govern such taking and forfeiture in the county court. [Id.]

2. JUSTICE COURTS

Art. 879. [969] [934] Criminal docket.—Each justice of the peace and each recorder shall keep

a docket in which he shall enter the proceedings in each trial had before him, which docket shall show:

1. The style of the action.
2. The nature of the offense charged.
3. The date the warrant was issued and the return made thereon.
4. The time when the examination or trial was had, and, if a trial, whether it was by a jury or by himself.
5. The verdict of the jury, if any.
6. The judgment of the court.
7. Motion for new trial, if any, and the decision thereon.
8. If an appeal was taken.
9. The time when, and the manner in which, the judgment was enforced. [O. C. 817; Acts 1876, p. 156.]

Art. 880. [970] [935] To file transcript of docket.—At each term of the district court, each justice of the peace shall, on the first day of the term of said court for their county, file with the clerk of said court a certified transcript of the docket kept by such justice, of all criminal cases examined or tried before him since the last term of such district court; and such clerk shall immediately deliver such transcript to the foreman of the grand jury.

Art. 881. [971] [936] Warrant without complaint.—Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender.

Art. 882. [972] [937] Complaint shall be written.—Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing and cause the same to be signed and sworn to by the complainant. It shall be duly attested by the officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him. [Acts 1876, p. 165.]

Art. 883. [973] [938] What complaint must state.—Such complaint shall state:

1. The name of the accused, if known, and, if unknown, shall describe him as accurately as practicable.
2. The offense with which he is charged, in plain and intelligible words.
3. That the offense was committed in the county in which the complaint is made.
4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation. [Id.]

Art. 884. [974] [939] Warrant shall issue.—When the requirements of the preceding article have been complied with, the justice shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed. [Id.; O. C. 821.]

Art. 885. [975] [940] Requisites of warrant.—Said warrant shall be deemed sufficient if it contain the following requisites:

1. It shall issue in the name of "The State of Texas."
2. It shall be directed to the proper sheriff, constable or some other person specially named therein.
3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at a time and place therein named.
4. It must state the name of the person whose arrest is ordered, if it be known; and, if not known, he must be described as in the complaint.
5. It must state that the person is accused of some offense against the laws of the State, naming the offense.
6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature.

Art. 886. [976] [941] Court of inquiry.—When a justice of the peace has good cause to believe that an offense has been, or is about to be, committed against the laws of this State, he may summon and examine any witness in relation thereto. If it appears from the statement of any witness that an offense has been committed, the justice shall reduce said statements to writing and cause the same to be sworn to by each witness making the same; and, issue a warrant for the arrest of the offender, the same as if complaint has been made and filed.

Art. 887. [977] [942] Witnesses refusing to testify.—Witnesses summoned under the preceding article who shall refuse to appear and make a statement of facts, under oath, shall be guilty of a contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned until they make such statement.

Art. 888. [979] [944] Any person may execute warrant.—A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of arrest by naming such person specially in the warrant. In such case, such person shall have the same powers, and shall be subject to the same rules that govern peace officers in like cases. [Acts 1876, p. 166.]

Art. 889. [980] [945] Offenses committed in another county.—Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, such justice shall issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases. [Id.]

Art. 889a. Offenses in counties of 225,000; venue; fee of constable; penalties.—Sec. 1. No person shall ever be tried in any Justice Precinct Court unless the offense with which he was charged was committed in such Precinct. Provided, however, should there be no duly qualified Justice Precinct Court in the Precinct where such offense was committed, then the defendant shall be tried in the Justice Precinct next adjacent which may have a duly qualified Justice Court. And provided further that if the Justice of the Peace of the Precinct in which the offense was committed is disqualified for any reason for trying the case, then such defendant may be tried in some other Justice Precinct within the County.

Sec. 2. No Constable shall be allowed a fee in any misdemeanor case arising in any Precinct other than the one for which he has been elected or appointed, except through an order duly entered upon the minutes of the County Commissioners Court.

Sec. 3. Any Justice of the Peace, Constable or Deputy Constable violating this Act shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00).

Sec. 4. The provisions of this Bill shall apply only to counties having a population of two hundred and twenty-five thousand (225,000) or over according to the last preceding Federal Census. [Acts 1934, 43rd Leg., 2nd C.S., p. 29, ch. 14.]

3. TRIAL IN JUSTICE COURT

Art. 890. [981] [946] To try cause without delay.—When the defendant is brought before the justice, he shall proceed to try the cause without de-

lay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause. [O. C. 823.]

Art. 891. [982] [947] Defendant may waive jury.—The accused may waive a trial by jury; and, in such case, the justice shall hear and determine the case without a jury.

Art. 892. [983–984] Jury summoned.—If the accused does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a jury of six men qualified to serve as jurors. Said jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. Any man so summoned who fails to attend may be fined not exceeding twenty dollars for contempt. [O. C. 836; Acts 1876, p. 167.]

Art. 893. [985] [950] Complaint read.—If the warrant issued upon a complaint made to the justice, the complaint shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him. [O. C. 824.]

Art. 894. [986] [951] Not discharged for informality.—A defendant shall not be discharged by reason of any informality in the complaint or warrant. The proceeding before the justice shall be conducted without reference to technical rules. [O. C. 825.]

Art. 895. [987] [952] Challenge of jurors.—In all jury trials in the justice court the State and each defendant in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice. [Acts 1876, p. 160.]

Art. 896. [988] [953] Other jurors summoned.—If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified men to form the jury.

Art. 897. [989] [954] Oath to jury.—The justice shall administer the following oath to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God." [O. C. 834.]

Art. 898. [990] [955] Defendant shall plead.—After the jury is impaneled, the defendant may plead guilty or not guilty or the special plea named in the succeeding article. [O. C. 829.]

Art. 899. [991] [956] The only special plea.—The only special plea allowed is that of former acquittal or conviction for the same offense. [O. C. 830.]

Art. 900. [992] [957] Pleading is oral.—All pleading in justice court is oral. The justice shall note upon his docket the plea offered. [O. C. 831.]

Art. 901. [993] [958] Plea of guilty.—Proof as to the offense shall be heard upon a plea of guilty and the punishment assessed by the court or jury. [O. C. 832.]

Art. 902. [994] [959] If defendant refuses to plead.—The justice shall enter a plea of not guilty if the defendant refuses to plead. [O. C. 833.]

Art. 903. [995] [960] Witnesses examined by whom.—The justice shall examine the witnesses if the State is not represented by counsel. [O. C. 835.]

Art. 904. [996] [961] May appear by counsel.—The defendant has a right to appear by counsel as in all other cases. Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument. [O. C. 836.]

Art. 905. [997] [962] Rules of evidence.—The rules of evidence which govern the trials of criminal actions in the district court shall apply to such actions in justice courts. [O. C. 837.]

Art. 906. [998] [963] Jury kept together.—The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict or are discharged. [O. C. 838.]

Art. 907. [999] [964] Mistrial.—A jury shall be discharged if they fail to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than two days and again impanel a jury to try such cause. [O. C. 839.]

Art. 908. [1000] [965] Defendant to give bail.—In case of adjournment, the justice shall require the defendant to give bail for his appearance. If he fails to give bail he may be held in custody. [O. C. 840.]

Art. 909. [1001–1002] Verdict.—When the jury have agreed upon a verdict, they shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment thereon.

Art. 910. [1003] [968] Defendant placed in jail.—Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept. [O. C. 844.]

Art. 911. [1004] [969] New trial granted.—A justice may, for good cause shown, grant the defendant a new trial, whenever such justice shall consider that justice has not been done the defendant in the trial of such case. [Acts 1876, p. 176.]

Art. 912. [1005] [970] Motion for new trial.—An application for a new trial must be made within one day after the rendition of judgment, and not afterward; and the execution of the judgment shall not be stayed until a new trial has been granted.

Art. 913. [1006–1007] Only one new trial granted.—Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.

Art. 914. [1008] [973] State not entitled to new trial.—In no case shall the State be entitled to a new trial.

Art. 915. [1010] [975] Effect of appeal.—When a defendant files the appeal bond required by law with the justice, all further proceeding in the case in the justice court shall cease.

Art. 916. [1011] [976] Judgments in open court.—All judgments and final orders of the justice shall be rendered in open court and entered upon his docket. [Acts 1876, p. 162.]

4. JUDGMENT IN JUSTICE COURT

Art. 917. [1012] [977] The judgment.—The judgment, in case of conviction in a criminal action before a justice of the peace, shall be that the State of Texas recover of the defendant the fine and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and that execution issue to collect the same. [O. C. 845.]

Art. 918. [1013] [978] Capias.—If the defendant be not in custody when judgment is rendered, or if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail until he is legally discharged.

Art. 919. [1014] [979] Execution.—In each case of conviction before a justice from which no appeal is taken, an execution shall issue for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before justices. [O. C. 849.]

Art. 920. [1015] [980] Discharged from jail.—A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and costs, and

2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket.

TITLE 12—MISCELLANEOUS PROCEEDINGS

CHAPTER 1.—INSANITY AFTER CONVICTION

Article 921. [1017–19] Insanity after conviction.—If at any time after conviction and by the manner and method as hereinafter provided, it be made known to the Judge of the Court in which the indictment has been returned, that the defendant has become insane, since his conviction, a jury shall be empaneled as in ordinary Criminal cases to try the question of insanity. [O.C. 781–783; Acts 1931, 42nd Leg., p. 82, ch. 54, § 1.]

Art. 922. [1018] [983] Affidavit of insanity.—Information to the Judge of the Court as provided in Article 921 of the Code of Criminal Procedure of the State of Texas as to the insanity of a defendant, shall consist of the affidavit of the Superintendent of some State Institution for the treatment of the insane, or the affidavit of not less than two licensed and regularly practicing physicians of the State of Texas, or the affidavit of the prison physician or warden of the Penal Institution wherein the defendant is in prison, or the County Health Officer of the County where the defendant was finally convicted, which affidavits, if made, shall state that after a personal examination of the defendant, it is the opinion of the affiant that the defendant is insane, and said affidavits shall, in addition thereto, set forth the reasons and the cause or causes which have justified the opinion. [O. C. 782; Acts 1931, 42nd Leg., p. 82, ch. 54, § 2.]

Section 3 of Acts 1931, repeals all conflicting laws and parts of laws.

Art. 923. [1021] [986] Court to appoint counsel.—If the defendant has no counsel, the court shall appoint counsel to conduct the trial for him. [O. C. 787.]

Art. 924. [1019–22] Trial.—No special formality is necessary in conducting the proceedings authorized by this chapter. The court shall see that the inquiry is so conducted as to lead to a satisfactory conclusion. The counsel for the defendant has the right to open and conclude the argument upon the trial of such issue of insanity.

Art. 925. [1023] [988] If the defendant is found insane.—Upon the trial of an issue of insanity, if the defendant is found to be insane, all further proceedings in the case against him shall be suspended until he becomes sane. [O. C. 788, 789.]

Art. 926. [1024] [989] To commit insane defendant.—If a defendant is found to be insane, the court shall make and have entered upon the minutes 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. [O. C. 793.]

Art. 927. [1025] [990] Confined in asylum.—When a defendant has been committed, as provided in the preceding article, the proceedings shall forthwith be certified to the county judge, who shall at once take the necessary steps to have the defendant confined in the lunatic asylum until he becomes sane.

Art. 928. [1026] [991] When a defendant becomes sane.—If the defendant becomes sane, he shall be brought before the court in which he was convicted or before the District Court in the County in which the defendant is located at the time he is alleged to have become sane; and, a jury shall be empaneled in the court before which such defendant is brought to try the issue of his sanity; and, if he is found to be sane, the conviction shall be enforced against him as if the proceedings had never been suspended. [As amended Acts 1935, 44th Leg., p. 557, ch. 239, § 1.]

Art. 929. [1027] [992] Affidavit of sanity.—The fact that the defendant has become sane may be made known to the court in which the conviction was had by the official written certificate of the superintendent of the lunatic asylum, where he is confined, or, if not confined in the lunatic asylum, by the affidavit of any credible person.

Art. 930. [1028] [993] Proceedings upon affidavit.—When such certificate or affidavit is presented to the judge or court, either in vacation or term time, such judge or court shall issue a writ, directed to the officer having custody of such defendant, commanding such officer to bring the defendant before the court immediately, if the court be then in session; and if not then in session, to bring the defendant before the court at its next regular term for the county in which the conviction was had; which writ shall be served and returned as in the case of the writ of habeas corpus, and under like penalties for disobedience.

Art. 931. [1029] [994] When defendant is again insane.—A defendant again found to be insane shall be remanded to the custody of the superintendent of the lunatic asylum or other proper officer.

Art. 932. [1030] [995] Conviction to be enforced.—Upon the trial of the issue of insanity, if it is found that the defendant is sane, the judgment of conviction shall be enforced as if no such inquiry had been made. [O. C. 791.]

CHAPTER 1A.—INSANITY AS DEFENSE

Art. 932a. Verdict finding insanity at time of offense or at time of trial, effect of.

Discharge or commitment of defendant

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.]

CHAPTER 2.—DISPOSITION OF STOLEN PROPERTY

Article 933. [1031] [996] Subject to order of court.—An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate. [O. C. 794.]

Art. 934. [1032] [997] Restored on trial.—Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same. [O. C. 795.]

Art. 935. [1033] [998] Schedule.—When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor. [O. C. 796.]

Art. 936. [1034] [999] Restored to owner.—Upon an examining trial, if it is proved to the satisfaction of the magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may, by written order, direct the property to be restored to such owner. [O. C. 797.]

Art. 937. [1035–6] Bond required.—If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its redelivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property, or by the county treasurer of such county.

Art. 938. [1037–8] Property sold.—If the property is not claimed within six months from the conviction of the person accused of illegally acquiring it, the sheriff shall sell it for cash, after advertising for ten days as under execution. The proceeds of such sale, after deducting all expenses of keeping such property and costs of sale, shall be paid into the treasury of the county where the defendant was convicted. Money stolen shall be paid into the county treasury if not claimed by the proper owner within six months.

Art. 939. [1039] [1004] Owner may recover.—The real owner of the property or money dis-

posed of shall have twelve months within which to present his claim to the commissioners court for the money paid to such county treasurer. If his claim is denied by such court, he may sue the county treasurer, and, upon sufficient proof, recover judgment therefor against such county.

Art. 940. [1040–1] Written instrument.—If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under any provision of this chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

Art. 941. [1042] [1007] Claimant to pay charges.—The claimant of property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safe-keeping of the same while in the custody of the law; which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

Art. 942. [1043] [1008] Charges of officer.—When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

Art. 943. [1044] [1009] Scope of chapter.—Each provision of this chapter relating to stolen property applies as well to property acquired in any manner which makes the acquisition a penal offense.

CHAPTER 3.—COLLECTION OF MONEY

Art.
944. Reports of money collected.
945. Contents of report.
946. Report of collections for county.
947. What officers to report.
948. Report to embrace all moneys.
949. Money collected paid to treasurer.
950. Commissions on collections.
951. Commissions to other officers.

Article 944. [1045] [1010] Reports of money collected.—All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid. [Acts 1874, p. 182.]

Art. 945. [1046] [1011] Contents of report.—Such report shall state:
1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

Art. 946. [1047] [1012] Report of collections for county.—A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county. [Id.]

Art. 947. [1048] [1013] What officers to report.—The officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace. [Id.]

Art. 948. [1049] [1014] Report to embrace all moneys.—The moneys required to be reported embrace all moneys collected for the State or county other than taxes. [Id.]

Art. 949. [1050] [1015] Money collected paid to treasurer.—Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same. [O. C. 806.]

Art. 950. [1193] [1143] Commissions on collections.—The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected. [Acts 1879, p. 133.]

Art. 951. [1194] [1144] Commissions to other officers.—The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected. [Acts 1876, p. 287; Acts 1889, p. 95; Acts 1929, 41st Leg., p. 240, ch. 105, § 1.]

