

# Texas Historical Statutes Project

WEST'S TEXAS STATUTES 1984  
VOLUME 3

Revised Civil Statutes (4414 to 5433)



This project was made possible by the  
**Texas State Law Library**  
and a grant from the  
**Texas Bar Foundation.**

Digitized with permission from



THOMSON REUTERS

# Texas Civil Statutes

Articles 4414 to 5433

---

*As Amended through the  
1983 Regular and First  
Called Sessions of the  
68th Legislature*

WEST PUBLISHING CO.  
ST. PAUL, MINNESOTA



COPYRIGHT © 1974, 1976, 1978, 1980, 1982 WEST PUBLISHING CO.

---

COPYRIGHT © 1984  
By  
WEST PUBLISHING CO.

## PREFACE

---

This Pamphlet contains the text of the Civil Statutes, Articles 4413 to 5433, as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Civil Statutes are followed by a descriptive word Index to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial construction and interpretations of the Civil Statutes, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

August, 1984

\*



# TABLE OF CONTENTS

---

	Page
Preface .....	III
Effective Dates .....	VII
Revised Civil Statutes .....	IX

## REVISED CIVIL STATUTES

*Article Analysis see beginning of each Title*

Title	
71. Health—Public .....	2385
72. Holidays—Legal .....	2949
73. Hotels and Boarding Houses .....	2950
74. Humane Society—Repealed	
75. Husband and Wife—See Family Code	
76. Injunctions .....	2955
77. Injuries Resulting in Death .....	2958
78. Insurance—See Insurance Code	
79. Interest—Consumer Credit—Consumer Protection .....	2960
80. Intoxicating Liquor—Repealed	
81. Jails .....	3045
82. Juveniles .....	3053
83. Labor .....	3157
84. Landlord and Tenant—See Property Code	
85. Lands—Acquisition for Public Use .....	3314
86. Lands—Public .....	3324
87. Legislature .....	3367
88. Libel .....	3393

*Index to Revised Civil Statutes follows the Final Title*

\*



## EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 23, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

\* No legislation for which the ninety day effective date is applicable.



# REVISED CIVIL STATUTES

---

Title	Article
1. General Provisions .....	1
2. Accountants—Public and Certified .....	31
3. Adoption— <i>See Family Code</i>	
3A. Aeronautics .....	46c-1
4. Agriculture and Horticulture— <i>See Agriculture Code</i>	
5. Aliens .....	166
6. Amusements—Public Houses of .....	178
7. Animals .....	180
8. Apportionment .....	193
9. Apprentices— <i>See Family Code</i>	
10. Arbitration .....	224
10A. Architects .....	249a
11. Archives .....	250
11A. Assignments, in General— <i>See Business and Commerce Code</i>	
12. Assignments for Creditors— <i>See Business and Commerce Code</i>	
13. Attachment .....	275
14. Attorneys at Law .....	304
15. Attorneys—District and County .....	321
16. Banks and Banking .....	342
17. Bees— <i>See Agriculture Code</i>	
18. Bills and Notes— <i>See Business and Commerce Code</i>	
19. Blue Sky Law—Securities .....	579-1
19A. The Securities Act— <i>Repealed</i>	
20. Purchasing and General Services Commission .....	601
20A. Board and Department of Public Welfare .....	695b
21. Bond Investment Companies .....	696
22. Bonds—County, Municipal, etc. ....	701
23. Brands and Trade Marks— <i>See Business and Commerce Code</i>	
24. Building—Savings and Loan Associations .....	852
25. Carriers .....	882
26. Cemeteries .....	912
27. Certiorari .....	932
28. Cities, Towns and Villages .....	961
29. Commissioner of Deeds .....	1270
29A. Commissioners on Uniform Laws .....	1273a
30. Commission Merchants .....	1274
31. Conveyances— <i>See Property Code</i>	
32. Corporations .....	1302
<i>Corporations—Business Corporation Act</i>	
33. Counties and County Seats .....	1539
34. County Finances .....	1607
35. County Libraries .....	1677
36. County Treasurer .....	1703
37. Court—Supreme .....	1715
38. Court of Criminal Appeals .....	1801
39. Courts of Appeals .....	1812



## REVISED CIVIL STATUTES

Title	Article
40. Courts—District .....	1884
41. Courts—County .....	1927
42. Courts—Practice in District and County .....	1971
43. Courts—Juvenile .....	2329
44. Courts—Commissioners .....	2339
45. Courts—Justice .....	2373
46. Credit Organizations .....	2461
46A. Declaratory Judgments .....	2524-1
47. Depositories .....	2525
48. Descent and Distribution— <i>See Probate Code</i>	
49. Education—Public— <i>See Education Code</i> Election Code	
51. Eleemosynary Institutions .....	3174
52. Eminent Domain— <i>See Property Code</i>	
52A. Engineers .....	3271a
53. Escheat— <i>See Property Code</i>	
54. Estates of Decedents— <i>See Probate Code</i>	
55. Evidence .....	3704
56. Execution .....	3770
57. Exemptions— <i>See Property Code</i>	
58. Express Companies .....	3860
59. Feeble Minded Persons—Proceedings in Case of .....	3867
60. Feeding Stuff— <i>See Agriculture Code</i>	
61. Fees of Office .....	3882
62. Fences— <i>See Agriculture Code</i>	
63. Fire Escapes .....	3955
63A. Fire Protection Districts .....	3972a
64. Forcible Entry and Detainer— <i>See Property Code</i>	
65. Frauds and Fraudulent Conveyances— <i>See Business and Com- merce Code</i>	
66. Free Passes, Franks and Transportation .....	4005
67. Fish, Oyster, Shell, etc.— <i>See Parks and Wildlife Code</i>	
68. Garnishment .....	4076
68A. Good Neighbor Commission of Texas .....	4101-1
69. Guardian and Ward— <i>See Probate Code</i>	
70. Heads of Departments .....	4330
71. Health—Public .....	4414
72. Holidays—Legal .....	4591
73. Hotels and Boarding Houses .....	4592
74. Humane Society— <i>Repealed</i>	
75. Husband and Wife— <i>See Family Code</i>	
76. Injunctions .....	4642
77. Injuries Resulting in Death .....	4671
Insurance Code	
79. Interest—Consumer Credit—Consumer Protection .....	5069
80. Intoxicating Liquor— <i>Repealed</i>	
81. Jails .....	5115
82. Juveniles .....	5119
83. Labor .....	5144
84. Landlord and Tenant— <i>See Property Code</i>	
85. Lands—Acquisition for Public Use .....	5240
86. Lands—Public— <i>See Natural Resources Code</i>	