CHAPTER 4.—PARDON AND PAROLE

Art.
952. Governor may pardon, etc.
953. May pardon treason.
954. May remit forfeitures.
955. May commute death penalty.
956. May delay execution.
957. Shall file reasons.
958. Governor's acts under seal.
959. Power of parole.
960. Power to recall.
961. Record of prisoner.
962. Optional parole.
963. Report of warden.
964. Action on report.
965. May recommend discharge.
966. May restore citizenship.
967. Reduction of time.

Article 952. [1051] [1016] Governor may pardon, etc.—In all criminal actions, except treason and impeachment, the Governor shall have power, after conviction, to remit fines, grant reprieves, commutations of punishment and pardons. [Const. art. 4, sec. 11.]

Art. 953. [1054] [1019] May pardon treason.—With the advice and consent of the Senate, the Governor may grant pardons in cases of treason; and to this end, he may respite a sentence therefor until

the close of the succeeding session of the legislature. [Id.]

Art. 954. [1052] [1017] May remit forfeitures.—The Governor shall have power to remit forfeitures of recognizances and bail bonds. [Id.]

Art. 955. [1055] [1020] May commute death penalty.—The Governor shall have the authority to commute the punishment in every case of capital felony, except treason, by changing the penalty of death to imprisonment for life, or for a term of years, which may be done by his warrant to the proper officer, commanding him not to execute the penalty of death, and directing him to convey the prisoner to the penitentiary, stating therein the time for which, and the manner in which, the prisoner is to be confined; which warrant shall be sufficient authority to the sheriff to deliver, and to the proper officers of the penitentiary to receive and imprison such prisoner.

Art. 956. [1056] [1021] May delay execution.—The Governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in the warrant to the proper officer, and such warrant shall be executed and returned to the proper court as if it had been issued from such court.

Art. 957. [1053] [1018] Shall file reasons.—When the Governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of Secretary of State his reasons therefor.

Art. 958. [1057] [1022] Governor's acts under seal.—All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the Governor, and certified by the Secretary of State, under the great seal of State, and shall be forthwith obeyed by any officer to whom the same may be presented.

Art. 959. Power of parole.—Meritorious prisoners who may be in prison under a sentence to penal servitude may be allowed to go upon parole, outside of the building and jurisdiction of the penitentiary authorities, subject to the provisions of this title, and to such regulations and conditions as may be made by the Board of Prison Commissioners, with the approval of the Governor. Such parole shall be made only by the Governor, or with his approval. [Acts 1905, p. 33; Acts 1911, p. 64; Acts 1913, p. 262; Acts 1st C. S. 1913, p. 4.]

Art. 960. Power to recall.—While on parole, such prisoners shall remain under the control of the Board of Prison Commissioners, and subject at any time to be taken back within the physical possession and control of said Board as under the original sentence. Such retaking shall be at the direction of the Governor, and all orders and warrants issued by said Board under such authority for the retaking of such prisoners shall be sufficient warrant for all officers named therein to return to actual custody such paroled convicts, and it is the duty of all officers to execute such orders as ordinary criminal processes. [Id.]

Art. 961. Record of prisoner.—The wardens or sergeants or guards of such prisoners, or whoever has in custody convicts subject to parole under this title, shall cause to be kept at such prison or place of confinement at which such convicts are confined, an accurate record of each prisoner therein confined upon sentence. Such record shall include a biographical sketch covering such items as may indicate the cause of the criminal character or conduct of the prisoner, and also a record of the demeanor, education and labor of the prisoner while confined. Whenever such prisoner is transferred from one prison or place of confinement to another, a copy of such record or an abstract of the substance thereof, together with certified copy of the sentence of such prisoner, shall be transmitted with such prisoner to the place of confinement to which he shall be transferred, and delivered to the prison officer in charge thereof and retained by him as a part of the record of such prisoner. [Acts 1st C. S. 1913, p. 4.]

Art. 962. Optional parole.—Any prisoner now serving or who may be sentenced to serve a term of imprisonment in the penitentiary, shall be paroled, if the prisoner so desires, three months before the expiration of his term of service, after deducting from his sentence all commutations for good behavior, and such parole shall extend until such prisoner shall violate the parole rules or until the expiration of such prisoner's original term of imprisonment, unless terminated by the restoration of citizenship by the Governor. [Acts 1911, p. 64.]

Art. 963. Report of warden.—The wardens of such prisoners shall make or cause to be made to the Board of Prison Commissioners semi-annually, a written report based upon the record of such prisoner as to whether or not such prisoner shall be paroled or pardoned, and such report shall be made with reference to each prisoner in charge of such warden, and shall give reasons for such recommendations as are made, and if no recommendations are made, the report shall so state. [Acts 1st C. S. 1913, p. 4.]

Art. 964. Action on report.—The Board shall preserve said reports and recommendations and consider the same, and approve or disapprove the same within three months after the same are received. They shall transmit to the Governor without delay a report of such recommendations for parole or pardon as they shall approve. [Id.]

Art. 965. May recommend discharge.—Whenever any prisoner serving an indeterminate sentence, as provided by law, shall have served for twelve months on parole in a manner acceptable to the Board, it shall certify such fact to the Governor, with the recommendation that the said prisoner be pardoned and finally discharged from the sentence under which he is serving. The Board shall continue its supervision and care over such paroled prisoner until such time as the Governor shall pardon him. [Id.]

Art. 966. May restore citizenship.—When a convict who has been paroled has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, he shall, upon a written discharge from the Superintendent and Prison Commissioners, setting forth these facts, be recommended by the Board to the Governor for restoration of his citizenship. [Id.]

Art. 967. Reduction of time.—If a prisoner sentenced to the penitentiary shall not be paroled under the provisions of this title, or if he shall only be sentenced to serve the minimum term of imprisonment fixed by law, then the general rule shall apply to his sentence, and he shall be entitled to such reduction of time as provided by law. [Id.]

TITLE 13—INQUESTS

1. UPON DEAD BODIES

1. UPON DEAD BODIES—Cont'd

2. FIRE INQUESTS

1. UPON DEAD BODIES

Article 968. [1058] [1023] When held.—Any Justice of the Peace shall be authorized, and it shall be his duty, to hold inquests without a jury within his county, in the following cases:

1. When a person dies in prison or in jail.

2. When any person is killed; or from any cause dies an unnatural death, except under sentence of the law; or dies in the absence of one or more good witnesses.

3. When the body of a human being is found, and the circumstances of his death are unknown.

4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means.

5. When any person commits suicide, or the circumstances of his death are such as to lead to suspicion that he committed suicide.

6. When a person dies without having been attended by a duly licensed and practicing physician, and the local health officer or registrar required to report the cause of death under Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, Forty-sixth Legislature, 1939, page 343, does not know the cause of death. When the local health officer or registrar of vital statistics whose duty it is to certify the cause of death does not know the cause of death, he shall so notify the Justice of the Peace of the precinct in which the death occurred and request an inquest.

7. When a person dies who has been attended by a duly licensed and practicing physician or physicians, and such physician or physicians are not certain as to the cause of death and are unable to certify with certainty the cause of death as required by Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, Fortieth Legislature, 1927, page 116. In case of such uncertainty the attending physician or physicians, or the superintendent or general manager of the hospital or institution in which the deceased shall have died, shall so report to the Justice of the Peace of the precinct in which the death occurred, and request an inquest.

The inquests authorized and required by this Article shall be held by the Justice of the Peace of the precinct in which the death occurred, but in event the Justice of the Peace of such precinct is unavailable, or shall fail or refuse to act, then such inquest shall be conducted by the nearest available Justice of the Peace in the county in which the death occurred. [O.C. 851; Acts 1887, p. 31; Acts 1947, 50th Leg., p. 745, ch. 369, § 1.]

Sections 2–5 of the amendatory act of 1947 amended arts. 969–971, 1053. Section 6 amended Rev.Civ.St. art. 4477, rule 41a. Section 7 added art. 970a.

Section 8 of 1947 provided that partial invalidity should not affect the remaining portion of the act.

Art. 969. [1059] [1024] Body disinterred or cremated.—Section 1. When a body upon which an inquest ought to have been held has been interred, the Justice may cause it to be disinterred for the purpose of holding such inquest.

Sec. 2. Before any body, upon which an inquest is authorized by the provisions of Article 968, Code of Criminal Procedure, 1925, as herein amended, can be lawfully cremated, an autopsy shall be performed thereon as provided in this Act, or a certificate that no autopsy was necessary shall be furnished by the Justice of the Peace. Before any dead body can be lawfully cremated, the owner or operator of the crematory shall demand and be furnished with a certificate, signed by the Justice of the Peace of the justice precinct in which the death occurred showing that an autopsy was performed on said body or that no autopsy thereon was necessary. No autopsy shall be required by the Justice of the Peace as a prerequisite to cremation in case death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925. All certificates furnished the owner or operator of a crematory by any Justice of the Peace, under the terms of this Act, shall be preserved by such owner or operator of such crematory for a period of two (2) years from the date of the cremation of said body.

Sec. 3. Any person violating any provision of this Article in so far as it relates to the cremation of bodies, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than Five Hundred Dollars ($500) and not more than One Thousand Dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. [O.C. 852; Acts 1947, 50th Leg., p. 745, ch. 369, § 2.]

Art. 970. [1060] Physician called in.—Upon an inquest held to ascertain the cause of death, the Justice of the Peace shall in all cases call in the county health officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and advice as to the necessity of an autopsy before reaching a determination as to whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the Justice of the Peace shall request the county health officer, or if there be none or if it be impracticable to secure his services, then some duly licensed and practicing physician who is trained in pathology, to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulted from violence, and the nature and character of either of them. The county in which such inquest and autopsy is held shall pay to the physician making such autopsy a fee of not more than One Hundred Dollars ($100), the amount to be determined by the Commissioners Court after ascertaining the amount and nature of the work performed in making such autopsy. [Acts 1893, p. 155; Acts 1947, 50th Leg., p. 745, ch. 369, § 3.]

Art. 970a. Liability of physician performing autopsy where order invalid.—(a) Any physician duly licensed under the Laws of the State of Texas to practice medicine, who, when an autopsy is ordered by a Justice of the Peace, performs the autopsy in the good faith belief that the order of autopsy is a valid order, shall not be held liable for damages in event is should be determined that the order of autopsy made by the Justice of the Peace is for any reason invalid.

(b) The provisions of this Act shall not apply to any lawsuit now pending. [Acts 1947, 50th Leg., p. 745, ch. 369, § 7.]

Art. 971. [1061] [1024] Chemical analysis.—If upon such inquest, it becomes necessary to determine whether the death has been produced by poison, the Justice of the Peace, upon his own determination, or upon request of the physician performing such autopsy, shall call in to his aid, if necessary, some medical expert, chemist, toxicologist or licensed physician practicing pathology, qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body. The Commissioners Court shall pay to such expert or specialist such fee as it may determine reasonable, not to exceed One Hundred Dollars ($100). [Acts 1893, p. 155; Acts 1947, 50th Leg., p. 745, ch. 369, § 4.]

Art. 972. [1062] [1025] Upon what justice may act.—The justice shall act in such cases upon information given him by any credible person or upon facts within his own knowledge. [O. C. 853.]

Art. 973. [1063] [1026] Death in jail.—The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein. [O. C. 854.]

Art. 974. [1064] [1027] Subpœnas.—The justice may issue subpœnas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpœnaed who fail to attend.

Art. 975. [1065] [1028] Testimony.—Witnesses shall be sworn and examined by the justice and their testimony reduced to writing by or under his direction, and subscribed by them.

Art. 976. [1066] [1029] Private inquest.—Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence. [O. C. 862.]

Art. 977. [1067] [1030] Hindering proceedings.—If any other persons than the justice, the accused and his counsel, and the counsel for the State, are present at the inquest, they shall not interfere with the proceedings. No question shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the State. The justice of the peace may fine any person violating this article for contempt of court, not exceeding twenty dollars, and may cause such person to be placed in custody of a peace officer; and removed from the presence of the inquest. [O. C. 862.]

Art. 978. [1068] [1031] Inquest record.—The justice shall keep a book in which he shall make a minute of all the proceedings relating to every inquest held by him. Such minute shall set forth:

1. The nature of the information given the justice, and by whom given, unless he acts upon facts within his own knowledge.
2. The time and place, when and where, the inquest is held.
3. The name of the deceased, if known, or if not known, as accurate a description of him as can be given.
4. The finding by the justice at the inquest.
5. If any arrest is made of a suspected person before inquest held, the name of the person and the fact of his arrest, as well as everything material which relates thereto, shall be noted. [O. C. 864; Acts 1887, p. 32.]

Art. 979. [1069] [1032] In homicide cases.—When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that such person has killed the deceased, a warrant may issue for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury.

Art. 980. [1070] [1033] Warrant of arrest.—Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority.

Art. 981. [1072] [1035] If slayer arrested.—If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was an accomplice or accessory to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense. [Acts 1887, p. 32.]

Art. 982. [1073] [1036] Bail bond.—A bail bond taken before a justice shall be sufficient if it state the grade of offense of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety. Such bond may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail bond.

Art. 983. [1074] [1037] Warrant of arrest.—When, by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was an accomplice or accessory to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ. [O. C. 872; Acts 1887, p. 32.]

Art. 984. [1071–1075] Requisites of warrant.—A warrant of arrest shall be sufficient if it run in the name of the State of Texas, give the name of the accused, or describe him when his name is unknown, recite the offense with which he is charged in plain language, and be dated and signed officially by the justice. [O. C. 873.]

Art. 985. [1076] [1039] Officer shall execute warrant.—The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the accused and taking him before the magistrate named in the warrant; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him. [O. C. 874.]

Art. 986. [1077] [1040] Arrest pending inquest.—Nothing contained in this title shall prevent proceedings being had for the arrest and examination of an accused before a magistrate, pending the inquest. When a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate. [O. C. 877.]

Art. 987. [1078] [1041] To certify proceedings.—The justice holding an inquest shall certify to the proceedings, and shall enclose in an envelope the testimony taken, the finding of the justice, the bail bonds, if any, and all other papers connected with the inquest, shall seal up such envelope and without delay deliver it properly endorsed to the clerk of the district court, who shall safely keep the same in his office subject to the order of the court. [Acts 1887, p. 32.]

Art. 988. [1079] [1042] Evidence.—The justice shall preserve all evidence that may come to his knowledge and possession which might in his opinion tend to show the real cause of the death or the person who caused such death, and deliver all such evidence to the district clerk, who shall keep the same safely, subject to the order of the court.

Art. 989. [1080] [1043] Witnesses to give bail.—The justice, if he deems it proper, may require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases.

2. FIRE INQUESTS

Art. 990. [1081] [1044] Investigation.—When an affidavit is made by a credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set or attempted to be set on fire, such justice shall cause the truth of such complaint to be investigated. [Act June 2, 1873, p. 171.]

Art. 991. [1082] [1045] Proceedings.—The proceedings in such case shall be governed by the laws relating to inquests upon dead bodies. The officer conducting such investigation shall have the same powers as are conferred upon justices of the peace in the preceding articles of this chapter. [Id.]

Art. 992. [1083] [1046] Verdict.—The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest their written signed verdict in which they shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, either as principal or accessory, and in what manner. If such jury is unable to so ascertain they shall find and certify accordingly. [Id.]

Art. 993. [1084] [1047] Witnesses bound over.—If the jury find that any building has been unlawfully set on fire or has been attempted so to be, the justice holding such inquest shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed. [Id.]

Art. 994. [1085] [1048] Warrant for accused.—If the person charged with the offense, if any, be not in custody, the justice of the peace shall issue a warrant for his arrest; and when arrested, such person shall be dealt with as in other like cases. [Id.]

Art. 995. [1086] [1049] Testimony written down.—In all such investigations, the testimony of all witnesses examined before the jury shall be reduced to writing by or under the direction of the justice and signed by each witness. Such testimony together with the verdict and all bail bonds taken in the case shall be certified to and returned by the justice to the next district or criminal district court of his county. [Id.]

Art. 996. [1087] [1050] Compensation.—The pay of the officers and jury making such investigation shall be the same as that allowed for the holding of an inquest upon a dead body, so far as applicable, and shall be paid in like manner. [Id.]

TITLE 14—FUGITIVES FROM JUSTICE

Art.
997. Delivered up.
998. To aid in arrest.
999. Magistrate's warrant.
1000. Complaint.
1001. Bail or commitment.
1002. Notice of arrest.
1003. Discharge.
1004. Second arrest.
1005. Governor may demand fugitive.
1006. Pay of agent; traveling expenses.
1007. Reward.
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Article 997. [1088] [1051] Delivered up.—A person charged in any other State or territory of the United States with treason or any felony who shall flee from justice and be found in this State, shall on demand of the executive authority of the State or territory from which he fled, be delivered up, to be removed to the State or territory having jurisdiction of the crime. [O. C. 878.]

Art. 998. [1089–1092] To aid in arrest.—All peace officers of the State shall give aid in the arrest and detention of a fugitive from any other State or territory, that he may be held subject to a requisition by the Governor of the State or territory, from which he fled. [O. C. 879.]

Art. 999. [1090] [1053] Magistrate's warrant.—When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State or territory, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him.

Art. 1000. [1091] [1054] Complaint.—The complaint shall be sufficient if it recites:
1. The name of the person accused.
2. The State or territory from which he has fled.
3. The offense committed by the accused.
4. That he has fled to this State from the State or territory where the offense was committed.
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State or territory from which he fled. [O. C. 883.]

Art. 1001. [1093–4–5] Bail or commitment.—When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State or territory with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State or territory from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

Art. 1002. [1096–7–8] Notice of arrest.—The magistrate who held or committed such fugitive shall immediately notify the Secretary of State and the district or county attorney of his county of such fact and the date thereof, stating the name of such fugitive, the State or territory from which he fled, and the crime with which he is charged; and such officers so notified shall in turn notify the Governor of the proper State or territory.

Art. 1003. [1099] [1062] Discharge.—A fugitive not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail bond shall be discharged. [O. C. 889.]

Art. 1004. [1100] [1063] Second arrest.—A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State. [O. C. 890.]

Art. 1005. [1101] [1064] Governor may demand fugitive.—When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State or territory, he may commission any suitable person to take such requisition. The accused, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense. [O. C. 881.]

Art. 1006. [1102] [1065] Pay of agent; traveling expenses.—Section 1. The officer or person so commissioned shall receive as compensation the actual and necessary traveling expenses upon requisition of the Governor to be allowed by such Governor and to be paid out of the State Treasury upon a certificate of the Governor reciting the services rendered and the allowance therefor.

Sec. 2. The Commissioners Court of the county where an offense is committed may in its discretion, on the request of the Sheriff and the recommendation of the District Attorney, pay the actual and necessary traveling expenses of the officer or person so commissioned out of any fund or funds not otherwise pledged. [O.C. 881; Acts 1923, p. 397; Acts 1935, 44th Leg., p. 412, ch. 162, § 1; Acts 1945, 49th Leg., p. 457, ch. 288, § 1.]

Sections 2 of the Acts of 1935 and 1945 repealed conflicting laws.

Art. 1007. [1103–4–5] Reward.—The Governor may offer a reward for the apprehension of one accused of a felony in this State who is evading arrest, by causing such offer to be published in such manner as he deems most likely to effect the arrest. The reward shall be paid out of the State treasury to the person who becomes entitled to it upon a certificate of the Governor reciting the facts which entitle such person to receive it.

Art. 1008. Sheriff to report.—Each sheriff upon the close of any regular term of the district or criminal district court in his county, or within thirty days thereafter, shall make out and mail to the Adjutant General a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each such fugitive, the offense with which he is charged, and a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarity in person, speech, manner or gait that may serve to identify such person so far as the sheriff may be able to give them. The Adjutant General shall prescribe and forward to all sheriffs the necessary blanks upon which are to be made the lists herein required. [Acts 1887, p. 44.]

TITLE 15—COSTS IN CRIMINAL ACTIONS

CHAPTER 1.—TAXATION OF COSTS

Article 1009. [1106] [1069] Fee books.—Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs. [Acts 1876, p. 203.]

Art. 1010. [1107] [1070] Fee book shall show what.—The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to whom such costs are due, and state each item of costs separately.

Art. 1010a. Receipt books; delivery monthly to County Auditor; penalty.—Sec. 1. Each fee officer within this State collecting fines and fees in criminal cases shall be furnished, by the county, in addition to the fee books now provided by law, duplicate official receipts in book form, each of which receipts shall bear a distinct number, and a facsimile of the official seal of the county. Whenever any money is received by any such officer in his official capacity, to be applied on the payment of any fine or costs in any case, the person paying said money shall be given a receipt showing the amount, date, style of case, number of case and purpose for which paid, which receipt shall show the name of the person paying and the official signature of the receiving officer.

Sec. 2. At the close of each month's business the receipt book shall be delivered to the County Auditor and the County Auditor shall thoroughly check said receipt book to see that proper disposition has been made of the money collected, and after such audit, the receipt books shall be returned to the officer, if any portion of the book is unused, but if all the book is used it shall be retained by the County Auditor. Such books shall be open to public inspection.

Sec. 3. Any officer who shall fail or refuse to comply with any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction therefor, may be fined not to exceed Two Hundred Dollars ($200.00), and may be removed from office upon petition of the County or District Attorney; and the principal of any office shall be responsible for the failure of his Deputies to comply herewith, insofar as the remedy of removal from office shall apply; but the Deputy so failing or refusing to comply herewith shall be liable for the fine herein provided. [Acts 1935, 4th Leg., p. 470, ch. 188.]

Art. 1011. [1108] [1071] Extortion.—No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.

Art. 1012. [1109] [1072] Costs payable in money.—All costs in criminal actions or proceedings are due and payable in money.

Art. 1013. [1110] [1073] When costs payable.—No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.

Art. 1014. [1111] [1074] Bill of costs to accompany appeal.—When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.

Art. 1015. [1112] [1075] Taxing after payment.—No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless

otherwise adjudged by the court upon a proper motion filed for that purpose.

Art. 1016. [1113] [1076] Costs retaxed.—Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.

Art. 1017. [1114] [1077] Fee book evidence.—The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.

CHAPTER 2.—COSTS PAID BY THE STATE

Article 1018. [1136] [1091] Defendant liable for costs.—When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury. [O. C. 956.]

Art. 1019. [1124–1135] Conviction for misdemeanor.—If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases. [As amended Acts 1931, 42nd Leg., p. 338, ch. 205, § 1.]

Art. 1019a. Fees in felony cases against same defendant.—In all felony cases where any officer is allowed fees payable by the State for services performed either before or after indictment, including examining trials before magistrates and habeas corpus proceedings, no officer shall be entitled to fees in more than five cases against the same defendant; provided, however, that where defendants are indicted and tried separately after severance of their cases, said officers shall be entitled to fees in five cases against each of said defendants, the same as if indicted and tried separately for separate offenses; provided further, that cases in which the same defendant has previously been indicted, tried, and convicted prior to the date of any act or acts for which said defendant is again apprehended, indicted, and/or tried shall not be computed in determining the number of cases against such defendant in which such officers are entitled to collect fees. [Acts 1931, 42nd Leg., p. 338, ch. 200, § 1; Acts 1935, 44th Leg., p. 697, ch. 297, § 1.]

Art. 1020. [1119–1137] Fees in examining court.—In each case where a County Judge or a Justice of the Peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to Justices of the Peace, and ten cents for each one hundred words for writing down the testimony, to be paid by the State, not to exceed Three and No/100 ($3.00) Dollars, for all his services in any one case.

Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and No/100 ($4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day.

District and County Attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of Five and no/100 ($5.00) Dollars, to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witnesses; and provided further that such written testimony of all material witnesses to the transaction shall be delivered to the District Clerk under seal, who shall deliver the same to the foreman of the grand jury and take his receipt therefor. Such foreman shall, on or before the adjournment of the grand jury, return the same to the clerk who shall receipt him and shall keep said testimony in the files of his office for a period of five years.

The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District Court, and said County or District Attorney shall present to the District Judge the testimony transcribed in the examining trial, who shall examine the same and certify that he has done so and that he finds the testimony of one or more witnesses to be material; and provided further that a certificate from the District Clerk, showing that the written testimony of the material witnesses has been filed with said District Clerk, in accordance with the preceding paragraph, shall be attached to said account before such District or County Attorney shall be entitled to a fee in any felony case for services performed before an examining court.

Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in

the complaint, or a severance is had. When defendants are proceeded against separately, who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with. [Acts 1st C.S., 1907, p. 466; Acts 1933, 43rd Leg., p. 219, ch. 99.]

Art. 1021. [1120] District attorneys of two or more counties.—District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of $500.00 per annum, and in addition thereto, shall receive from the State as pay for their services, the sum of $20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and $20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and $20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said $20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer. [Acts 1925, 39th Leg., p. 406, ch. 173, § 1; Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 350, ch. 236, repeals all conflicting laws and parts of laws.

This article in so far as it applied to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, see Rev.Civ.St. Arts. 326a–326e.

Art. 1022. [1121] [1082] If there are several defendants.—If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

Art. 1023. Fees in trust cases.—For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney. [Acts 1907, p. 458.]

Art. 1024. Attorney for Dallas and Harris counties.—In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide. For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars. [Acts 1911, p. 116, Acts 1917, p. 316.]

Art. 1025. [1118–1131] Fees to district and county attorneys.—In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case. [Acts 1895, p. 148; Acts 1st C. S. 1897, p. 5.]

Art. 1026. [1127–1129] Fees of district clerk.—In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall receive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff. [Acts 1st C. S. 1897, p. 5.]

Art. 1027. Officers not to be paid fees until case finally disposed of.—In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys. [Acts 1903, p. 112; Acts 1923, p. 402; Acts 1931, 42nd Leg., p. 338, ch. 205; Acts 1933, 43rd Leg., p. 308, ch. 119.]

Art. 1028. [1123–1130] Sheriff due fees after approval.—All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.

Art. 1029. [1122] Fees to sheriff or constable.—In each county where there have been cast at the preceding presidential election 3000 votes or-

more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or capias, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case or series of cases against the same defendant, or in companion cases, or otherwise; when it is possible to serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witnesses to or from the County seat, but shall charge only one mileage and for such additional miles only as are actually and necessarily travelled in summoning each additional witness. [As amended Acts 1933, 43rd Leg., p. 144, ch. 69.]

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed. If two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his account to the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriffs shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge. [Acts 1923, p. 399.]

Acts 1933, 43rd Leg., p. 144, ch. 69, amended subdivision 5 of this article.

Art. 1030. [1130] Fees to sheriff or constable.—In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents

for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, or in habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such

officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge. [Acts 1923, p. 402.]

Art. 1030a. Fugitives from justice; allowance to sheriffs and deputies for expenses.—Section 1. Every sheriff, or deputy sheriff, in any county of this State, who shall hereafter arrest, or cause to be arrested, any person, or persons indicted for a criminal offense of the grade of a felony, in the county where such officer is the duly acting sheriff, or deputy sheriff, shall be paid the sum of five cents (5¢) per mile from the state line and return thereto, along the nearest practicable route, to the point where such person or persons has been, or will be, placed under arrest, and in addition thereto, such officer, or officers, shall be paid, not to exceed Five Dollars ($5) per day, per person, for hotel bills, meals and other expenses necessarily contracted in the performance of such official duty.

Sec. 2. The Comptroller of Public Accounts of the State of Texas is authorized and directed to pay, out of any fund or funds, provided for such purpose, upon the presentment of a duly itemized and verified mileage, per diem and expense account of any such officer, approved by the District Judge of the District where such official duty was performed as provided in the preceding Section, all of such account due, provided that only one (1) claim for mileage shall be paid for any such trip, and further providing that not more than two (2) such officers shall draw per diem and expense accounts for one (1) of such trips.

Sec. 3. In the event the Comptroller of Public Accounts of the State of Texas certifies that no funds are available for the payment of such per diem mileage and expense account, as specified in the preceding Section, then upon presentment of such itemized account duly verified by such officer and approved by the District Judge of the Judicial District in which such county is located, the Commissioners Court is authorized, within its discretion, to pay out of any fund or funds not otherwise pledged, such mileage per diem and expense accounts.

Sec. 4. It is further specifically provided that if the county of the sheriff or deputy sheriff making said trip is operating on a fee basis and no State funds are available, then and in that event, the Commissioners Court is authorized, within its discretion, to pay out of any available funds the mileage and per diem not in excess of the amounts stated in Section 1 of this Act, to said sheriff or deputy sheriff from the county seat to the state line and return.

Sec. 5. The compensation herein provided for the sheriff or any deputy sheriff of the county shall be allowable to such officer as expenses of office, and shall not be included in his compensation, and/or salary paid him, as now authorized by law.

Sec. 6. The provisions of this Act shall be severable, and if any section, subsection, sentence, clause or word of the same shall be held unconstitutional, or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have been adopted, had such invalid provision not been included therein.

Sec. 7. It is not the intention of the Legislature by the passage of this Act to repeal any existing law providing for the reimbursement of traveling expenses and this Act is cumulative of all other statutes on this subject. [Acts 1941, 47th Leg., p. 669, ch. 412.]

Art. 1031. [1125] [1084] Services by officer other than sheriff.—When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer. [O. C. 953, 954.]

Art. 1032. [1126] [1085] Sheriff shall not charge fees, when.—A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail. [Acts 1885, p. 76.]

Art. 1033. [1132] [1087] Officer shall make out cost bill.—Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.
8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance. [Acts S. S. 1879, p. 41.]

Art. 1034. [1133] [1088] Judge to examine bill, etc.—The District Judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such approval shall be conditioned only upon, and subject to the approval of the State Comptroller as provided for in Article 1035 of this Code, and the Judge's approval shall so state therein; and such bill, with the action of the Judge thereon, shall be entered on the minutes of said Court; and immediately on the rising of said Court, the Clerk thereof shall make a certified copy from the minutes of said Court of said bill, and the action of the Judge thereon, and send same by registered letter to the Comptroller. Provided the bill herein referred to shall before being presented to such District Judge, be first presented to the County Auditor, if such there be, who shall carefully examine and check the same, and shall make whatever recommendations he shall think proper to be made to such District Judge relating to any item or the whole bill.

Fees due District Clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due District Clerks for making transcripts on change of venue and on appeal shall be paid as soon as

the service is performed; and the Clerk's bill for such fees shall not be required to show that the case has been finally disposed of. Bills for fees for such transcripts shall be approved by the District Judge as above provided, and with the same conditions, and when approved shall be recorded as part of the minutes of the last preceding term of the Court. [Acts 1903, p. 112; Acts 1931, 42nd Leg., p. 239, ch. 143, § 1.]

Art. 1035. [1134] [1089] Duty of Comptroller.—The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and, if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred. [Acts 1883, p. 75; Acts 1931, 42nd Leg., p. 239, ch. 143, § 2.]

Art. 1036. [1138] [1003] [1] Witness fees.—(1). Any witness who may have been subpoenaed, or shall have been recognized or attached and given bond for his appearance before any Court, or before any grand jury, out of the county of his residence, to testify in a felony case regardless of disposition of said case, and who appears in compliance with the obligations of such recognizance or bond shall be allowed Three (3) Cents per mile going to and returning from the Court or grand jury, by the nearest practical conveyance, and Two Dollars ($2) per day for each day he may necessarily be absent from home as a witness in such case;

Provided, any witness who may have been subpoenaed, or shall have been recognized or attached and given bond for his appearance before any Court, out of the county of his residence, to testify in a felony case, and who appears in compliance with said subpoena or with the obligations of such recognizance or bond, and the case in which he is a witness is reset for a later day in the same term of Court, not exceeding four (4) days, shall not be paid mileage for any additional trip to or from Court he may make by reason of the resetting of said case, unless permission first had and obtained from the trial Judge to make said trip, but shall be entitled to receive his per diem for the additional days he may be in attendance upon Court by reason of the resetting of the case.