## REVISED CIVIL STATUTES

Title	Article
87. Legislature .....	5422
88. Libel .....	5430
89. State Library and Archives Commission .....	5434
90. Liens— <i>See Property Code</i>	
91. Limitations .....	5507
92. Mental Health .....	5547-1
93. Markets and Warehouses— <i>See Agriculture Code</i>	
94. Militia—Soldiers, Sailors and Marines .....	5765
95. Mines and Mining .....	5892
96. Minors—Removal of Disabilities of— <i>See Family Code</i>	
96A. Minors—Liability of Parents for Acts of Minors— <i>See Family Code</i>	
96B. Gifts to Minors— <i>See Property Code</i>	
97. Name .....	5924
97A. National Guard Armory Board .....	5931-1
98. Negotiable Instruments Act— <i>See Business and Commerce Code</i>	
99. Notaries Public .....	5949
100. Officers—Removal of .....	5961
101. Official Bonds .....	5998
102. Oil and Gas— <i>See Natural Resources Code</i>	
103. Parks .....	6067
104. Partition— <i>See Property Code</i>	
105. Partnerships and Joint Stock Companies .....	6110
106. Patriotism and the Flag .....	6139
106A. Passenger Elevators .....	6145a
107. Pawnbrokers and Loan Brokers— <i>Repealed</i>	
108. Penitentiaries .....	6166
109. Pensions .....	6204
109A. Plumbing .....	6243-101
110. Principal and Surety— <i>See Business and Commerce Code</i> Probate Code	
110A. Public Offices, Officers and Employees .....	6252-1
110B. Public Retirement Systems	
111. Quo Warranto .....	6253
112. Railroads .....	6259
113. Rangers—State— <i>Repealed</i>	
113A. Real Estate Dealers .....	6573a
114. Records .....	6574
115. Registration .....	6591
116. Roads, Bridges, and Ferries .....	6663
117. Salaries .....	6813
118. Seawalls .....	6830
119. Sequestration .....	6840
120. Sheriffs and Constables .....	6865
120A. State and National Defense .....	6889-1
121. Stock Laws— <i>See Agriculture Code</i>	
122. Taxation— <i>See Tax Code</i>	
122A. Taxation—General— <i>See Tax Code</i>	
123. Timber— <i>See Natural Resources Code</i>	
124. Trespass to Try Title— <i>See Property Code</i>	
125. Trial of Right of Property— <i>See Property Code</i>	
125A. Trusts and Trustees— <i>See Property Code</i>	

## REVISED CIVIL STATUTES

Title	Article
126. Trusts—Conspiracies Against Trade— <i>See Business and Commerce Code</i>	
127. Veterinary Medicine and Surgery .....	7448
128. Water— <i>See Water Code</i>	
129. Wills— <i>See Probate Code</i>	
130. Workers' Compensation and Crime Victims Compensation ....	8306
131. Wrecks— <i>Repealed</i>	
132. Occupational and Business Regulation .....	8401
133. Safety .....	9201
Final Title	

# TITLE 71

## HEALTH—PUBLIC

Chapter	Article	Art.
1. Health Boards and Laws .....	4414	4418f-1. Grants or Contracts by Department for Purchases of Public Health Services, Equipment, and Supplies.
2. Special Quarantine Regulations .....	4448	4418g. Repealed.
3. Food and Drugs .....	4465	4418g-1. The Texas Board of Health Dental Advisory Committee;
3A. Bedding .....	4476a	4418h. Health Planning and Development Act.
4. Sanitary Code .....	4477	4419 to 4419b. Repealed.
4A. Sanitation and Health Protection .....	4477-1	4419b-1. Communicable Disease Prevention and Control Act.
4B. Tuberculosis .....	4471-11	4419c. Crippled Childrens Services Act.
4C. Kidney Disease .....	4477-2	4419d to 4419f. Repealed.
4D. Hemophilia .....	4477-30	4419g. Special Senses and Communication Disorders Act.
4E. Cancer .....	4477-40	4420. Repealed.
4F. Epilepsy .....	4477-50	4420a. Entry of Private Residence for Health Inspection; Penalties.
4G. Diabetes .....	4477-60	4420b. Industrial Homework.
5. County Hospital .....	4478	4421. Investigations by Board.
6. Medicine .....	4495	4422 to 4435. Repealed.
6½. Abortion .....	4512.1	4436. Health Control in Cities, Towns, and Villages.
6A. Chiropractors .....	4512a-1	4436a-1. Repealed.
6B. Psychology .....	4512c	4436a-2. Tax Levy to Create Health Units in Counties of 22,200 to 22,500 Authorized.
6C. Athletic Trainers .....	4512d	4436a-3. Tax Levy to Create Health Units in Counties Under 22,000 Authorized.
6D. Physical Therapy .....	4512e	4436a-4. County Public Health Units or Centers in Counties of More Than 100,000 Population.
6E. Social Psychotherapy .....	4512f	4436b. Local Public Health Reorganization Act.
6F. Professional Counselors .....	4512g	4437. Hospitals.
6G. Licensed Dietitians .....	4512h	4437a. Hospital Control in Counties of 200,000 or Over; Tuberculosis Control.
6H. Lay Midwives .....	4512i	4437b. Tax for County Hospitals.
6I. Speech-Language Pathologists and Audiologists .....	4512j	4437c. Lease of City and County Hospitals.
7. Nurses .....	4513	4437c-1. Lease of City Hospital.
8. Pharmacy .....	4529	4437c-2. Sale, Lease, or Closure of Public Hospitals.
9. Dentistry .....	4543	4437d. Texas Hospital Survey and Construction Act.
10. Optometry .....	4552-1.01	4437e. Hospital Authority Act.
10A. Hearing Aids .....	4566-1.01	4437e-1. Leases, Agreements to Manage or Operate, Sale or Closure by Hospital Authorities; Referendum on Sale or Closure.
11. Podiatry .....	4567	4437e-2. Hospital Project Financing Act.
12. Embalming .....	4576	4437e-3. Hospital Equipment Financing Act.
13. Anatomical Board .....	4583	4437f. Texas Hospital Licensing Law.
14. Group Hospital Service [Repealed] .....	4590a	4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population.
15. Ambulances .....	4590b	4437g. Internship or Residency of Foreign Medical School Graduates.
16. Basic Sciences .....	4590c	4437h. Surveys and Inspections of Health Care Facilities.
17. Naturopathy [Repealed] .....	4590d	4438. Indigent Sick.
18. Identification of System of Healing .....	4590e	4438a. Emergency Diagnoses and Services; Denial For Inability to Pay; Discriminatory Practices.
19. Nuclear and Radioactive Materials .....	4590f	4438b. Reimbursement of Hospital for Transporting Infant to its Neonatal Intensive Care Unit.
20. Natural Death .....	4590h	4439. Isolation of Lepers.
21. Medical Liability and Insurance Improvement .....	4590i	4440 to 4442. Repealed.

### CHAPTER ONE. HEALTH BOARDS AND LAWS

Art.	Description
4414 to 4414aa.	Repealed.
4414b.	Texas Department of Health; Texas Board of Health.
4414c.	Fees for Public Health Services.
4415 to 4418f.	Repealed.