Witnesses shall receive from the State, for attendance upon District Courts and grand juries in counties other than that of their residence in obedience to subpoenas issued under the provisions of law Three (3) Cents per mile, going to and returning from the Court or grand jury, by the nearest practical conveyance, and Two Dollars ($2) per day for each day they may necessarily be absent from home as a witness to be paid as now provided by law; and the foreman of the grand jury, or the District Clerk, shall issue such witness certificates therefor, after deducting therefrom the amounts advanced by the officers serving said subpoenas, as shown by the returns on said subpoenas; which certificates shall be approved by the District Judge, and recorded by the Clerk in a well-bound book kept for that purpose; provided, that when an indictment can be found from the evidence taken before an inquest or examining trial, no subpoena or attachment shall issue for a witness who resides out of the county in which the prosecution is pending to appear before a grand jury. When the grand jury shall certify to the District Judge that sufficient evidence can not be secured upon which to find an indictment, except upon testimony of nonresident witnesses, the District Judge may have subpoenas issued as provided for by law to other counties for witnesses to testify before the grand jury, not to exceed one witness to any one fact, nor more than three (3) witnesses to any one case pending before the grand jury. [As amended Acts 1927, 40th Leg., p. 113, ch. 75, § 1.]

(2). Witness fees shall be allowed only to such witnesses as may have been summoned on the sworn written application of the State's attorney or the defendant or his attorney as provided in Article 463, Code of Criminal Procedure, which sworn application must be made at the time of the procuring of the subpoena, attachment for, or recognizance of, the witness. The Judge to whom an application for attachment is made may, in his discretion, grant or refuse such application, when presented in termtime. [As amended Acts 1927, 40th Leg., p. 113, ch. 75, § 1; Acts 1931, 42nd Leg., p. 239, ch. 143, § 3.]

(3). The witness shall make an affidavit stating the number of miles he will have traveled going to and returning from the Court, by the nearest practical conveyance, and the number of days he will have been necessarily absent in going to and returning from the place of trial; which affidavit shall be a part of the certificate issued by the clerk, copy of which is to be kept in a well-bound book. Fees shall not be allowed to more than two (2) witnesses to the same fact, unless the Judge before whom the cause is tried shall, after such case has been tried, continued, or otherwise disposed of, certify that such witnesses were necessary in the cause. Witness, when attached and conveyed by Sheriff, shall not be entitled to receive fees while in custody of such officer.

No witness subpoenaed, recognized, or attached for the purpose of proving the general reputation of the defendant shall be allowed the benefits hereof, provided the trial Judge may, in his discretion, allow pay to not more than two (2) character witnesses for the State and to not more than two (2) character witnesses for the defendant. [As amended Acts 1927, 40th Leg., p. 113, ch. 75, § 1; Acts 1931, 42nd Leg., p. 239, ch. 143, § 3.]

(4). The District or Criminal District Judge, when any such claim is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve same, in whole or in part, or disapprove the entire claim, as the facts and law may require; and such approval shall be conditioned only upon and subject to the approval of the State Comptroller, as provided for in Article 1035 of the Code of Criminal Procedure; and said claim with the action of the Judge thereon shall be entered on the Minutes of said Court; and upon the approval of said claim by the Judge, the Clerk shall make a certified list of said claim, upon forms prescribed by the Comptroller, furnishing such information as required by him, and send the same to the Comptroller at such times as he may require, for which service the Clerk shall be entitled to a fee of Fifty (50) Cents which shall be paid by the witness. The service mentioned in the foregoing sentence shall include the issuance of certificate, swearing the witness to claim for witness fees, and reporting to Comptroller, and witness shall not be required to pay any additional amount for the completion of the certificate. [As amended Acts 1927, 40th Leg., p. 113, ch. 75, § 1; Acts 1931, 42nd Leg., p. 239, ch. 143, § 3.]

(5). The Comptroller, upon receipt of such claim and the certified list provided for in the foregoing section, shall carefully examine the same, and if he deems said claim correct, and in compliance with and authorized by law in every respect, draw his warrant on the State Treasury for the amount due in favor of the witness entitled to same, or to any person such certificate has been assigned by such witness, but no warrant shall issue to any assignee of such witness's claim unless the assignment is made under oath and

acknowledged before some person duly authorized to administer oaths, certified to by the officer and under seal. If the appropriation for paying such account is exhausted, the Comptroller shall file the same away and issue a certificate in the name of the witness entitled to same, stating therein the amount of the claim. All such claims not filed in the office of the Comptroller within twelve (12) months from the date same become due and payable shall be forever barred. [Acts 1905, p. 375; Acts 1927, 40th Leg., p. 113, ch. 75, § 1; Acts 1931, 42nd Leg., p. 239, ch. 143, § 3; Acts 1941, 47th Leg., p. 688, ch. 430, § 1.]

1 Probably should be "1093."

CHAPTER 3.—COSTS PAID BY COUNTIES

Art.
1037. County liable for costs.
1038. Food and lodging of jurors.
1039. Juror may pay his own expenses.
1040. Allowance to sheriff for prisoners.
1041. Guards and matrons.
1041a. Chief jailer or turnkey.
1042. Sheriff reimbursed.
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1045. Judge shall give sheriff draft.
1046. Account for keeping prisoners.
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1050. In case of change of venue.
1051. Account in change of venue.
1052. Fees of judge and justice of the peace.
1053. Inquest fee.
1054. Pay for inquest.
1055. Half costs paid officers.
1056. Pay of jurors.
1057. [Repealed.]
1058. Pay of bailiffs.
1058a. Bailiffs of Court of Civil Appeals.
1059. Certificates for pay.
1060. Receivable for taxes.

Article 1037. [1139] [1094] County liable for costs.—Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping. [O. C. 957.]

Art. 1038. [1140] [1095] Food and lodging of jurors.—Each county shall be liable for the expense of food and lodging for jurors impaneled in a felony case, but no script shall be issued or money paid to the jurors whose expenses are so paid. [O. C. 958.]

Art. 1039. [1141] [1096] Juror may pay his own expenses.—A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed two dollars a day.

Art. 1040. [1142] Allowance to sheriff for prisoners.—For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safekeep of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death. [Acts 1923, p. 405.]

Art. 1041. [1143] Guards and matrons.—The sheriff shall be allowed for each guard or matron necessarily employed in the safekeeping 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 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 seventy thousand (70,000) inhabitants and less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties may allow each jail guard, jailer, matron and turnkey a salary of not to exceed One Hundred and Eighty-seven Dollars and Fifty Cents ($187.50) per month; provided further that, in counties having a population in excess of two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, each jail guard, matron, jailer, jail bookkeeper and turnkey shall be paid not less than One Hundred and Seventy-five Dollars ($175) per month. [Acts 1921, p. 231; Acts 1937, 45th Leg., p. 7, ch. 7, § 1; Acts 1941, 47th Leg., p. 843, ch. 518, § 1; Acts 1945, 49th Leg., p. 205, ch. 158, § 1; Acts 1947, 50th Leg., p. 166, ch. 104, § 1.]

Art. 1041a. Chief jailer or turnkey.—In all counties in this State having a population of one hundred and forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last or any future Federal Census, the Commissioners Court shall allow the chief jailer and/or turnkey who has the care and custody of persons in the County Jail, not to exceed Eight Dollars ($8) per day, and shall allow each assistant jailer and/or turnkey who has the care and custody of prisoners in the County Jail, not to exceed Six Dollars and Fifty Cents ($6.50) per day, and not to exceed four (4) assistant jailers and/or turnkeys and a matron for each jail. [Acts 1933, 43rd Leg., 1st C.S., p. 151, ch. 51, § 1; Acts 1947, 50th Leg., p. 1011, ch. 429, § 1.]

Art. 1042. [1144] [1099] Sheriff reimbursed.—The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles. [O. C. 961.]

Art. 1043. [1145] [1100] Sheriff shall present account.—At each term of the district court

of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff. [O. C. 962.]

Art. 1044. [1146] [1101] Judge shall examine account.—Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor. [O. C. 963.]

Art. 1045. [1147] [1102] Judge shall give sheriff draft.—The district judge shall give the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid. [O. C. 964.]

Art. 1046. [1148] [1103] Account for keeping prisoners.—At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.

Art. 1047. [1149] [1104] Court to examine account.—The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.

Art. 1048. [1150] [1105] Expenses of prisoner from another county.—If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.

Art. 1049. [1151] [1106] Draft to sheriff.—The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.

Art. 1050. [1152] [1107] In case of change of venue.—In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay for jurors in trying such causes. [Acts 1881, p. 52.]

Art. 1051. [1153] [1108] Account in change of venue.—The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners. [Id.]

Art. 1052. [1154–1155] Fees of judge and justice of the peace.—Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at Law, and Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same. [Acts 1st C.S. 1879, p. 40; Acts 1929, 41st Leg., p. 239, ch. 104, § 1; Acts 1929, 41st Leg., 1st C.S., p. 155, ch. 55, § 1.]

Art. 1053. [1156] [1111] Inquest fee.—A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of Ten Dollars ($10), to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the Commissioners Court of the county in which the inquest may be held and by the General Manager of the Texas Prison System. [Acts 1876, p. 291; Acts 1883, p. 39; Acts 1917, 1st C.S., p. 52; Acts 1947, 50th Leg., p. 745, ch. 369, § 5.]

Art. 1054. [1157] [1112] Pay for inquest.—Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.

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. [Acts 1895, p. 179; Acts 1937, 45th Leg., p. 1323, ch. 488, § 1; Acts 1939, 46th Leg., p. 143, § 1.]

Art. 1056. [1158–60] Pay of jurors.—Each juror in the district or criminal district court, county court or county court at law, except special veiremen and talesmen challenged on their voir dire whose pay is now fixed by law, shall receive Four Dollars ($4) for each day and for each fraction of a day he attends court as such juror, to be paid out of the jury fund of the county. Jurors in justice courts who serve in the trial of criminal cases in such courts shall receive fifty cents (50¢) in each case they sit as jurors, provided that no juror in such court shall receive more than One Dollar ($1) for each day or fraction of a day he may so serve as such juror. Grand Jurors shall each receive Four Dollars ($4) for each day and for each fraction of a day that they may serve as such. The same per diem shall be paid to all persons responding to the process of the court but who are excused by the court from jury service for any cause, after being tested on their voir dire. [Acts 1911, p. 110; Acts 1919, p. 35; Acts 1927, 40th Leg., p. 255, ch. 177, § 1; Acts 1945, 49th Leg., p. 371, ch. 239, § 2.]

Art. 1057. [Repealed by Acts 1945, 49th Leg., p. 371, ch. 239, § 4.]

Art. 1058. [1161] Pay of bailiffs.—Each walking grand jury bailiff appointed as such bailiff shall receive as compensation for his services the sum of Four Dollars ($4.00) for each day he may serve, and each riding grand jury bailiff appointed in counties of a population of one hundred and fifty thousand (150,000) or more, according to the last Federal Census, shall receive as compensation for his services the sum of Six Dollars ($6.00) for each day he may serve, and shall further receive One Dollar ($1.00) per day for automobile expense and upkeep; provided, however, that not more than ten (10) such bailiffs shall be employed at any one time, and providing further that the Sheriff or Deputy Sheriff attending any county or District Court in counties of over three hundred and fifty thousand (350,000) according to the last preceding Federal Census shall be paid the sum of Six Dollars ($6.00) for each day the Sheriff or Deputy Sheriff shall serve in any of such said Courts as bailiffs, and One Dollar ($1.00) per day as automobile expense and upkeep for each day he may use said automobile.

The compensation herein provided for shall be paid from the General or Jury Fund of the county affected, as may be determined by the Commissioners Court thereof, upon sworn accounts showing the Court in which or the Grand Jury for which, said Bailiff, Sheriff, or Deputy Sheriff serves, with a statement showing the dates on which the service was performed and the amounts due. No such claim shall be paid until approved by the foreman of the Grand Jury or the Judge of the Court for which the service was performed, and said claim shall be presented to the Commissioners Court or to the County Auditor in counties having a County Auditor, and shall be allowed in the manner provided by law for so much thereof as may be found due, and no warrant in payment of the amount due shall be paid unless countersigned by the County Auditor, if any. [Acts 1925, 39th Leg., p. 273, ch. 98, § 1; Acts 1927, 40th Leg., p. 320, ch. 217, § 1; Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1; Acts 1931, 42nd Leg., p. 222, ch. 130, § 1; Acts 1935, 44th Leg., p. 476. ch. 192, § 1.]

Acts 1947, 50th Leg., c. 388, p. 781, § 1, purported to amend Article 1058 of the Code of Criminal Procedure without reference to the earlier amendments of 1927, 1931 and 1935.

Art. 1058a. Bailiffs of Court of Civil Appeals.—That the Commissioners court of any county, having a population of 210,000 or more, in which is located a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals. [Acts 1927, 40th Leg., 1st C. S., p. 154, ch. 54, § 1.]

Section 1 of this Act after amending section 3 as referred to in Acts 1927, 40th Leg., p. 320, ch. 217, § 1, added a new section designated as "3a" and constituting this article.

Art. 1059. [1162] [1117] Certificates for pay.—The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor.

Art. 1060. [1163] [1118] Receivable for taxes.—Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes. [O. C. 968.]

CHAPTER 4.—COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

2. IN JUSTICE'S COURTS

3. JURY AND TRIAL FEES

4. WITNESS FEES

1. IN DISTRICT AND COUNTY COURTS

Article 1061. [1168] [1123] District and county attorneys.—District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, fifteen dollars.

For every other conviction in cases of misdemeanor, where no appeal is taken, or when on appeal the judgment is affirmed, ten dollars. [Acts 1876, p. 284.]

Art. 1062. [1170] [1124] Joint defendants.—Where several defendants are tried together, but

one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

Art. 1063. [1171] [1125] Attorney appointed.—An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.

Art. 1064. [1172] [1126] District and county clerks.—The following fees shall be allowed the clerks of the district and county courts:

1. For issuing each capias or other original writ, seventy-five cents.
2. For entering each appearance, fifteen cents.
3. For docketing cause, to be charged but once, twenty-five cents.
4. For swearing and impaneling a jury, and receiving and recording the verdict, fifty cents.
5. For swearing each witness, ten cents.
6. For issuing each subpœna, twenty-five cents.
7. For each additional name inserted therein, fifteen cents.
8. For issuing each attachment, fifty cents.
9. For entering each order not otherwise provided for, fifty cents.
10. For filing each paper, ten cents.
11. For entering judgment, fifty cents.
12. For entering each continuance, twenty-five cents.
13. For entering each motion or rule, ten cents.
14. For entering each recognizance, fifty cents.
15. For entering each indictment or information, ten cents.
16. For each commitment, one dollar.
17. For each transcript on appeal, for each one hundred words, ten cents. [Id.]

Art. 1065. [1173] Peace officers.—The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or capias, or making arrest without warrant, two dollars.
2. For summoning each witness, seventy-five cents.
3. For serving any writ not otherwise provided for, one dollar.
4. For taking and approving each bond, and returning the same to the court house, when necessary, one dollar and fifty cents.
5. For each commitment or release, one dollar.
6. Jury fee, in each case where a jury is actually summoned, one dollar.
7. For attending a prisoner on habeas corpus, when such prisoner, upon a hearing, has been remanded to custody, or held to bail, for each day's attendance, four dollars.
8. For conveying a witness attached by him to any court out of his county, four dollars for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath and approved by the judge of the court from which the attachment issued.
9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, ten cents a mile, or by railway, seven and one-half cents a mile.
10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county from which the process was issued, for each mile traveled going and coming, by the nearest practicable route, twelve and one-half cents.
11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, seven and one-half cents. For traveling in the service of process not otherwise provided for, the sum of seven and one-half cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same. [Acts 1923, p. 406.]

2. IN JUSTICE'S COURTS

Art. 1066. [Repealed by Acts 1929, 41st Leg., 1st C.S., p. 154, ch. 54, § 1.]

Art. 1067. [1176] [1129] Fees of peace officers.—Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services.

Art. 1068. [1177] [1130] Fees of State's attorney.—If the defendant pleads guilty to a charge before a justice, the fee allowed the attorney representing the State shall be five dollars. The attorney who represents the State in a criminal action in a justice's court shall receive, for each conviction on a plea of not guilty, where no appeal is taken, ten dollars.

Art. 1069. [1179] [1131] Joint prosecution.—Where several defendants are prosecuted jointly, and do not sever on trial, but one attorney's fees shall be allowed.