- Art.  
 4442a. Day Nursery for Care and Custody of Children.  
 4442a-1. Adult Day Care Act.  
 4442b. Repealed.  
 4442c. Convalescent and Nursing Homes and Related Institutions.  
 4442c-1. Repealed.  
 4442d. Nursing Home Administrators Licensure Act.  
 4443. Omitted.  
 4443a. Federal Aid Accepted.  
 4444. Repealed.  
 4445 to 4445c. Repealed.  
 4445d. Texas Venereal Disease Act.  
 4446. Legal Proceedings.  
 4447. Repealed.  
 4447a, 4447b. Repealed.  
 4447c. Texas Coordinating Commission for State Health and Welfare Services.  
 4447d. Providing State Department of Health With Data on Condition and Treatment of Persons.  
 4447d-1. Inadmissibility as Evidence of Immunization Survey Data.  
 4447d-2. Immunization Reminder Notices.  
 4447e. Phenylketonuria and Other Heritable Diseases.  
 4447e-1. Hypothyroidism.  
 4447e-2. Sudden Infant Death Syndrome.  
 4447e-3. Expired.  
 4447f. Duty of State Department of Health to Recommend Policies Relating to Medical Aspects of Driver Licensing, Traffic Safety and Accident Investigation.  
 4447g, 4447h. Repealed.  
 4447i. Consent of Minors to Treatment for Drug Abuse.  
 4447j. Capacity of Minors to Donate Blood; Compensation.  
 4447k. Control and Eradication of Pediculosis in Minors.  
 4447l. Youth Camp Safety and Health Act.  
 4447m. Costs of Medical Examinations of Sexual Assault Victims.  
 4447n. Filing and Copies of Autopsy Reports.  
 4447o. Emergency Medical Services Act.  
 4447o-1. Mutual Assistance Among Cities and Counties in Provision of Emergency Medical Services.  
 4447p. Reporting Treatment of Gunshot Wound.  
 4447q. Misrepresentation of Nonresident in Application for Medical Aid.  
 4447r. Cooperative Associations by Eligible Institutions.  
 4447s. Disclosure of Agreements for Payment of Laboratory Tests.  
 4447t. Determination of Death.  
 4447u. Home Health Services.  
 4447v. Circuses, Carnivals, and Zoos.  
 4447w. Reports and Assistance to Veterans Exposed to Agent Orange, Chemical Defoliants or Herbicides or Other Causative Agents.

Art. 4414. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11

Arts. 4414a, 4414aa. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983

Art. 4414b. Texas Department of Health; Texas Board of Health

#### Definitions

Sec. 1.01. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the Commissioner of Health.
- (3) "Department" means the Texas Department of Health.

#### Creation

Sec. 1.02. To better protect and promote the health of the people of Texas, the Texas Board of Health and the Texas Department of Health are created. The Texas Department of Health consists of the commissioner of health, an administrative staff, and the hospitals known as the San Antonio State Chest Hospital and the Harlingen State Chest Hospital.

#### Application of Sunset Act

Sec. 1.03. The Texas Board of Health and the Texas Department of Health are subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act the board and the department are abolished effective September 1, 1985.

#### Texas Board of Health

Sec. 1.04. (a) The board consists of 18 members appointed by the governor with the advice and consent of the senate. The governor shall make appointments so that the board is composed of:

- (1) six members who are physicians currently licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment;
- (2) two members who are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;
- (3) one member who is a dentist licensed under the laws of this state and who has been engaged in the practice of dentistry in this state for at least five years prior to appointment;
- (4) one member who is a registered nurse licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;
- (5) one member who is a veterinarian licensed under the laws of this state and who has been engaged in the practice of veterinary medicine in this state for at least five years prior to appointment;
- (6) one member who is a pharmacist licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;
- (7) one member who is a nursing home administrator licensed under the laws of this state and who has been engaged as a nursing home administrator

in this state for at least five years prior to appointment;

(8) one member who is an optometrist licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member who holds a civil engineering degree from an accredited university or college, is licensed by this state as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member who is a doctor of chiropractic licensed under the laws of this state and who has been engaged in the practice of chiropractic in this state for at least five years prior to appointment; and

(11) two members who are citizens who have none of the qualifications required of the other 16 members.

(b) Members of the board serve for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year.

(c) Biennially, the governor shall designate one member as chairman and one member as vice-chairman.

(d) A majority of the members of the board constitute a quorum for the transaction of business.

(e) The board shall meet in Austin or in other places fixed by the board.

(f) The board shall meet at least once each month on dates determined by the board and shall hold special meetings when called by the chairman. The chairman shall give timely notice of any special meeting to each member.

(g) Members of the board receive no fixed salary. A board member is entitled to \$50 per day for each day spent in attending board meetings. A board member is also entitled to reimbursement for travel expenses and other necessary expenses incurred while performing an official duty.

(h) Members of the board qualify by taking the constitutional oath of office. On presentation of the oath of office and the certificate of appointment, the secretary of state shall issue commissions to them, which are evidence of their authority to act.

#### Duties of Board

Sec. 1.05. (a) The board shall:

(1) have general supervision and control of all matters pertaining to the health of citizens of this state;

(2) employ the commissioner of health;

(3) investigate the conduct of the work of the department and for this purpose shall have access at any time to all departmental books and records

and may require written or oral information from a departmental officer or employee;

(4) adopt rules, not inconsistent with law, for its own procedure and for the conduct and performance of every duty imposed on the board, the department, or the commissioner by law and shall file a copy of the rules with the department; and

(5) examine, investigate, enter, and inspect as the board determines necessary any public place or public building for the discovery and suppression of disease and for the enforcement of any health or sanitation law of this state.

(b) The board is responsible for the adoption of policies and rules and for the government of the department. The board shall supervise the commissioner's administration and enforcement of the health laws of the state. The board may delegate in writing any power or duty imposed on it by law, except the power or duty to adopt rules, to the commissioner of health or, in his absence, to the person acting as commissioner of health, including the authority to make final orders or decisions.

(c) The board has all the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.

(d) The board may appoint advisory committees to assist the board in performing its duties. If not otherwise specified by law, a member of an advisory committee appointed by the board is entitled to receive \$50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees. Two members of each advisory committee must be representatives of the general public. A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation.

#### Commissioner of Health

Sec. 1.06. (a) The commissioner is the executive head of the department.

(b) The commissioner is employed by the board and serves at the will of the board.

(c) The commissioner must be a person licensed to practice medicine in this state.

(d) The commissioner shall administer and enforce the health laws of this state under the board's supervision.

(e) The commissioner shall perform the duties assigned to him by the board and state law, subject to the provisions of this Act.

#### Appropriations; Grants; Donations

Sec. 1.07. To carry out its duties and functions, the department may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation. The department may accept donations and contributions to be expended in the interest of the public health and the enforcement of public health laws. The commissioners court of any county shall have the authority to appropriate and expend money from the general revenues of its county for and in behalf of public health and sanitation within its county.

[Acts 1983, 68th Leg., p. 522, ch. 109, § 1, eff. May 17, 1983.]