Art. 1070. [1180] [1132] No fee allowed attorney.—No fee shall be allowed a district or county attorney in any case where he is not present and representing the State, upon the trial thereof, unless he has taken some action therein for the State, or is present and ready to represent the State at each regular term of the court in which such criminal action is pending; provided, that when pleas of guilty are accepted in any justice court, at any other time than the regular term thereof, the county attorney shall receive the sum of five dollars. In no case shall the county attorney, in consideration of a plea of guilty remit any part of his lawful fee. [Acts 1903, p. 219.]

Art. 1071. [1181] Examining court in misdemeanor.—Justices of the peace who sit as an examining court in misdemeanor cases shall be entitled to the same fees allowed by law to such justices for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction. [Acts 1907, p. 215.]

Art. 1072. [1182] Officers in examining court.—Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction. [Id.]

3. JURY AND TRIAL FEES

Art. 1073. [1183] [1133] In district and county courts.—In each criminal action tried by a jury in the district or county court, or county court at law, a jury fee of five dollars shall be taxed against the defendant if he is convicted.

Art. 1074. [1184] [1134] Trial fee.—In each case of conviction in a county Court, or a County Court at Law, whether by a jury or by a Court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of Five Dollars, the same to be collected and paid over in the same manner as in the case of a jury fee, and in the Justice Court the trial fee shall be the sum of Four Dollars. [As amended Acts 1929, 41st Leg., p. 496, ch. 236, § 1; Acts 1929, 41st Leg., 1st C.S., p. 156, ch. 56, § 1.]

Art. 1075. [1185] [1135] Jury fee in justice court.—If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.

Art. 1076. [1186] [1136] Several defendants.—Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.

Art. 1077. [1187] [1137] Jury fee collected.—A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.

4. WITNESS FEES

Art. 1078. [1188] [1138] Fees of witnesses.—Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.

Art. 1079. [1189] [1139] Taxed against defendant.—Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case. [O. C. 457.]

Art. 1080. [1190] [1140] No fees allowed.—No fees shall be allowed to a person as witness fees unless such person has been subpœnaed, attached or recognized as a witness in the case.

Art. 1081. [1191] [1141] Witness record.—Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpœnaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.

Art. 1082. [1192] [1142] Witness liable for costs.—In any criminal case where a witness has been subpœnaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpœna. [O. C. 979.]

TITLE 16—DELINQUENT CHILD

Art. 1083. [Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6; Acts 1943, 48th Leg., p. 313, ch. 204, § 24.]

Arts. 1084–1093. [Repealed by Acts 1943, 48th Leg., p. 313, ch. 204, § 24.]

Article 1087 was amended by Acts 1927, 40th Leg., p. 236, ch. 163, § 1.

GENERAL REPEALING CLAUSE

Section 3

Art. 1. Be it further enacted by the Legislature of the State of Texas: That all penal laws and all laws relating to criminal procedure in this State, that are not embraced in this Act and that have not been enacted during the present session of the Legislature, be and the same are hereby repealed. All laws and parts of laws relating to crime omitted from this Act have been intentionally omitted, and all additions have been intentionally added, and this Act shall be construed to be an independent Act of the Legislature enacted under the caption hereof, and the articles contained in this Act, as revised, re-written, changed, combined and codified shall not be construed as a continuation of former laws, except as otherwise herein provided.

Art. 2. The importance of this Act, and the near approach of the close of this session of the Legislature, and the fact that it is impossible to read this Act on any day or on three several days, creates an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

Art. 3. This Act shall take effect and be in force from and after twelve o'clock, Meridian, of the First day of September, Anno Domini, One Thousand Nine Hundred and Twenty-five.

RECORD OF ENACTMENT

The enrolled bill (*REVISED CODE OF CRIMINAL PROCEDURE 1925*) on file in the office of the Secretary of State shows that the foregoing act passed the Senate, finally January 23, 1925. (*No vote given.*)

PASSED the House February 4, 1925, by following vote: 111 yeas, 4 nays.

APPROVED by the Governor Feb. 7, 1925.

TABLES

*

Table 1

TABLE OF SESSION LAWS

1923–1947

38th to 50th Legislatures

This table indicates where Acts of the 38th to the 50th Legislatures may be found in Vernon's Texas Statutes 1948.

Where particular Acts or sections of Acts are not included in this table it signifies that they are either special, local, or temporary Acts, or that the sections are merely appropriation, repeal, or emergency sections.

References are to Civil Statutes unless otherwise indicated.

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Adjourned March 15, 1923

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27	47	7	199(77)
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135	295	1	2647
136	296	1	1934a
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197	429	1	6704
198	430	1, 2	5421b
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202	442	1	P.C. 952*l*—1 note
203	443	1	P.C. 941a—1
204	444	1–6	4442a
204	444	7	P.C. 701a
205	446	1	2790a
206	447	1–3	2647a
207	448	1, 2	3899b
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209	450	1–4	P.C. 879f—1
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3	5	1	5053
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13	44	1	2796a
15	47	1	377 Repealed
16	48	1	415 Repealed
17	48	1	416 Repealed
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26	60	1	1970—31
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30	65	1–4	1182b
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39	86	1–10	2675b—1 note
40	90	1	4860a—1
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40	90	9	4860a—9
40	90	10	4860a—10
40	90	11	4860a—11
40	90	12	4860a—12
40	90	13	4860a—13
40	90	14	4860a—14
40	90	15	4860a—15
40	90	16	4860a—16
40	90	17	4860a—17
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40	90	19	4860a—19
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45	99	1	6203 Repealed
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49	109	1	7414
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51	111	1	2963
51	111	2	2965
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52	114	1–28	P.C. 1525b
53	128	1–37	P.C. 1525c
55	155	1	C.C.P. 1052
56	156	1	C.C.P. 1074
57	157	1	200a note
58	157	1, 2	5326b
59	158	1	P.C. 559a Repealed
60	159	1	535 Repealed
61	160	1	517a Repealed
62	161	1	365 Repealed
62	161	2	370 Repealed
62	161	3	370a Repealed
62	161	4	370b Repealed
62	161	5	514 Repealed
62	161	6	358 Repealed
62	161	7	350 Repealed
65	167	1–30	P.C. 734a
66	175	1–3	5248a
67	176	1–14	2116b note
67	176	15, 16	P.C. 418a
67	176	18	P.C. 418a
68	181	1	P.C. 923pp Repealed
70	184	1	P.C. 952*l*—1 note Repealed
71	185	1	6954
73	187	1	2802c
74	188	1–5	2701c
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78	196	3	911a, § 8
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82	205	1	7880—84a
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87	218	1	P.C. 1571 Repealed
88	219	1, 2	P.C. 955a—1 Repealed
89	220	1	331c
90	221	1, 2	3899c
91	222	1	4413a—1 Repealed
91	222	2	4413a—2 Repealed
91	222	3	4413a—3 Repealed

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91	222	5	4413a—5 Repealed
91	222	6	4413a—6 Repealed
91	222	7	4413a—7 Repealed
91	222	8	P.C. 422a Repealed
92	225	2	3902
93	229	1–5	67a
93	229	6	P.C. 1555a
94	233	1	6677 Repealed
95	234	1–4	7331a Repealed
96	235	1–9	192b
96	235	10–13	P.C. 1378a
97	239	1, 2	3888a Repealed
98	240	1	2350f
99	240	1	4056a
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100	242	2	P.C. 1377
101	243	1	5561
103	246	1–7	8263a
104	253	1–9	P.C. 1137c Repealed
105	255	1	3769c
107	257	1, 2	190b
108	258	1–5	P.C. 952*l*—1
109	259	1, 2	2742e
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Convened June 3, 1929
Adjourned July 2, 1929

2	3	1, 2	2745
3	4	1	P.C. 480a
4	5	1	4437b
5	5	1	6221
6	7	1	7622
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8	10	1	C.C.P. 570
9	11	1–3	2628a—8
10	12	1	2675b—1
10	12	2	2675b—2
10	12	3	2675b—3
10	12	4	2675b—4
10	12	5	2675b—5
10	12	6	2675b—6
10	12	7	2675b—7
10	12	8	2675b—8
10	12	9	2675b—9
10	12	10	2675b—10
11	16	1	7047(40) Repealed
14	19	1	1970—309
15	21	1–8	135a—1
15	21	9	P.C. 1700a—1
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16	28	1	4825
16	28	2	4826
16	28	3	4827
16	28	4	4828
16	28	5	4831
17	30	1	634
17	30	1a	634½
18	31	1	2744c
19	32	1	P.C. 1444a
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22	36	1–3	P.C. 923qa—1
23	37	1	P.C. 904 Repealed
24	38	1	911b, § 13
25	40	1	P.C. 941a
26	41	1	P.C. 1377
27	43	1	190a
28	44	1–5	P.C. 952*l*—1
29	45	1–4	5837b
31	49	1–10	2740d
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32	52	2	P.C. 879g
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37	63	1	7537a
41	71	1–4	6701a
42	72	1–16	P.C. 827a
43	78	1	3832a
45	79	1	C.C.P. 727a
46	80	1–7	835a Repealed
47	83	1	P.C. 803a
48	85	1	P.C. 1558
50	89	1	P.C. 952*l*—2
51	89	1	388 Repealed
52	90	1	2654b
53	91	1–4	28 note; 3568 note
54	92	1–4	2632a
55	94	1	3902a Repealed
56	94	1	2350g
58	97	1	3902c Repealed
59	97	1	2327a Repealed
60	99	1	4860a—18
61	100	1	881a—1
61	100	2	881a—2
61	100	3	881a—3
61	100	4	881a—4
61	100	5	881a—5
61	100	6	881a—6
61	100	7	881a—7
61	100	8	881a—8
61	100	9	881a—9
61	100	10	881a—10
61	100	10a	881a—10a
61	100	11	881a—11
61	100	12	881a—12
61	100	13	881a—13
61	100	14	881a—14
61	100	15	881a—15
61	100	16	881a—16
61	100	17	881a—17
61	100	18	881a—18
61	100	19	881a—19
61	100	20	P.C. 1136a—9
61	100	21	881a—20
61	100	21-a	881a—21a
61	100	22	881a—21
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61	100	26	881a—25
61	100	27	881a—26
61	100	28	881a—27
61	100	29	881a—28
61	100	30	881a—29
61	100	31	881a—30
61	100	32	881a—31
61	100	33	881a—32
61	100	34	881a—33
61	100	35	881a—34
61	100	36	881a—35
61	100	37	881a—36
61	100	38	881a—37
61	100	38a	881a—37a Repealed
61	100	38b	881a—37b Repealed
61	100	38c	881a—37c Repealed
61	100	39	881a—38
61	100	40	881a—39
61	100	41	881a—40
61	100	42	881a—41
61	100	43	881a—42
61	100	44	881a—43
61	100	45	881a—44
61	100	46	881a—45
61	100	47	881a—46
61	100	48	881a—47
61	100	49	881a—48
61	100	50	881a—49
61	100	51	881a—50
61	100	52	881a—51
61	100	53	881a—52
61	100	54	881a—53
61	100	55	881a—54
61	100	55a	881a—54a
61	100	56	881a—55
61	100	57	881a—56
61	100	58	881a—57
61	100	58a	881a—57a
61	100	59	881a—58
61	100	60	881a—59
61	100	61	881a—60
61	100	62	881a—61
61	100	63	881a—62
61	100	64	881a—63
61	100	65	881a—64
61	100	66	881a—65
61	100	67	881a—66
61	100	68	P.C. 1136a—1
61	100	69	P.C. 1136a—2
61	100	70	P.C. 1136a—3
61	100	71	P.C. 1136a—4
61	100	72	P.C. 1136a—5
61	100	73	P.C. 1136a—6
61	100	74	P.C. 1136a—7
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61	100	76	881a—67
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62	129	1	P.C. 734a, § 27
62	129	2	P.C. 734a, § 28
63	131	1	1265
64	133	1	2753a
66	134	1	326k—2
67	135	1	331b—1
68	136	1	2742d note
69	136	1	7716a
70	137	1–15	2740e Repealed
71	144	1–3	326k—3
73	148	1	2628a
74	149	1	752x
75	150	1, 2	P.C. 952*l*—3 Repealed
76	151	1–4	630a
77	153	1, 2	7258a
78	154	1, 2	5472b—1
79	156	1, 2	1934a—1
80	157	1–7	117a
80	157	8	P.C. 1112a
80	157	9	117a
81	161	1	7298
82	162	1–7	2613a—1
83	164	1–5	2663b—1
84	166	1	199(58)
84	166	2–4	199(58) note
85	168	1	2463, 2465, 2484
86	170	1	4494a
88	172	1	6675a—1
88	172	2	6675a—2
88	172	3	6675a—3
88	172	3a	6675a—3a
88	172	3aa	6675a—3aa
88	172	4	6675a—4
88	172	5	6675a—5
88	172	6	6675a—6
88	172	6a	6675a—6a
88	172	7	6675a—7
88	172	8	6675a—8
88	172	8a	6675a—8a
88	172	8b	6675a—8b
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88	172	10	6675a—10
88	172	10a	6675a—10a
88	172	11	6675a—11
88	172	12	6675a—12
88	172	12a	6675a—12a
88	172	12b	6675a—12b
88	172	13	6675a—13
88	172	13a	6675a—13a
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88	172	14a–14e	P.C. 807a Repealed
88	172	14f	P.C. 807a
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88	172	17	7065, 7065a to 7065f, 7065h, 7065j, 7065*l* to 7065n, Repealed; P.C. 141a, 141b, 141c, 141d Repealed
88	172	18	7065p Repealed
88	172	19	7065q Repealed
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13	22	1	T. 128, ch. 8 note

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3	233	1	P.C. 952aa
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4	234	4	P.C. 835a
6	237	1	716
8	240	1	6954
9	242	1–5	2701d
10	243	1	6674n
11	245	1	199(112)
11	245	2	199(33)
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Convened Jan. 20, 1930
Adjourned Feb. 18, 1930

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8	9	1, 2	7335a
9	9	1	6203, § 6 Repealed
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47	88	1	190e
48	89	1, 2	P.C. 952*l*—6
49	90	1–4	2700d—1
50	91	1	2278a
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Convened Feb. 19, 1930
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6	119	1, 2	6839b

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328	803	1	3943 note
329	805	1–3	2742*l*
330	806	1	3902f Repealed
331	807	1–3	199(29)
332	809	1	6869a[B]
333	810	1, 2	1605a
334	812	1	2815g—1
336	815	1	3902—e Repealed
337	818	1	6869A
338	819	1	1605
339	820	1–5	2116a note
340	822	1	3883
341	824	1	199(2)
341	824	2, 3	199(2) note
342	826	1	199(84)
342	826	2	199(84) note
343	828	1	P.C. 827
345	831	1–5	1180A
346	833	1	3943
347	834	1	822f
348	835	1	2702, 2703, 2724
350	838	1–4	P.C. 1700a—2
351	840	1–5	P.C. 928a
352	842	1	3432a
353	842	1	1641—A
354	844	1–6	326q
355	847	1	P.C. 923qa—1 note
356	848	1	P.C. 904 note
357	849	1	2688
360	852	1	7005
361	853	1	P.C. 880
362	854	1	2832
363	855	1–5	678a
364	857	1, 2	P.C. 952f—1
365	858	1, 2	8263b
366	860	1	199(32)
366	860	2–14	199(32) note
367	864	1, 2	199(51)
367	864	3, 4	199(35)
367	864	5	199(119)
367	864	6, 7	199(51) note
367	864	8–16	199(119) note
368	870	1	3891
369	873	1	199(4)
369	873	2, 3	199(4) note
369	873	4, 5	199(123)
369	873	6–9	199(123) note
369	873	10	199(123)
369	873	11	199(123) note
370	876	1	199(79)
370	876	2	199(92)

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Convened Jan. 13, 1931
Adjourned May 23, 1931

2	2	1	7674, 7677, 7684
9	21	–	2701d—3 note
28	88	–	2701d—3 note
36	101	1, 2	P.C. 923*ll*—4
39	105	–	2701d—3 note
45	120	–	2701d—3 note
51	129	1–9	1118a note Repealed
52	132	1	3183b
88	189	1–7	5138a
89	192	1–7	8263c
90	194	1–4	P.C. 952*l*—7
97	204	1	P.C. 952aa
115	226	–	2701d—3 note
118	230	–	2701d—3 note
143	280	1	1193b
143	280	2	1182a *note*
146	284	1	3899c Repealed
152	297	1, 2	P.C. 879f—2

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Laws of a general nature published as Special Laws

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157	309	- - - -	2701d—3 note
160	312	- - - -	2701d—3 note
164	343	1 - - - -	2701d—2a
166	345	- - - -	2700d—3 note
171	351	1, 2 - - - - -	1182c
174	355	1 - - -	3883b Repealed
187	374	1–5 - - -	P.C. 952*l*—1
188	376	- - - -	2701d—3 note
193	404	- - - -	2700d—3 note
194	406	- - - -	2700d—3 note
198	411	- - - -	2701d—3 note
201	416	1 - -	P.C. 923q, § 13-A
202	417	1 -	P.C. 879C—1 Repealed
205	420	- - - -	2701d—3 note
213	428	1 - - - - - -	2350d
217	431	- - - -	2701d—3 note
219	433	1–3 - - - - -	2700c
221	439	1 - - - - - -	2892a
233	453	1 - - - -	P.C. 923*ll*—6
236	457	1 - - -	1702a Repealed

1931 (42nd Leg.) First Called Session

Convened July 14, 1931
Adjourned Aug. 12, 1931

3	5	1 - - - -	P.C. 952*l*—1
4	7	1 - - - - - -	822f
7	11	1 - - - - - -	4553
7	11	2 - - - - - -	4554
8	13	1–7 - - - - -	199(53)
8	13	2 - - - -	199(53) note
8	13	9 - - - - - -	199(53)
8	13	10–12 - - -	199(53) note
9	16	1 - - - - - -	2559
9	16	2 - - - - - -	2560
12	24	1–3 - - - - -	8263d
13	26	1, 2 - - -	P.C. 952*l*—8
14	27	— - - - - -	199(32)
20	33	1–4 - - - - -	2904a
22	35	1–3 - - -	P.C. 952*l*—9
23	37	— - - - - -	199(124)
24	42	1 - - - - - -	2368a
26	46	1 - - - - - -	6014
26	46	2 - - - - - -	6008
26	46	3 - - - - - -	6036
26	46	4 - - -	6049c Repealed
26	46	5 - - - - - -	6049c
26	46	6 - - -	6049c Repealed
26	46	7, 8 - - - - -	6049c
26	46	9 - - -	6049c Repealed
26	46	10–13 - - - -	6049c
26	46	14 - - -	6049c Repealed
26	46	15 - - - - - -	6029
26	46	16–21 - - - - -	6049c
26	46	22 - - - - - -	6032
26	46	23 - - - - - -	6049c
27	56	1 - - - - - -	2832
28	58	- - - - - - -	6049a
31	70	1–3 - - - -	P.C. 978h
32	71	1–3 - - - -	P.C. 147a
34	75	1 - - - - - -	2237
34	75	2 - - - - - -	2238
34	75	3 - - - - - -	2239
34	75	3a - - - -	2239 note
34	75	6 - - -	C.C.P. 760 note
34	75	7 - - - -	C.C.P. 760
36	79	1 - - - - - -	1139a
37	80	1 - - - - - -	2698
38	82	1, 2 - - - - -	6839c
39	83	1–5 - - - -	2701d—5
40	85	1–3 - - - - -	2368b
42	88	— - -	P.C. 698a Repealed
44	90	1 - - - - - -	7439a

1931 (42nd Leg.) Second Called Session

Convened Sept. 8, 1931
Adjourned Oct. 3, 1931

2	2	1 - - - - - -	165a
2	2	2 - - - - - -	165b
2	2	3 - - - - - -	165c
2	2	4 - - - - - -	165d
2	2	5 - - - - - -	165e
2	2	6 - - - - - -	165f
2	2	7 - - - - - -	165g
2	2	8 - - - - - -	165h
2	2	9 - - - - - -	165i
2	2	10 - - - - - -	165j
2	2	11 - - - - - -	165k
2	2	12 - - - - - -	165*l*
2	2	13 - - - - - -	165m
9	17	1 - - - - -	199(35)
9	17	1a, 2 - - -	199(35) note
10	18	1 - - - - -	P.C. 773
10	18	2 - - - - -	P.C. 774
11	20	1 - - - - -	P.C. 955
13	24	1–8 - - - - -	5679a
13	24	9, 10 - - -	P.C. 1027a
13	24	11 - - - - - -	5679a
15	29	1 - - - - - -	1645
16	31	1, 2 - - - - -	7332
18	34	1 - - - -	7336 note
21	38	1 - - - - - -	8225
22	40	1–4 - - - -	1644b note Expired
23	42	1, 2 - - - - -	4026a
23	42	3 - - - - -	P.C. 978i
23	42	4, 5 - - - - -	4026a
24	44	1 - - - - - -	2818
25	45	1, 2 - - - - -	5570a
32	53	1 - - - - - -	7043
33	55	1 - -	7047(39) Repealed
34	56	1 -	3887, § 2a Repealed
35	57	1 - - - -	2742f note
36	58	1 - - - -	767e, 767f
36	58	2 - - - - - -	767g
38	62	1 - - - - - -	1667
39	63	1 - - - - -	2815g—2

1931 (42nd Leg.) Second Called Session—Cont'd

Ch.	P.	Sec.	Art.
40	64	1, 2	5421c, § 8–A
41	68	1	7047, § 14 note

1932 (42nd Leg.) Third Called Session

Convened Aug. 30, 1932
Adjourned Sept. 21, 1932

2	2	1	517 Repealed
3	4	1	515 Repealed
4	5	—	7336a note
6	7	1, 2	P.C. 923qa—5
7	8	1–3	P.C. 923qa—6
8	9	1–3	P.C. 923*ll*—7
9	10	1	6954
13	15	1	6674q—1
13	15	2	6674q—2
13	15	3	6674q—4
13	15	4	6674q—5
13	15	5	6674q—6
13	15	6	6674q—7
13	15	7	6674q—8a
13	15	7a	6674q—7A Repealed
13	15	8	6674q—8
13	15	9	6674q—8c
13	15	10	6674q—9
13	15	11	6674q—10
13	15	12	6674q—1 note
13	15	13	6674q—11a
16	30	1	7247
16	30	2	7249
16	30	3	7249a
17	32	1	881a—69
18	34	1	P.C. 1136a—9
18	34	2	881a—21a
18	34	3	881a—26
18	34	4	881a—37
18	34	5	881a—43
18	34	6	881a—46
18	34	7	881a—47
19	44	1–3	8197d
20	46	1	1118a, § 2a
21	47	1	2688
22	49	1–11a	7880—147d to 7880—147*o* Repealed
23	54	1	7880—126a
23	54	2	7880—126b
24	56	1	7880—147p
24	56	2	7880—147q
24	56	3	7880—147r
24	56	4	7880—147s
24	56	5	7880—147t
25	60	1	P.C. 1544a
26	61	1	8225
27	63	1–93	8263e
28	91	1–5	P.C. 952*l*—10
31	94	1–6	784a
32	96	1	1111
32	96	2	1112
32	96	3	1113
34	98	1, 2	2676
35	100	1–3	P.C. 952*l*—9
38	103	1, 2	198
41	106	1	752y
42	107	1	1524b
42	107	2	1524c
42	107	3	1524d
42	107	4	1524e
42	107	5	1524f
42	107	6	1524g
42	107	7	1524h
42	107	8	1524i
42	107	9	1524j
42	107	10	1524k
43	111	1–5	P.C. 1339b
44	112	1–4	P.C. 879f—3 Repealed
46	114	1–2a	7336a
47	116	—	199(7) note
48	120	—	199(124) note

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1932 (42nd Leg.) Fourth Called Session

Convened Nov. 3, 1932
Adjourned Nov. 12, 1932

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2	3	1	6014
2	3	2	6014a
2	3	3	6049c, § 5
2	3	4	6049d
3	3	5	6049c, § 7
2	3	6, 6–A	6049d
2	3	7	6029
2	3	8	6049c, § 8
2	3	9, 10	6049d
2	3	11	repealer
2	3	12, 13	6049d
2	3	14	6049d Repealed
3	10	1	7880—147x
3	10	2	7880—147y
4	12	1	P.C. 880

1933 (43rd Leg.) Regular Session

Convened Jan. 10, 1933
Adjourned June 1, 1933

3	3	—	2953a
3	3	9	Repealer
4	5	—	2956
5	7	—	6675a—3c Expired
6	8	—	2802d
7	10	—	2832 note
8	10	—	Repeal
9	11	—	1580 note
10	14	—	7005
12	17	—	6717 note Repealed
13	33	—	2700 note
14	34	—	6674q—7 Repealed
15	35	—	6562 note

1933 (43rd Leg.) Regular Session —Cont'd

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16	36		375a Repealed
17	37		3804 note
19	40		2547
20	45		P.C. 827a, § 9
21	47		3943a
22	48		6548
23	50		Repealer
24	50		2350d
25	51		7807b
26	55		P.C. 909
27	56		C.C.P. 348
28	57		4477, rule 40a, subd. (21)
29	58		2317
30	59		6824 note
31	60		2815g—3
32	62		2789
33	63		2530
34	64		C.C.P. 824
35	65		P.C. 1316
36	67		2777b
37	68		4591b
38	69		P.C. 643a
41	72		2691
42	73		2701d—2a
43	74		322
44	75	1-14	7065a—1 to 7065a—14 Repealed
44	75	15	P.C. 141a—1 Repealed
44	75	15-a	P.C. 141a—2 Repealed
44	75	16-18	7065a—16 to 7065a—18 Repealed
45	91	1-4	5159a
45	91	5-6	P.C. 1581a
46	94	1	P.C. 1103
46	94	2	P.C. 1105
46	94	3	P.C. 1106
46	94	4	P.C. 1110
47	96		4295a
48	100		2774a, § 5
49	101		1605a
51	103		4386a
52	104		4682c Expired
53	106		1118a, § 2a
54	107		3912a
55	110		1580 note
56	112		Repealer
58	125		1134a
59	126		3804 note
60	128		3912b Repealed
62	131		2276a
63	132		2919b
64	133		375b Repealed
65	135		911b, § 13
66	137		2547
67	142		1839
68	143		P.C. 367
69	144		C.C.P. 1029, § 5
70	145		2039a
71	147		1851a
74	151		7716b
75	152		C.C.P. 47
76	154		7807d
77	168		6020a
78	171		7700a
79	172		2350m note
80	173		6839d
81	175		2613b
82	176		C.C.P. 273
83	177		C.C.P. 26
84	179	1	6081e, § 1 Repealed
84	179	2	6081e, § 2 Repealed
84	179	3	6081e, § 2-A Repealed
84	179	4	6081e, § 6 Repealed
85	182		5506a
86	185		1269d
87	186		6142a
88	192		5421c, § 8-A, subd. 14
89	194		2558
90	195		2919a
91	197		375c Repealed
92	198		2218, 2218a
93	201		7807c
94	206		6229-6243
95	211		7684a
96	212		P.C. 978k
97	215		6049b
98	217	1	1656a
98	217	2	1656b
99	219		C.C.P. 1020
100	222		6008
101	223		2547 note
102	225		2218b Executed
103	229		2786a
105	232		3804 note
106	234		3737b
108	278		1302, subd. 95
109	279		3734a
110	280		6479a
111	281		6479
112	282		5238
113	284	1	4604
113	284	2	Repeal
114	285		P.C. 1569 Repealed; P.C. 1572
115	287		6881
116	288		P.C. 694a Repealed
117	305		5497a
118	306		1676a
119	308		C.C.P. 1027
120	309	1	5421c, § 8-A, subds. 6a, 6b and note
120	309	1a	5421c, § 8-A, subd. 6b note
121	312		7807f
122	320	1	1111
122	320	2	1112
122	320	3	1113
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122	320	7	1114c
123	323	1	1778
123	323	2	1871
124	324		P.C. 923h
125	325		P.C. 288
126	326		P.C. 497
127	327		2029
128	328		1601
130	330		2802e
131	332	1–6	7807e
131	332	7	7699
131	332	8, 9	7807c
133	341		2832
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135	344		197
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138	356	1–5	5068b
138	356	6	P.C. 570a
139	358		3078a
140	364		1667
141	365	1–4	5190a Repealed
141	365	5	5190a
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144	369		3773
145	371	1	199(32)
145	371	2	199(70)
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146	375	1	6834
146	375	2	6835
147	376	1	2955a
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148	377		6819a Repealed
149	378		1665
150	379	1	5679b
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151	380		1738
152	381		C.C.P. 451
153	383	1–10	7047cc Repealed
153	383	11–21	P.C. 131c Repealed
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154	396		2350h
156	398		5414c
158	400		2675j
159	403	1–3	8183
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160	406		842a
161	408		C.C.P. 841
162	409	1–7	7057a
162	409	8	P.C. 1111a
162	409	9	7057a
162	409	9a, 9b	P.C. 1111a
162	409	10	Repeal
162	409	11	6032, 6032a
162	409	11a	7047, subd. 23
162	409	12	7105 and note
162	409	13	7057a
163	418		1302, subd. 96
164	420		4686
165	422		P.C. 1112b
166	428	1–3	P.C. 655a
167	517		1118b
168	519		2790c
169	521		7336b Repealed
170	526		P.C. 1583a
172	529	1	1302, subd. 95a Repealed
172	529	2	1302, subd. 95b Repealed
174	543		1302, subd. 97
175	544	1	1670
175	544	2	1673
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178	547	1	6675a—13
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179	548		6166z—1
180	550	1–19	118a
180	550	20	P.C. 719b
181	557		2701d—4
182	558		2790b
183	560		5367a
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185	567	1	6081e, § 1 Repealed
185	567	2	6081e, § 2 Repealed
185	567	3	6081e, § 2A Repealed
185	567	4	6081e, § 6 Repealed
187	571		6070b
190	577		4875a—5, par. 5
191	579		2905a Executed
192	581	1	7076
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192	581	2b(17)	7142 Repealed
192	581	2b(18)	Repeal
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193	593		Repeal
194	594		P.C. 419a Repealed
195	595		2326c
196	596		2654c
197	598	1	7245
197	598	2	7246
197	598	3	7247
197	598	4	7248
197	598	5	7181a
197	598	6	Repeal
197	598	7	7181a
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204	609	- - -	P.C. 725a Repealed
205	619	- - - - - - - -	2824a
206	620	- - - - - - - -	1644b
207	622	- - - - - - - -	6674n
208	624	- - - - - - -	6166z—10
209	625	- - - - - - - -	2835a
210	626	- - - - - - -	1028 note
212	634	- - - - - - - -	5421d
213	636	- - - - - - - -	7005
214	637	- - - -	7057b Repealed
216	727	- - - - - - - -	2350
217	730	- - - - - - - -	5155
218	731	- - - - - - -	Repeal
219	732	- - - - - -	P.C. 1111b
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221	746	1–6 - - - - - -	2654d
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223	751	- - - - - - - -	1528a
224	761	- - - - - - - -	6674q
225	762	1 - - - - - - -	3022
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225	762	14 - - - - - -	3022 note
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227	768	2 - - - - - - -	1259
228	769	1 - - - - - - -	3026a
228	769	2 - - - - - - -	3123
228	769	3 - - - - - -	P.C. 231b
229	771	- - - - -	P.C. 1544b
230	772	- - - - -	P.C. 1388a
231	774	- - - - - - - -	1187a
232	784	- - -	1581a Ineffective
233	799	- - - - - - - -	5421E
234	800	- - - - - -	6674e note
235	802	- - - - - - -	P.C. 734a
236	805	- - - - - - -	2372 note
238	835	- - - - - - -	P.C. 430a
239	838	- - - - - - - -	4223a
240	840	- - - - - - - -	2529
241	843	1 - - - - -	P.C. 614—1
241	843	2 - - - - -	P.C. 614—2
241	843	3 - - - - -	P.C. 614—3
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241	843	6 - - - - -	P.C. 614—6
241	843	7 - - - - -	P.C. 614—7
241	843	8 - - - - -	P.C. 614—8
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241	843	17a - - -	P.C. 614—17a
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242	851	- - - - - - - -	5006
243	853	- - - - - - - -	4838a
244	854	- - - - - - - -	2529
245	856	- - - - - - - -	4859f
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247	867	1–20 - -	C.C.P. 52(161)
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249	875	1 - - - - - -	199(84)
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250	878	- - - - - - -	199(31)
250	878	2, 3 - - - -	199(31) note
251	880	- - - - - - -	199(30)
252	881	- - - -	foll. 199(9) note
253	885	1 - - - - - -	199(102)
253	885	2 - - - - -	199(102) note
254	887	1 - - - - - - -	199(5)
254	887	2 - - - - -	199(5) note