Sections 2 and 3 of the 1983 Act provide:

"Sec. 2. Any delegation before the effective date of this Act by the Texas Board of Health to the commissioner of health or to any designee of the board or the commissioner to perform any duties, acts, or functions, including the power to make final orders and decisions, is ratified.

"Sec. 3. The members of the Texas Board of Health who hold office on the effective date of this Act serve until the expiration date of their terms."

#### Art. 4414c. Fees for Public Health Services

##### Definitions

Sec. 1. As used in this Act the following terms have the meanings indicated:

- (1) "Board" means Texas Board of Health.
- (2) "Department" means Texas Department of Health.

##### Fees; Authorization; Rules; Maximum Amounts and Schedules; Inability to Pay

Sec. 2. (a) The board by rule may charge fees to persons who receive public health services from the department.

(b) The board by rule may require department contractors to charge fees for public health services provided by department contractors participating in the department's programs.

(c) The amount of a fee for service may not exceed the cost to the department of providing the service.

(d) The board may establish a schedule of fees and in establishing such a schedule shall take into account a person's ability to pay the entire amount of a fee.

(e) The board may not deny public health services to a person because of the person's inability to pay for services.

##### Procedure for Collection of Fees

Sec. 3. (a) The board shall establish procedures for the collection of fees for services to be employed by the department and by those department contractors required by the board to charge fees.

(1) The fees may be collected either prior to the services being performed or by billing after the services are performed.

(2) The department should make reasonable effort to collect those fees billed after services have been performed, but the board by rule may waive collection procedures when the administrative costs exceed the fees to be collected.

(b) If the board elects to require payment in cash by program participants, the money received shall be deposited locally at the end of each day and retained by the department for a period not to exceed seven days, at the end of which time the money shall be deposited in the State Treasury.

(c) The department shall deposit all money collected for fees charged under Subsection (a) of Section 2 of this Act to a special fee fund in the State Treasury to be entitled the Texas Department of Health Public Health Services Fee Fund. All fees in the Texas Department of Health Public Health Services Fee Fund are appropriated to the department. The department shall maintain proper accounting records to allocate this special fund between the various state and federal programs generating the fees and administrative costs incurred in the collection of the fees.

(d) All money collected by department contractors for fees charged under Subsection (b) of Section 2 of this Act shall be retained by the department contractors and used in accordance with contract provisions.

##### Department's Right of Subrogation

Sec. 4. (a) In furnishing public health services to a person, the department is subrogated to the person's right of recovery from:

- (1) personal insurance;
- (2) another person for personal injury caused by the other person's negligence or wrongdoing; or
- (3) any other source.

(b) The department's right of subrogation is limited to the cost of the services provided.

(c) The board or the board's delegatee may totally or partially waive the department's right of subrogation when the board or the delegatee finds that enforcement would tend to defeat the purpose of the department's program or if the administrative expense of enforcement would be greater than any expected recovery of the department's expenditures.

(d) The board may adopt rules for the enforcement of the department's right of subrogation.

**Modification, Suspension or Termination of Services; Notice and Hearing**

Sec. 5. The department may modify, suspend, or terminate services to a person for nonpayment of billed services after notice to the persons affected and the opportunity for a fair hearing. The criteria for the department's action and the fair hearing procedures shall be described in board rules.

**Additional Rules**

Sec. 6. In addition to the rulemaking authority given to the board in specific sections of this Act, the board may adopt any other rules as necessary to implement the Act.

**Construction With Other Laws**

Sec. 7. This Act does not repeal or modify existing statutes fixing the amount, directing the disposition, or prohibiting the collection of any fee or charge nor does this Act repeal or modify existing statutes prescribing the basis for calculating any fee or charge. This section does not restrict the redetermination or recalculation in accordance with the prescribed basis of the fee or charge.

[Acts 1983, 68th Leg., p. 4082, ch. 641, eff. Aug. 29, 1983.]

**Art. 4415. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

**Art. 4415a. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

Section 3 of the 1983 repealing act provides:

"The members of the Texas Board of Health who hold office on the effective date of this Act serve until the expiration date of their terms."

See, now, art. 4414b, § 1.04(a) to (c).

**Art. 4416. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

**Art. 4416a. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

See, now, art. 4414b, § 1.04(d) to (f).

**Art. 4417. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

**Art. 4417a. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

See, now, art. 4414b, § 1.04(g), (h).

**Art. 4418. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

**Art. 4418a. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

Section 2 of the 1983 repealing act provides:

"Any delegation before the effective date of this Act by the Texas Board of Health to the commissioner of health or to any designee of the board or the commissioner to perform any duties, acts, or functions, including the power to make final orders and decisions, is ratified."

See, now, art. 4414b, §§ 1.05(a)(2) to (4), (b), (d), 1.06(b), (c).

**Arts. 4418b to 4418c. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(1), (2), eff. May 28, 1975**

**Art. 4418d. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

Section 2 of the 1983 repealing act provides:

"Any delegation before the effective date of this Act by the Texas Board of Health to the commissioner of health or to any designee of the board or the commissioner to perform any duties, acts, or functions, including the power to make final orders and decisions, is ratified."

See, now, art. 4414b, § 1.06(a), (d), (e).

**Art. 4418e. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(1), eff. May 28, 1975**

**Art. 4418f. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

See, now, art. 4414b, § 1.07.

**Art. 4418f-1. Grants or Contracts by Department for Purchases of Public Health Services, Equipment, and Supplies**

(a) The Texas Department of Health may provide funds by grant or contract to qualified entities, including but not limited to individuals, corporations, local units of government, and other state agencies for the purchase of services, equipment, and supplies to be used to promote and maintain the public health.

(b) The expenditure of funds received by the local units of government from the Texas Department of Health shall be governed by the applicable provisions of the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes), and the rules adopted thereunder.

(c) The expenditure of the funds received by other state agencies from the Texas Department of Health shall be subject to the applicable provisions of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) and the rules adopted thereunder.

(d) The expenditure of funds received by any other qualified entity from the Texas Department of Health shall be governed by the provisions of the grant or the contract between the entity and the department.

[Acts 1983, 68th Leg., p. 1073, ch. 241, § 1, eff. Sept. 1, 1983.]

**Art. 4418g. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983**

See, now, art. 4414b, § 1.05(c).

**Art. 4418g-1. The Texas Board of Health Dental Advisory Committee**

**Appointment, Composition, Terms, Vacancies, and Officers**

Sec. 1. (a) The Texas Board of Health Dental Advisory Committee is composed of nine members. The members shall be appointed as follows:



(1) the governor shall appoint four dentists and one dental hygienist licensed under the laws of this state, each of whom has engaged in the practice of dentistry or dental hygiene in this state for at least five years prior to appointment, three of whom are members of the Texas Dental Association, and one of whom is a member of the Gulf States Dental Association, and one of whom is a member of the Texas Dental Hygienists Association;

(2) the State Board of Dental Examiners shall appoint one of its members;

(3) the governor shall appoint two members who are representatives of the general public, who are not licensed dentists, and who do not have, other than as consumers, financial interests in the dental health industry;

(4) on a rotating basis, each of the three dental schools in the state shall appoint one member who is a member of the faculty of the dental school.

(b) Except for the initial appointees, the nine voting members of the advisory committee hold office for staggered terms of six years, with the terms of three members expiring on February 1 of each even-numbered year. The Texas Board of Health shall designate three initial members for terms expiring on February 1, 1984, three initial members for terms expiring on February 1, 1982, and three initial members for terms expiring on February 1, 1980.

(c) A vacancy on the advisory committee for any cause shall be filled by a successor who is appointed in the same manner as his or her predecessor. The successor shall serve for the unexpired term of his or her predecessor.

(d) At a regular meeting in April of each year, the advisory committee shall elect from its membership a chairman, vice-chairman, and secretary.

(e) A member of this advisory committee serves without compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing the duties of the advisory committee.

#### Application of Sunset Act

Sec. 2. The advisory committee is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the advisory committee is continued in existence as provided by that Act, the advisory committee is abolished and this Act expires effective September 1, 1985.

#### Quorum and Meetings

Sec. 3. A majority of the members of the advisory committee constitute a quorum for the transaction of business. The committee shall meet at Austin or at other places fixed by the committee at least four times per calendar year on dates to be fixed by the committee and shall hold special meetings at the call of the chairman. Timely notice of the special

meetings shall be given to each member of the committee.

#### Funds; Study of Supply and Demand for Dental Services; Advice

Sec. 3A. The Texas Department of Health may provide funds for the advisory committee to hire necessary staff and may provide funds for office space, equipment, postage, travel, and printing. In addition to the duties imposed upon the advisory committee, the committee may conduct a comprehensive study of the supply and demand for dental services within Texas and advise the appropriate governmental entities regarding anticipated dental educational programs necessary to satisfy the dental care needs of the people of Texas.

#### Oath of Office

Sec. 4. The members of the committee shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and on presentation of the oath of office, the secretary of state shall issue commissions to them, which shall be evidence of their authority to act as members of the committee.

#### Powers and Duties

Sec. 5. The advisory committee shall:

(1) investigate the various public dental service programs in the state, identify the various funding sources for the programs, and make recommendations to the Texas Board of Health about the best manner in which to administer those funds to provide the maximum use of the funds for the purpose of providing the best dental care possible to the citizens of the state within the available funding levels;

(2) review current rules adopted by the Texas Board of Health and rules proposed by the board relating to dental health care and draft proposed recommended rules relating to dental health care or relating to the conduct and performance of the duties relating to dental health care imposed on the board by law and submit those recommendations to the board for final approval and implementation; and

(3) make investigations and studies of the dental health care delivery system in the state necessary to develop procedures by which the provision of dental services can be coordinated to provide the most economical and effective dental care delivery system to serve the maximum number of patients from current funding levels and submit the procedures to the Texas Board of Health for approval and implementation.

[Acts 1979, 66th Leg., p. 787, ch. 349, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 537, ch. 220, §§ 1, 2, eff. Sept. 1, 1981.]

**Art. 4418h. Health Planning and Development Act**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Short Title**

Sec. 1.01. This Act may be cited as the Texas Health Planning and Development Act.

**Policy, Purpose**

Sec. 1.02. The policy of this state and the purpose of this Act are to insure that health-care services and facilities are made available to all citizens in an orderly and economical manner and to meet the requirements of, and to implement, the National Health Planning and Resources Development Act of 1974 (P.L. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (P.L. 96-79),<sup>1</sup> the federal rules and regulations promulgated under that Act, and other pertinent federal authority. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that health-care services and facilities be provided in a manner that is cost effective and that is compatible with the health-care needs of the various areas and populations of the state.

<sup>1</sup> 42 U.S.C.A. § 300k et seq.

**Definitions**

Sec. 1.03. In this Act:

(1) "Applicant" means any person who makes application to the commission pursuant to this Act.

(2) "Application" means a written request for consideration by the commission pursuant to this Act.

(3) "Certificate holder" is the person named in the certificate of need and any person owning title or interest in the person named in the certificate of need.

(4) "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by this Act and by rule of the commission.

(5) "Commission" means the Texas Health Facilities Commission.

(6) "Department" means the Texas Department of Health.

(7) "Development" means those activities, other than planning or predevelopment activities, as determined by rule of the commission, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

(8) "Federal law" includes the National Health Planning and Resources Development Act of 1974 (P.L. 93-641), as amended by the Health Planning

and Resources Development Amendments of 1979 (P.L. 96-79),<sup>1</sup> and Public Laws 79-725,<sup>2</sup> 88-164,<sup>3</sup> 89-749,<sup>4</sup> 91-515,<sup>5</sup> and 92-603,<sup>6</sup> the federal rules and regulations promulgated under those Acts, and other pertinent federal authority.

(9) "Health-care facility," referred to as "facility," means, regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

(10) "Health maintenance organization," referred to as "HMO," has the meaning given the term in the Texas Health Maintenance Organization Act.<sup>7</sup>

(11) "Health systems agency" means a nonprofit private corporation or public regional planning body acting as an instrumentality of the federal government and designated in accordance with federal law and subject to approval of the governor and his periodic review and redesignation.

(12) "Institutional health-care services," referred to as "services," means the health-care services provided in health-care facilities and includes, but is not limited to, inpatient or outpatient services for observation, diagnosis, treatment, or rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, drug abuse, chronic, rehabilitative, or other conditions.

(13) "Party" means any person who by formal intervention or action as determined by rule of the commission participates in the consideration of a specific application by the commission.

(14) "Person" means an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, any receiver, trustee, assignee, or other similar representative or any other legal entity.

(15) "Project" means services, facility, or HMO requiring a certificate of need or other action under this Act.

(16) "Statewide Health Coordinating Council" means the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions.

(17) "Capital expenditure" means an expenditure made by or on behalf of a health-care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance.

(18) "Expenditure minimum" means a capital expenditure that exceeds \$150,000 or any other unadjusted minimum as may be defined by federal law.

<sup>1</sup> 42 U.S.C.A. § 300k et seq.

<sup>2</sup> See 42 U.S.C.A. § 201 et seq.

<sup>3</sup> 42 U.S.C.A. § 2661 et seq.

<sup>4</sup> See 42 U.S.C.A. § 246.

<sup>5</sup> 42 U.S.C.A. § 299 et seq.

<sup>6</sup> 42 U.S.C.A. § 401 et seq.

<sup>7</sup> Insurance Code, art. 20A.01 et seq.

#### Administrative Procedure

Sec. 1.04. The Administrative Procedure and Texas Register Act<sup>1</sup> applies to all proceedings under this Act except to the extent inconsistent with this Act.

<sup>1</sup> Article 6252-13a.

#### Authority of the Governor

Sec. 1.05. As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of his office to the commission or the department.