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Adjourned June 1, 1933

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19	20	- - - -	C.C.P. 52—161
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23	29	- - - - - - -	4054 note
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32	39	- - - - - - -	2683 note
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61	77		P.C. 978*l*
62	78		C.C.P. 52—47 note
63	79		199(25) note
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65	86	1	1970—152
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Adjourned Oct. 13, 1933

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9	21	1-20	489a Repealed
10	32	1-3	P.C. 655a Repealed
12	43	1	7057a, § 2
12	43	2	7057a, § 3
12	43	3	7057a, § 5
12	43	4	7057a, § 9
13	46	1	2701 note
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15	48	2	2899a, P.C. 301c
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21	74	1	6694a
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37	118	12-19	842b Repealed
37	118	20, 21	P.C. 107c Repealed
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57	159	1-3	2789 note
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64	181		2350m note
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66	183	1, 2	1656c
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78	208	1	8263c
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84	223	1	28a
87	228	1, 2	6812a
88	229	1	6008
89	231	1	2525, 2528, 2533, 2537; 2539 Repealed
89	231	2	Repeal
90	234	1	7047cc—1 Repealed; P.C. 131cc Repealed
91	249	1-21	1606a
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95	267	1-3	2350m note
97	269	1-5	P.C. 952*l*—1 note
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117	322	1	6674q—7A Repealed
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Adjourned Feb. 27, 1934

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3	5	2	6675a—4
3	5	3	6675a—3d Expired
3	5	4	P.C. 807a, §§ 14a–14e
3	5	5–8	P.C. 807b
4	10	1–6	7880—147u
5	14	1–12	2603c
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44	102	1	P.C. 1112b, § 9
45	104	1	6049c, § 5
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52	113	1–6	7047cc—2 Repealed
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57	122	1	3903a
59	123	1	3883, subd. 6a
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61	130	1	752y—1
62	131	1–8	P.C. 614b
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62	131	10	P.C. 614b
63	133	1	2529
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66	146	2	P.C. 705b
66	146	3	931b Repealed
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Convened Aug. 27, 1934
Adjourned Sept. 25, 1934

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34	59	26	842d
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34	59	28–31	842d
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Convened Oct. 12, 1934
Adjourned Nov. 10, 1934

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10	36	2	7336
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Convened Jan. 8, 1935
Adjourned May 11, 1935

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44	118	1–8	7428a
46	121	1	7941a
47	123	1	8136a
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59	145	1	199(86)
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60	147	1	835e
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68	159	2	881a—37
68	159	3	881a—39
68	159	4	881a—54
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139	377	1	P.C. 1583
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404	947	1	P.C. 1388b—1
404	947	2	P.C. 1327, 1328, 1330 Repealed
404	947	3	P.C. 1388b—1 note
404	947	4	Emergency
405	948	1–5	4437d
405	948	6	4437d note
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405	948	10	Repeal
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417	963	5	199(43)
417	963	6	Repeal
417	963	7	199(43) note
417	963	8	Emergency
418	964	1	C.C.P. 367e
418	964	2	Repeal
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424	1005	6	46a note
424	1005	7	Emergency
425	1007	1	6675a—1(s)
425	1007	2	6675a—5
425	1007	3	6675a—1 note
425	1007	4	Repeal
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426	1008	1	P.C. 1436—1, § 47a
426	1008	2	P.C. 1436—1 note
426	1008	3	Repeal
426	1008	4	Emergency
427	1009	1	P.C. 178b
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428	1009	1–6	46b—1
428	1009	7	Emergency
429	1011	1	C.C.P. 1041a
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430	1012	1	249b note
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431	1013	1	6675a—1(n)
431	1013	2	6675a—1 note
431	1013	3	Repeal
431	1013	4	Emergency
432	1014	1	P.C. 923h
432	1014	2	P.C. 884
432	1014	3	Repeal
432	1014	4	Emergency
433	1015	1	1027a—1
433	1015	2	1027a—1 note
433	1015	3	Emergency
434	1016	1	46a, § 1
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437	1021	12	Emergency
439	1024	1	6954
439	1024	2	Emergency
440	1026	1	5142
440	1026	2	Repeal
440	1026	3	5142 note
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455	1064	1–5	3883g
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456	1066	1–18	foll. 8197f note
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Table 2

TABLE OF REPEALED LAWS

This table shows those acts or parts of acts of the 38th Legislature to the 50th Legislature, which have been omitted from Vernon's Texas Statutes 1948 because they have been repealed, held invalid, have become inoperative, or have expired by their own limitation.

References are to Civil Statutes unless otherwise indicated.

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75	155	18	6691
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103	202	1	6214
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139	294	1 (art. 27)	P.C. 934
139	294	1 (art. 32)	4044
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150	322	2	512
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22	53	A(§ 2)	5076; P.C. 667
22	53	B	5080; P.C. 671
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57	200	1	P.C. 698
64	215	1	5523
71	225	1–14	5343 note
75	233	1	475a, 477
77	236	9	1538i
81	252	1	475a, 477
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118	302	1	2350b
119	303	1–4	4201a
122	307	1–7	7010–7016
122	307	8	7017; P.C. 1504a
122	307	9	7018

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122	307	15	7023; P.C. 1509a
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122	307	17–19	7025–7027
122	307	20	P.C. 1522a
122	307	21	P.C. 1511a
122	307	22	7028
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122	307	24	P.C. 1517a
122	307	25	7031–7033
122	307	26	7034, 7035
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95	146	1	6214
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129	197	1	P.C. 425a
130	200	—	517
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132	201	1, 2	387a
133	202	1	P.C. 544
134	203	1, 2	P.C. 547b
136	204	1	506
141	210	1–7	5798a
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147	217	1	6203
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162	235	—	6691
163	236	1	C.C.P. 1087
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196	280	—	3135
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205	292	1	455
206	292	1	512a
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209	295	1, 2	369a
210	296	1	387b
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214	316	—	5125
215	316	1	P.C. 879
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220	324	5	P.C. 1137a
221	325	—	P.C. 560a
252	371	1	416
269	398	1, 2	P.C. 547c
271	409	—	3902d
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282	423	1	350
289	434	1	351

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84	228	1–4	2742b(§§ 1–4)
94	252	1	432
95	253	1	P.C. 545

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81	194	—	2372a
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117	264	1	541d
117	264	1a	541e
153	330	4	6222a
189	408	—	P.C. 1621a
190	409	1	P.C. 879a—1
234	494	1–6	2663b
258	534	—	P.C. 955a—1
281	614	—	1269g
282	616	6	2603a, § 6
304	678	—	93a
304	678	11	P.C. 1708a
305	684	2	4180, § 2
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16	48	1	415
17	48	1	416
24	58	—	3902a
38	85	1	2663b
39	86	1–10	2675a—1 to 2675a—10
45	99	1	6203
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60	159	1	535
61	160	1	517a
62	161	1	365

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62	161	4	370b
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62	161	7	350
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70	184	1, 2	P.C. 952*l*—1 note
87	218	1	P.C. 1571
88	219		P.C. 955a—1
91	222	1	4413a—1
91	222	2	4413a—2
91	222	3	4413a—3
91	222	4	4413a—4
91	222	5	4413a—5
91	222	6	4413a—6
91	222	7	4413a—7
91	222	8	P.C. 422a
94	233	1	6677
95	234	1–4	7331a
97	239		3888a
104	253	1–9	P.C. 1137c
114	284	1	P.C. 879

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23	37	1	P.C. 904
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51	89	1	388
55	94		3902a
58	97		3902c
59	97	1	2327a
61	100	38a	881a—37a
61	100	38b	881a—37b
61	100	38c	881a—37c
70	137		2740e
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88	172	14a–14e	P.C. 807a
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96	203	—	5221a—1; P.C. 1137d

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9	9	1	6203, § 6
10	10	1	P.C. 879c—1
28	49	1–8	P.C. 827b note
41	80	1, 2	P.C. 923qa—2
43	82		835b

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11	126	1	6203, § 8
11	126	2	6203, § 3
13	130	1	P.C. 941, § 1e
23	151	2a	6675a—2a
24	154	1	P.C. 923qa—1
68	220	5	7089a
74	233		7066, 7066a
78	242		P.C. 978g
81	246	1–11	199(114)

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73	111	14, 15	P.C. 131b
97	154	1–23	P.C. 725a
98	163	2–5, 7	7065a, 7065e, 7065h, 7065j, 7065f
98	163	6	P.C. 141c
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135	228		2237–2239
138	233	1	P.C. 689
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189	318	1	P.C. 546
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193	322	1	462
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210	353		931a
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212	355	1	7047(8)
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241	395	1	3152
246	414	1	5798a
277	480	4	911b
278	498	1–5	55b
278	498	6–8	P.C. 395a
282	507	7	P.C. 827a, § 5b
330	806		3902f
336	815		3902e

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174	355	1	3883b
202	417	1	P.C. 879c—1
236	457	1	1702a

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26	46	4, 6, 9, 14	6049c
28	58		6049a, § 11j
42	88		P.C. 698a

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33	55	- - - - - - -	7047(39)
34	56	- - - - -	3887, § 2a

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3	4	1 - - - - - - -	515
13	15	7a - - -	6674q—7A
22	49	- - - -	7880—147d to 7880—147o
44	112	- - - -	P.C. 879f—3
47	116	1–11, 13–16 - -	199(7)

1932 (42nd Leg.) Fourth Called Session

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14	34	1 - - - -	6674q—7(j)
16	36	— - - - - - - -	375a
44	75	15 - - -	P.C. 141a—1
44	75	15-a - -	P.C. 141a—2
44	75	1–18 - - -	7065a—1 to 7065a—18
60	128	1 - - - - - - -	3912b
64	133	— - - - - - - -	375b
84	179	1–4 -	6081e, §§ 1, 2, 2a, 6
91	197	— - - - - - - -	375c
102	225	- - - - - - - -	2218b
114	285	— - - - - -	P.C. 1569
116	288	- - - - -	P.C. 694a
141	365	1–4, 6 - - - -	5190a
148	377	— - - - - - - -	6819a
153	383	1–10 - -	7047cc, §§ 3–10
153	383	11–21, 24, 25 -	P.C. 131c
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172	529	1, 2 -	1302, subds. 95a, 95b
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185	567	1–4 -	6081e, §§ 1, 2, 2a, 6
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192	581	2b(17) - - - - -	7142
194	594	— - - - - -	P.C. 419a
203	608	— - - - - - - -	514
204	609	1 - - - -	P.C. 725a
214	637	6a - - - - - -	7057b
232	784	- - - - - - - -	1581a

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37	118	11 - - - - - - -	5190a
37	118	12–19 - - - - - -	842b
37	118	20, 21 - - -	P.C. 107c
41	136	- - - - - - - -	2756a
53	153	- - - - - - - -	7438a
65	182	1 - - - - - - -	522a
71	191	1–9 - - - - - -	540a
77	205	- - - - -	7880—76b
89	231	1 - - - - - - -	2539
90	234	1 - - - - -	7047cc—1
90	234	1 - - - - -	P.C. 131cc
116	320	1, 2 - - - - -	7047a—1
117	332	1 - - - - -	6674q—7A

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6	16	1 - - - - -	7047cc—1
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15	31	20, 21 - - -	P.C. 107d
52	113	- - - - - -	7047cc—2
66	146	1 - - -	912–930a, 931
66	146	3 - - - - - - -	931b

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34	59	14 - - - - -	842d, § 14
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34	59	27 - - - - - -	842, § 27
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64	120	1 - - - - -	6049c, § 14

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85	207	- - - - -	P.C. 1137i
155	399	1 - - - - - - -	930b
173	425	1 - - - - - - -	501a
183	459	8 - - - - - -	489b, § 8
214	504	1–8 - - - - -	165a—1
237	554	1–5 - - - - -	P.C. 1042a
240	558	1, 2 - - -	7065a—1, 7065a—2
240	558	3–12 - - - -	7065a—4 to 7065a—13
240	558	13 - - - -	P.C. 141a—1
240	558	14 - - - -	P.C. 141a—2
240	558	15 - - - -	7065a—16
265	653	1 - - - - - - -	460
307	713	1 - - - - - - -	4758
325	746	1–12 - - -	911c note; P.C. 1690c
339	790	2 - - - - - - -	2742f

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355	908	1	6819a

1935 (44th Leg.) First Called Session

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467	1795	1	43	P.C.	666—43
467	1795	1	50	P.C.	666—50
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472	1854		15–18	P.C.	427d

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495	2040	2	14	6243—13 note
495	2040	2	15–18	6243—16 to 6243—19
495	2040	2	19	P.C. 427e
495	2040	2	20, 21	6243—20, 6243—21
495	2040	4	5b	7064a
495	2040	4	5c	4769
495	2040	4	6	7047, § 40A
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495	2040	4	9	7047e
495	2040	4	11	7047g

1937 (45th Leg.) Regular Session

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37	60	1	6243—13
54	90	2	2740f—1
99	184	17	4860a—20, § 17
99	184	22	4860a—20, § 22
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REVISED CIVIL STATUTES 1911

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SHOWING THEIR CORRESPONDING ARTICLES IN

VERNON'S TEXAS STATUTES 1948

Where there are no corresponding articles in the Vernon's Texas Statutes 1948 indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

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171	Repealed
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*Vernon's Civ. St. 1914, arts. 150–165a, having been held invalid, the corresponding articles of Rev. St. 1911, were restored in Vernon's Civ. St. Supp. 1922, to which these articles refer.