#### Interagency Contracts

Sec. 1.06. Agencies, departments, instrumentalities, grantees, political subdivisions, and institutions of higher education of the state shall cooperate with the commission and the department in the performance of their assigned duties and functions.

#### Limitations on Powers

Sec. 1.07. Nothing in this Act shall be construed to authorize the commission or the department or any employee or official of the commission or the department to:

(1) exercise any supervision or control over the practice of medicine or the manner in which physician's services in private practice are provided, or over the selection, tenure, compensation, or fees of any physician in the delivery of physician's services;

(2) perform any duty or function under the provisions of Title XI of the Social Security Act (Section 249(f) of P.L. 92-603)<sup>1</sup> or rules or regulations promulgated thereunder; or

(3) apply for grants under the provisions of Section 1526, P.L. 93-641, as amended by P.L. 96-79.<sup>2</sup>

<sup>1</sup> 42 U.S.C.A. § 1301 et seq.

<sup>2</sup> 42 U.S.C.A. § 300m-5.

#### Health-Related State Agencies: Regional Administration

Sec. 1.08. The Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and as directed by the governor, other health-related state agencies shall divide the state into regions for administrative or regulatory purposes that coincide with the health service areas

established pursuant to P.L. 93-641, as amended by P.L. 96-79.<sup>1</sup>

<sup>1</sup> 42 U.S.C.A. § 300k et seq.

### SUBCHAPTER B. TEXAS HEALTH FACILITIES COMMISSION

#### Establishment

Sec. 2.01. The Texas Health Facilities Commission is established and is administratively attached to the Texas Department of Health. The department, at the request of the commission, shall provide administrative assistance to the commission; and the department and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The department, at the request of the commission, shall submit the commission's budget requests to the legislature.

#### Application of Sunset Act

Sec. 2.01a. The Texas Health Facilities Commission is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the commission is abolished, and Subchapters B and C of this Act expire effective September 1, 1985.

<sup>1</sup> Article 5429k.

#### Composition

Sec. 2.02. The commission is under the direction of three commissioners appointed by the governor with the advice and consent of the senate. At least one commissioner, at the time of appointment, must be a resident of a county having a population of less than 50,000, according to the last preceding federal decennial census. However, a commissioner by moving to another county does not vacate the office. The governor shall not appoint to the commission any person who is actively engaged as a health care provider or who has any substantial pecuniary interest in a facility.

#### Terms of Office

Sec. 2.03. Commissioners hold office for staggered terms of six years, with the term of one commissioner expiring on February 1 of each odd-numbered year.

#### Chairman, Vice-chairman

Sec. 2.04. The governor shall biennially designate one commissioner to serve as chairman and one commissioner to serve as vice-chairman.

#### Compensation; Expenses

Sec. 2.05. Each commissioner is entitled to a salary within the limits of legislative appropriations and to reimbursement for actual and necessary traveling expenses incurred in performing their official duties.

**General Duties of Commission**

Sec. 2.06. In addition to the other powers and duties prescribed by this Act, the commission shall:

- (1) administer a state certificate of need program as prescribed by this Act and to comply with federal law;
- (2) promulgate and adopt rules determined to be necessary for the administration and enforcement of Subchapters B and C of this Act;
- (3) issue written orders regarding certificates of need, declaratory rulings, and other matters which may properly come before it;
- (4) make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or the legislature may require;
- (5) administer all funds entrusted to the commission; and
- (6) prescribe the personnel policies for the commission and perform other duties and functions that may be prescribed by law.

**Executive Officer**

Sec. 2.07. (a) The chairman is the chief executive and administrative officer of the commission.

(b) In addition to the other powers and duties prescribed by this Act, the chairman as chief executive officer of the commission shall:

- (1) administer the duties and functions of the commission;
  - (2) employ and remove personnel and prescribe their duties, responsibilities, and compensation; and
  - (3) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission.
- (c) In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman.

**Offices and Divisions**

Sec. 2.08. The commission shall establish offices and divisions of the commission that it deems necessary to carry out the functions and duties of the commission. The commission may assign functions and duties to the various offices and divisions, provide for additional offices and divisions, and reorganize the commission if necessary to improve its efficiency or effectiveness.

**Funds**

Sec. 2.09. For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

**Review of Institutional Health Services**

Sec. 2.10. The commission, after consultation with the department, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies, shall review and determine, if required by and pursuant to federal law, the appropriateness of all institutional health services being offered in the state and shall make public its determinations by filing a report with the secretary of state.

**Capital Expenditure Review Program**

Sec. 2.11. The commission, when authorized by the governor, may negotiate an agreement with the Secretary of Health and Human Services on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act,<sup>1</sup> the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the commission determines that such a review program would be in the best interest of the people of Texas.

<sup>1</sup>42 U.S.C.A. § 1320a-1.

**SUBCHAPTER C. STATE CERTIFICATE OF NEED PROGRAM****Services and Facilities Requiring Certificates**

Sec. 3.01. (a) Each person must obtain from the commission a certificate of need in accordance with this Act for a proposed project to:

- (1) obligate a capital expenditure by or on behalf of a health-care facility that exceeds the expenditure minimum in this Act;
  - (2) offer a new institutional health-care service;
  - (3) terminate an existing institutional health-care service where the termination is associated with the obligation of any capital expenditure;
  - (4) acquire major medical equipment costing more than the expenditure minimum in this Act, unless the acquisition is exempt by commission rule pursuant to federal law; the commission shall, by rule, exempt such acquisitions to the maximum extent permitted by federal law;
  - (5) substantially change the bed capacity of a health-care facility where the change is associated with the obligation of any capital expenditure; or
  - (6) acquire an existing health-care facility where the acquisition is associated with the obligation of any capital expenditure, unless the acquisition is exempt by commission rule pursuant to federal law; the commission shall, by rule, exempt such acquisitions to the maximum extent permitted by federal law.
- (b) The commission shall review according to selected criteria a proposed project which is solely designed to eliminate or prevent imminent safety

hazards or to comply with licensing, accreditation, or certification standards.

(c) This section applies to a proposed project by an HMO's ambulatory care facility or by or on behalf of an inpatient health-care facility controlled directly or indirectly by an HMO or combination of HMOs only in those circumstances described in P.L. 96-79.<sup>1</sup>

(d) The commission by rule shall define and determine the terms and conditions under which a project comes within the meaning of this section. In this regard, the commission by rule shall exempt, to the extent permitted by federal law, the acquisition of major medical equipment to be used solely for research, the offering of an institutional health service solely for research, or the obligation of capital expenditures solely for research. In addition, the commission shall promulgate rules for determining the costs of acquiring facilities or equipment if facilities or equipment are leased or donated.

<sup>1</sup> 42 U.S.C.A. § 300k et seq.

Sec. 3.02. Repealed by Acts 1981, 67th Leg., p. 1798, ch. 393, § 12, eff. Sept. 1, 1981.