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255	289 Repealed
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258	292 Repealed
259	293 Repealed
260	294 Repealed
261	295 Repealed
262	296 Repealed
263	297 Repealed
264	298 Repealed
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274	4079 Repealed
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276	4081 Repealed
277	4082 Repealed
278	4083 Repealed
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281	4086 Repealed
282	4087 Repealed
283	Repealed
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286	Repealed
287	Repealed
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290	Repealed
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296	4091 Repealed
297	4092 Repealed
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300	4094 Repealed
301	4095 Repealed
302	4096
303	4097 Repealed
304	4097 Repealed
305	4098 Repealed
306	4099
307	4100 Repealed
308	4101 Repealed
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311	Repealed
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319	Repealed
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503	476 Repealed
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507	357 Repealed
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510	483 Repealed
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834	Omitted
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1541	1742 Repealed 1883 Repealed
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1546	1756 Repealed
1547	1757 Repealed
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1550	1766 Repealed
1551	1767 Repealed
1552	1769 Repealed
1553	1770 Repealed 1771 Repealed
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1556	1773 Repealed
1557	1774 Repealed
1558	1773 Repealed
1559	1775 Repealed 1867 Repealed
1560	1776 Repealed 1868 Repealed
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1562	1763 Repealed
1563	1764 Repealed
1564	1764 Repealed
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1609	1840 Repealed
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1611	1842 Repealed
	1843 Repealed
1612	1844 Repealed
1613	1845 Repealed
1614	1846 Repealed
1615	1847 Repealed
1616	1848 Repealed
1617	1849 Repealed
1618	1850
1619	1851 Repealed
1620	1852 Repealed
1621	1758 Repealed
	1853 Repealed
1622	1759 Repealed
	1854 Repealed
1623	1855 Repealed
1624	1758 Repealed
1625	1759 Repealed
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1626	1856 Repealed
1627	1857 Repealed
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1630	1861 Repealed
1631	1862 Repealed
1632	1863 Repealed
1633	1864 Repealed
1634	1865 Repealed
1635	1866 Repealed
1636	1873 Repealed
1637	1874 Repealed
1638	1875 Repealed
1639	1876 Repealed
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1642	1878 Repealed
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1644	1880 Repealed
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1698	Obsolete
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1761	See 1942
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1765	See C.C.P. 425
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1798c	1970—17
1798d	1970—18
1798e	1970—19
1798f	1970—20
1798g	1970—21
1798h	1970—22
1798i	1970—23
1798j	1970—24
1798k	Omitted
1798*l*	1970—25
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1801	1970—35
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1811—106	1970—285
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1811—118	Rep. sec.
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1811—125	1970—117
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1812 — 1971	Repealed
1813 — 1972	Repealed
1814 — 1972	Repealed
1815 — 1973	Repealed
1816 — 1974	Repealed
1817 — 1997	Repealed
1818 — 1997	Repealed
1819 — 1997	Repealed
1820 — 1998	Repealed
1821 — 1997	Repealed
1822 — 1999	Repealed
1823 — 2000	Repealed
1824 — 1998	Repealed
2001	Repealed
1825 — 2001	Repealed
1826 — 2001	Repealed
1827 — 2003	Repealed
1828 — 2004	Repealed
1829 — 2005	Repealed
1829a	Repealed
1829b	Repealed
1830	1995
1831 — 2018	Repealed
1832 — 2019	Repealed
1833 — 2020	Repealed
1834	1996
1835 — 1980	Repealed
1836	1981
1837	1982
1838	See 4671
1839	1983
1840	1984
1841	1985
1842	1986
1843	1987
1844 — 1988	Repealed
1845 — 1989	Repealed
1846 — 1990	Repealed
1847	1991
1848 — 1992	Repealed
1849 — 1993	Repealed
1850 — 2021	Repealed
1851 — 2021	Repealed
1852 — 2022	Repealed
1853 — 2023	Repealed
1854 — 2024	Repealed
1855 — 2025	Repealed
1856 — 2026	Repealed
1857	2026
1858	2027
1859	2028
1860	2029, 2030
1861	2031
1862	Omitted
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1865 — 2034	Repealed

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1866	2035 Repealed
1867	2036 Repealed
1868	2036 Repealed
1868a	Obsolete
1869	2037 Repealed
1870	2038 Repealed
1871	2038 Repealed
1872	2038 Repealed
1873	2038 Repealed
1874	2039 Repealed
1875	2040, 2041 Repealed
1876	2021
1877	2042 Repealed
1878	2043 Repealed
1879	2044 Repealed
1880	2045 Repealed
1881	2046 Repealed
1882	2047 Repealed
1883	2048 Repealed
1884	2049 Repealed
1885	2050 Repealed
1886	2078 Repealed
1887	2079 Repealed
1888	2080 Repealed
1889	2081 Repealed
1890	2082 Repealed
1891	2083 Repealed
1892	2084 Repealed
1893	2084 Repealed
1894	2085 Repealed
1895	2086 Repealed
1896	2087 Repealed
1897	2088
1898	2089 Repealed
1899	2090
1900	2016 Repealed
1901	2091 Repealed
1902	2006 Repealed
1903	2007 Repealed 2008
1904	2009 Repealed
1905	2009 Repealed
1906	2010 Repealed
1907	2014 Repealed
1908	2011 Repealed
1909	2012 Repealed
1910	2013 Repealed
1911	2169 Repealed
1912	2170 Repealed
1913	2171 Repealed
1914	2172 Repealed
1915	2173 Repealed
1916	2174 Repealed
1917	2167 Repealed
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1925c	See 2326
1926	See 2324
1927	2075
1928	See 2323
1929	Omitted
1930	Omitted
1931	Omitted
1932	2327
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1934	2152 Repealed
1935	2153 Repealed
1936	2154 Repealed
1937	2155 Repealed
1938	2156 Repealed
1939	2157 Repealed
1940	2157 Repealed
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1942	2159 Repealed
1943	2161 Repealed
1944	2162 Repealed
1945	2163 Repealed 2164 Repealed
1946	2165 Repealed
1947	2166 Repealed
1948	2176 Repealed
1949	2177 Repealed
1950	2178 Repealed
1951	2180 Repealed
1952	2181 Repealed
1953	2183 Repealed
1954	2187 Repealed
1955	2182 Repealed
1956	2192 Repealed
1957	2193 Repealed
1958	2194 Repealed
1959	2195 Repealed
1960	2196 Repealed
1961	2197 Repealed
1962	2198 Repealed
1963	2199 Repealed
1964	2199 Repealed
1965	2200 Repealed
1966	2200 Repealed
1967	2200 Repealed
1968	2200 Repealed
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1979	2205 Repealed 2206 Repealed
1980	2207 Repealed
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1982	2202 Repealed
1983	2202 Repealed
1984	2202 Repealed
1984a	2189 Repealed
1985	2190 Repealed 2202 Repealed
1986	2202 Repealed
1987	2202 Repealed
1988	2202 Repealed
1989	2208 Repealed
1990	2209 Repealed
1991	2210 Repealed
1992	2189 Repealed
1993	2203 Repealed
1994	2211 Repealed
1995	2211 Repealed
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1999	2217 Repealed
2000	2218 Repealed
2001	2219 Repealed
2002	2220 Repealed
2003	2221 Repealed
2004	2222 Repealed
2005	2222 Repealed
2006	2223
2007	2225 Repealed
2008	2224
2009	2225 Repealed
2010	2225 Repealed
2011	See 2211
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2013	2227 Repealed
2014	2227 Repealed
2015	2228 Repealed

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2017	2230 Repealed
2018	2231 Repealed
2019	2232 Repealed
2020	2232 Repealed
2021	2234 Repealed
2022	2235 Repealed
2023	2232 Repealed
2024	2233 Repealed
2025	2232 Repealed
2026	2236 Repealed
2027	2236 Repealed
2028	2236 Repealed
2029	2236 Repealed
2030	2051 Repealed
2031	2052 Repealed
2032	2053 Repealed
2033	2054 Repealed
2034	2055 Repealed
2035	2056 Repealed
2036	2054
2037	2057 Repealed
2038	2058 Repealed
2039	2059 Repealed
2040	2059 Repealed
2041	2060 Repealed
2042	2061 Repealed
2043	2062 Repealed
2044	2063 Repealed
2045	2064 Repealed
2046	2065 Repealed
2047	2065 Repealed
2048	2066 Repealed
2049	2067 Repealed
2050	2068 Repealed
2051	2069 Repealed
2052	2070 Repealed
2052a	2070 Repealed
2053	2071 Repealed
2054	2072
2055	2072
2056	2073 Repealed
2057	2074 Repealed
2058	2237 Repealed
2059	2237, subd. 1
2060	2237, subd. 2
2061	2237, subd. 3
2062	2237, subd. 4
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2064	2237, subd. 6
2065	2237, subd. 7
2066	2237, subd. 8
2067	2237, subd. 9 Repealed
2068	2243 Repealed
	2244 Repealed
2069	2240 Repealed

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2070	2239 Repealed
2071	2241 Repealed
2072	2242 Repealed
2073	2240 Repealed
	2246 Repealed
	Repealed
2074	2245 Repealed
2075	2247 Repealed
2076	2248
2077	Omitted
2078	See 2249
2079	2250
2079a	2250
2080	2251
2081	2252 Repealed
2082	2252 Repealed
2083	2252 Repealed
2084	2253 Repealed
2085	2254 Repealed
2086	2255
2087	2256 Repealed
2088	2257 Repealed
2089	2258 Repealed
2090	2259 Repealed
2091	2260 Repealed
2092	2261 Repealed
2093	2261 Repealed
2094	2262 Repealed
2095	2263 Repealed
2096	2264 Repealed
2097	2265 Repealed
2098	2266 Repealed
2099	2267 Repealed
2099a	2269 Repealed
2099b	2269 Repealed
2099c	2269 Repealed
2100	2268 Repealed
2101	2270 Repealed
2102	2271 Repealed
2103	2275 Repealed
2103a	2272 Repealed
2103b	2273 Repealed
	2274 Repealed
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*Articles 2877, 2878, 2879, 2880, were amended by act of 1917 so as to be numbered respectively 2876, 2877, 2878, 2879. The new article 2880 was made the repealing section of such act.

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2904¼a	Omitted
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2904¼*l*	Omitted
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3635	3702 Repealed
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5011j	Repealed
5011k	Repealed
5011*l*	Repealed
5011m	Repealed
5011n	Repealed
5011*o*	Repealed
5011p	Omitted
5011q	Omitted
5011r	Omitted
5011s	Omitted
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5011½ff	Omitted
5011½g	Omitted
5011½gg	Omitted
5011½h	Omitted
5011½hh	Omitted
5011½i	Omitted
5011½ii	Omitted
5011½j	Omitted
5011½jj	Unconst.
5011½k	Omitted

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5011½*l*	Omitted
5011½*ll*	Unconst.
5011½m	Omitted
5011½mm	Omitted
5011½n	Omitted
5011½nn	Omitted
5011½*o*	Omitted
5011½*oo*	Omitted
5011½p	Omitted
5011½pp	Omitted
5011½q	Omitted
5011½qq	Omitted
5011½r	Omitted
5011½rr	Omitted
5011½s	Omitted
5011½ss	Omitted
5011½t	Omitted
5011½tt	Omitted
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5011½vv	7621
5011½w	Rep. sec.
5012	Repealed
5013	Repealed
5014	Repealed
5015	Repealed
5016	Repealed
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5018	Repealed
5019	Repealed
5020	Repealed
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5043	Repealed
5044	Repealed

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5045	Repealed
5046	Repealed
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5097	Repealed
5098	Repealed
5099	Repealed
5100	Repealed
5101	Repealed

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5104	Repealed
5105	Repealed
5106	Repealed
5107	Repealed
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5323	Omitted

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5542a	Repealed
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5550	Repealed
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5580	Repealed
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5583	Repealed
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5584½aaa	Repealed
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5584½qqq	Repealed
5584½r	Repealed
5584½rr	Repealed
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5914	Repealed
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5917	Repealed
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5919	Repealed
5920	Repealed
5920a	Repealed
5920b	Repealed
5920c	Repealed
5920d	Repealed
5920e	Repealed
5920f	Repealed
5920g	Repealed
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5920i	Repealed
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5921	Repealed
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7314dd	Repealed
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7314e	Repealed
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7314k1	Repealed
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7423	Omitted
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7428	Omitted
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7484	Omitted
7485	Omitted
7486	Omitted
7487	Repealed
7488	Repealed
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7495	Repealed
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PENAL CODE 1911

AND

VERNON'S ANNOTATED PENAL CODE 1916 AND SUPPLEMENTS

SHOWING THEIR CORRESPONDING ARTICLES IN

VERNON'S TEXAS STATUTES 1948

Where there are no corresponding articles in the Vernon's Texas Statutes 1948 indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

References to the General Repealing Clause indicate that the articles have no counterpart in the Revised Criminal Statutes 1925, and are probably repealed by virtue of Section 3 thereof.

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606j	Omitted
606k	Omitted
606*l*	Omitted
606m	Omitted
606n	Omitted
606*o*	Omitted
606p	Omitted
606q	Omitted
607	Obsolete
608	Obsolete
609	Obsolete
610	Obsolete
610a	Obsolete
610b	Obsolete
610c	Obsolete
610d	Obsolete
610e	Obsolete
610f	Obsolete
610g	Obsolete
610h	Obsolete
610i	Obsolete
610j	Obsolete
610k	Obsolete
610*l*	Obsolete
610m	Obsolete
611	Omitted
612	Omitted
613	Omitted
614	Omitted

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615	Omitted
616	Omitted
617	Omitted
618	Omitted
619	Omitted
620	Omitted
621	Omitted
622	Omitted
623	Omitted
624	Omitted
625	Omitted
626	Omitted
627	Omitted
628	Omitted
629	Omitted
630	Omitted
630a	Omitted
631	Omitted
632	Omitted
633	Omitted
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637	609
638	609
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640	609
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640b	604
640c	605
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666	Civ. 4835
667	Civ. 4836
668	Repealed
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668b	Civ. 4838
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668f	Civ. 4842
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672	Omitted
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693	575
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703 - - -	Repealed
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710 - - - - -	716
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711a - - - -	719
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742 - - -	Omitted
743 - - -	Omitted
744 - - -	Omitted
745 - - -	Omitted
746 - - -	Omitted
747 - - -	720–722 Repealed
748 - -	723 Repealed
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755 - - - - -	741
756 - - - - -	742
756a - - - -	744
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758c - - - -	773
758d - - - -	774
758e - - - -	775
759 - - -	Omitted
760 - - -	Omitted
761 - - -	Omitted
762 - - -	Omitted
763 - - -	Omitted
764 - - -	Omitted
765 - - -	Omitted
766 - - -	Omitted
767 - - -	Omitted
767a - - - -	752
768 - - - - -	754
769 - - -	Omitted
770 -	See General Repealing Clause
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804 - - -	Amended. See 782
805 - - -	Amended. See 782
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805g - - - -	1521
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807 -	See General Repealing Clause
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810 -	See General Repealing Clause
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817	Omitted
818	Omitted
819	Omitted
820	Omitted
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820i	813
820j	799
820k	801
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856	867
857	Omitted
858	Omitted
859	Omitted
860	868
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861	Repealed
862	Repealed
863	Repealed
864	Repealed
865	Repealed
866	Repealed
867	Repealed
867a	Repealed
867b	Repealed
867c	Repealed
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867dd	Repealed
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868	Repealed
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877	Repealed
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884a	Repealed
884b	Repealed
884c	Repealed
884d	Repealed
885	Repealed
886	Repealed
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891	Repealed
892	Repealed
893	Repealed
894	Repealed
895	Repealed
896	Repealed
897	Repealed
898	Repealed
899	Repealed
900	Repealed
900½	Repealed
900½a	Repealed
900½aa	Repealed
900½b	Repealed
900½bb	Repealed
900½bbb	Repealed
900½bbbb	Repealed
900½c	Repealed
900½cc	Repealed
900½d	Repealed
900½dd	Repealed
900½e	Repealed
900½ee	Repealed
900½f	Repealed
900½ff	Repealed
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900½gg	Repealed
900½h	Repealed
900½hh	Repealed
900½i	Repealed
900½ii	Repealed
900½j	Repealed
900½jj	Repealed
900½k	Repealed
900½kk	Repealed
900½*l*	Repealed
900½*ll*	Repealed
900½m	Repealed
900½mm	Repealed
900½n	Repealed
900½nn	Repealed
900½*o*	Repealed
900½*oo*	Repealed
900½p	Repealed
900½pp	Repealed
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900½rr	Repealed
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980	Omitted
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999ww	Repealed
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999x	Repealed
999xx	Repealed
999xxx	Repealed
999xxxx	Repealed
999y	Repealed
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Table 6

CODE OF CRIMINAL PROCEDURE 1911

AND

VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURE 1916 AND SUPPLEMENTS

SHOWING THEIR CORRESPONDING ARTICLES IN

VERNON'S TEXAS STATUTES 1948

Where there are no corresponding articles in the Vernon's Texas Statutes 1948 indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

References to the General Repealing Clause indicate that the articles have no counterpart in the Revised Criminal Statutes 1925, and are probably repealed by virtue of Section 3 thereof.

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1504c	1977 Repealed
1504d	1978 Repealed
1504e	1979 Repealed

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Table 8

PENAL CODE 1895

SHOWING CORRESPONDING ARTICLES IN

VERNON'S TEXAS STATUTES 1948

References are to Penal Code unless otherwise indicated.

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Table 9

CODE OF CRIMINAL PROCEDURE OF 1895

SHOWING CORRESPONDING ARTICLES IN

VERNON'S TEXAS STATUTES 1948

References are to Code of Criminal Procedure unless otherwise indicated.

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66	Civ. 1801
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Table 10

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1127	1919
1128	1922 Repealed

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1129	1918 Repealed
1130	1918 Repealed
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1197	2005 Repealed
1198	1995
1199	1996
1200	1980 Repealed
1201	1981

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1208	1987, 1988 Repealed
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1258	2089 Repealed
1259	2090

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1260	2016 Repealed
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1318	2185 Repealed

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1319	2186 Repealed
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1369	2232 Repealed
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1425	2059 Repealed

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Table 11

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