#### Declaratory Ruling

Sec. 3.03. On the application of a person sufficiently describing a proposed project, the commission may issue a declaratory ruling on whether this Act requires a certificate of need for the project. If the commission rules that a certificate of need is required, the applicant may apply for a certificate of need and may seek judicial review of the declaratory ruling only in proceedings to review the denial of a certificate of need as provided by this Act.

#### Application for Certificate of Need

Sec. 3.04. (a) A person may apply for a certificate of need by submitting a written application to the commission. The application must be prepared in the form and contain the information required in rules promulgated by the commission.

(b) Each application for a certificate of need must be accompanied by the required application fee except as prohibited by federal law. All application fees shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of this Act.

#### Application Fee

Sec. 3.05. The maximum application fee is \$7,500 or 2 percent of the total cost of the proposed project, whichever is less, and the minimum application fee is \$25, and within these limits the commission by rule shall establish a schedule of application fees for the various types and sizes of projects, with fees for the more substantial projects set at nearer the maximum and fees for the smaller projects set at nearer the minimum.

#### Application Review

Sec. 3.06. (a) Each application for a certificate of need shall be reviewed and a determination made within 10 working days after the date of its receipt whether the application complies with the rules governing the preparation and submission of applications.

(b) If the application complies with the rules governing the preparation and submission of applications, the chairman shall, pursuant to commission rules:

(1) declare the application to be sufficient and shall accept and date the application;

(2) schedule a hearing on the application which on a showing of good cause by the applicant or the parties, may be postponed for a reasonable period of time not to exceed 45 days; and

(3) provide written notification to affected persons and to the health systems agency within whose boundary the project is located of the time, place, and matter to be considered at the hearing.

(c) If the application does not comply with the rules governing the preparation and submission of applications, the chairman shall notify the applicant in writing and provide a list of deficiencies.

(d) All applications for certificates of need shall be filed in the commission, indexed, and made available for public inspection.

#### Publication of Notice by Applicant

Sec. 3.07. (a) The applicant shall publish public notice of the hearing to be held by the commission on an application for a certificate of need in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed.

(b) The commission shall prescribe the form of publication and the date or dates of publication which shall not be later than 30 days after the application is accepted and dated.

#### Review by Health Systems Agencies

Sec. 3.08. (a) A health systems agency may review an application transmitted to it and may provide written comments to the commission and to the applicant not later than the 60th day after the day the application is dated.

(b) The review, if any, of an application by a health systems agency must be conducted according to rules promulgated by the commission.

(c) A health systems agency may hold a hearing on an application referred to it. The hearing must be conducted in accordance with rules promulgated by the commission.

(d) If at the time of the application a health systems agency is not currently designated for the area in which the project is to be located, the

commission may perform the functions of the health systems agency.

#### Commission Hearings

Sec. 3.09. (a) The chairman shall designate a hearing officer to conduct a hearing for each dated application. The hearing officer must be an employee of the commission who is an attorney licensed to practice law in this state.

(b)(1) If a health systems agency has submitted written comments concerning an application to the commission and the applicant as provided in Section 3.08 of this Act, a representative or representatives of that agency may present testimony and evidence for or against that application at the hearing. Any other interested party may present evidence or testimony for or against an application pursuant to rules promulgated by the commission. Testimony may be presented orally or in writing.

(b)(2) The commissioner of insurance may review an HMO application and provide written comments to the commission. The review and comment on an HMO application by the commissioner of insurance must be conducted according to rules promulgated by the commission. When written comments are provided on an HMO application, the commissioner of insurance or a representative may participate in the hearing on the application as a party.

(c) The hearing officer shall keep a complete record of each hearing and transmit the record to the commission when completed. Each record must include in addition to any other items required by rules promulgated by the commission:

- (1) evidence received or considered;
- (2) a statement of matters officially noticed;
- (3) objections and rulings thereon;
- (4) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing; and

(5) the recommendations of the hearing officer concerning the approval or disapproval of the application.

(d) The hearing officer shall forward to the commission the complete record of the hearing on an application for a certificate of need as provided by commission rules.

(e) At the request of the applicant and with the concurrence of the commission, an uncontested application may be reviewed by and acted on by the commission without a hearing under rules promulgated by the commission.

#### Criteria for Review

Sec. 3.10. (a) The commission shall promulgate rules establishing criteria to determine whether an applicant is to be issued a certificate of need for the proposed project.

(b) Criteria established by the commission must include at least the following:

(1) whether a proposed project is necessary to meet the health-care needs of the community or population to be served;

(2) whether a proposed project can be adequately staffed and operated when completed;

(3) whether the cost of a proposed project is economically feasible;

(4) if applicable, whether a proposed project meets the special needs and circumstances for rural or sparsely populated areas; and

(5) if applicable, whether the proposed project meets special needs for special services or special facilities.

(c) In developing criteria the commission shall consider at least the following:

(1) the recommendations, if any, of the Texas Department of Health, the Texas Board of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the governing boards of other state agencies;

(2) the relationship of a proposed project to the state health plan and the health systems plan and annual implementation plan of the appropriate health systems agency;

(3) the special needs and circumstances of facilities that provide substantial services to indigents;

(4) the special needs and circumstances of facilities that provide a substantial portion of their services to persons residing outside the areas in which the facilities are located;

(5) the possible effects of a project on existing facilities; and

(6) the special needs and circumstances of health maintenance organizations.

#### Orders of Commission

Sec. 3.11. (a) The commission shall either grant or deny a certificate of need by written order not later than the 90th day following the date of publication of public notice, unless the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, in which case the deadline for the order is extended accordingly, or unless a later date is agreed on in writing by the applicant and the commission.

(b) Copies of the order must be forwarded to the applicant, the appropriate health systems agency, and the parties of record.

(c) Copies of the order and the record of the hearing shall be filed together in the office of the commission, indexed, and made available for public inspection.

(d) The commission may prescribe as conditions to a certificate of need limits on project cost, time periods for development and completion of a project,

limits on the scope of the project, project status reports, and other conditions as may be placed in the order necessary for administering this Act.

#### Development May Commence

Sec. 3.12. Development of a project may commence only after appropriate authorization by the commission.

#### Forfeiture of Certificate

Sec. 3.13. (a) The order granting a certificate of need constitutes the determination of a need for the project and authorizes the certificate holder to commence development and proceed toward completion of the project as expeditiously as possible.

(b) A certificate of need is subject to forfeiture on the following conditions:

(1) automatically, for failure to commence development of an approved project within 180 days after the date of the order. The former certificate holder may petition the commission for the reissuance of the certificate forfeited under this subsection not later than 30 days after the date of forfeiture, and the commission may consider the petition without a hearing. The commission must approve or disapprove the petition by written order within 60 days after the date of receipt of the petition. A written order approving the petition constitutes reissuance of the certificate of need;

(2) after notice and hearing, for failure to proceed with reasonable diligence toward completion of the project;

(3) after notice and hearing, for failure of the certificate holder to comply with conditions in the written certificate of need order.

(c) The commission shall promulgate rules prescribing procedures and criteria for forfeiture proceedings.

#### Violations; Enforcement

Sec. 3.14. (a) A person who commences the development of a project without authorization from the commission is in violation of this Act.

(b) If requested by the commission, the attorney general may institute a legal action to enjoin an alleged violation of this Act or to recover civil penalties as provided by this subchapter.

(c) No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of this Act.

(d) No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this Act, by the state or a political subdivision or instrumentality of the state.

(e) A person who violates this Act is subject to a civil penalty of no greater than \$100 for each act of

violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for violations of this Act shall be deposited in the State Treasury and shall be expended by the commission for the administration and enforcement of this Act.

(f) A person who has been judicially determined to be in violation of this Act, and who has paid all imposed civil penalties and has made a proper application to the commission, shall not be deemed to be in violation of this Act.

#### Judicial Review

Sec. 3.15. An applicant or party who is aggrieved by an order of the commission granting or denying a certificate of need is entitled to judicial review under the substantial evidence rule.

### SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

#### Health Planning and Development Agency

Sec. 4.01. The Texas Department of Health is designated as the state health planning and development agency for the State of Texas.

#### General Powers and Functions

Sec. 4.02. The department shall perform the duties and functions prescribed by state law and, after consultation with the commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies, those of the state health planning and development agency.

#### Assistance to Statewide Health Coordinating Council

Sec. 4.03. The department shall assist the Statewide Health Coordinating Council in the performance of its functions.

#### Preliminary State Health Plan

Sec. 4.04. The department shall prepare, review, and revise a preliminary state health plan.

#### Assistance Under Title XVI

Sec. 4.05. No application for assistance under Title XVI of the Public Health Service Act<sup>1</sup> may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

<sup>1</sup> 42 U.S.C.A. § 300o et seq.

#### Authority to Collect Data

Sec. 4.06. (a) The department, after consultation with the commission, shall adopt rules establishing reasonable procedures for the collection and dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(c) Persons who fail to comply with the rules promulgated pursuant to this section are in violation of this Act.

#### Contracts

Sec. 4.07. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

#### SUBCHAPTER E. AMENDMENTS AND REPEALS

Sec. 5.01. [Adds § 2.24 to art. 5547-202]

Sec. 5.02. [Amends subsections. (a), (b) of art. 5547-91]

Sec. 5.03. [Amends subsec. (a) of art. 5547-93]

Sec. 5.04. [Adds § 9A to art. 4437f]

Sec. 5.05. [Adds § 6A to art. 4442c]

Sec. 5.06. [Amends §§ 1 to 5, 8 and adds § 6A to art. 4447c]

Sec. 5.07. [Amends arts. 4414a, 4415a, 4416a, 4417a, 4418a, 4418d, 4418f and adds art. 4418g]

Sec. 5.08. [Repeals arts. 4418b, 4418b-1, 4418c, 4418e, 4442c-1, and § 6 of art. 4447c]

#### SUBCHAPTER F. TRANSITION PROVISIONS AND MISCELLANEOUS

Secs. 6.01 to 6.03. Repealed by Acts 1981, 67th Leg., p. 1801, ch. 393, § 23, eff. Sept. 1, 1981.

##### Initial Terms of Reconstituted Board; Transition

Sec. 6.04. (a) In making the initial appointments of members of the Texas Board of Health Resources, as renamed and reconstituted by this Act, the governor shall designate members to serve initial terms as follows:

(1) for terms expiring February 1, 1977, two physicians, one citizen, one hospital administrator, the dentist, and the veterinarian;

(2) for terms expiring February 1, 1979, two physicians, one citizen, the civil engineer, the registered nurse, and the optometrist; and

(3) for terms expiring February 1, 1981, two physicians, the chiropractor, the nursing home administrator, the pharmacist, and one hospital administrator.

(b) The State Board of Health shall continue to function until all of the initial appointees of the board as reconstituted have been appointed and

have qualified, or until September 1, 1975, whichever is sooner.

[Acts 1975, 64th Leg., p. 832, ch. 323, §§ 1.01 to 4.07, 6.01 to 6.04, eff. May 28, 1975. Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, §§ 2, 114, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 506, ch. 236, §§ 1 to 10, eff. May 17, 1979; Acts 1981, 67th Leg., p. 1794, ch. 393, §§ 1 to 23, eff. Sept. 1, 1981.]

Section 24 of Acts 1981, 67th Leg., p. 1801, ch. 393, provides:

"The amendments made herein to Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes), shall become effective September 1, 1981, except as follows: until January 1, 1982, a certificate of need shall be required prior to (a) the development and establishment of a new Class B home health agency and (b) a service expansion or geographical expansion of an existing Class B home health agency. For purposes of this section, a Class B home health agency shall have the meaning given that term in Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes)."

**Art. 4419. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983; Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983**

See, now, art. 4414b, § 1.05(a)(1), and art. 4419b-1, § 2.02.

**Arts. 4419a, 4419b. Repealed by Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983**

See, now, art. 4419b-1, § 2.02

**Art. 4419b-1. Communicable Disease Prevention and Control Act**

#### ARTICLE 1. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act may be cited as the Communicable Disease Prevention and Control Act.

##### Purpose

Sec. 1.02. The legislature recognizes that many of the public health laws of the state were enacted under public health conditions that are not relevant to contemporary society. It is the intent of the legislature to revise the laws pertaining to identifying, reporting, preventing, and controlling communicable disease or conditions that are injurious or threaten the health of the people of Texas. While the legislature recognizes that it is the duty of the state to protect the public health, the legislature also recognizes that it is the responsibility of each person to conduct himself responsibly to prevent and control communicable disease in this state.

##### Cumulative Effect

Sec. 1.03. This Act is cumulative of all other state or federal laws relating to the prevention and control of communicable disease.

##### Definitions

Sec. 1.04. In this Act:

(1) "Board" means the Texas Board of Health.



(2) "Commissioner" means the commissioner of health.

(3) "Communicable disease" means an illness due to an infectious agent or its toxic products that arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

(4) "Department" means the Texas Department of Health.

(5) "Health authority" means a physician designated to administer state and local laws relating to public health.

(6) "Health professional" means an individual whose vocation or profession is indirectly or directly related to the maintenance of the health status of another individual or animal and whose duties require a specified amount of formal education together with, in many instances, a special examination, certificate or license, and membership in regional or national associations.

(7) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

(8) "Reportable disease" means a disease or condition for which the board requires a report.

(9) "School authority" means the superintendent of a public school system or the superintendent's designee and the principal or other chief administrative officer of a private school located in the state.

ARTICLE 2. GENERAL DUTIES AND POWERS

Commissioner

Sec. 2.01. The commissioner is responsible for the general statewide administration of this Act.

Board

Sec. 2.02. (a) The board may adopt rules necessary for the effective administration and implementation of this Act.

(b) The board shall determine which diseases, either directly or indirectly through their complications, constitute threatening risks to the public health, and the department shall provide regular reports of the incidence, prevalence, and medical and economic effects of those diseases.

(c) The board has the general supervision and general control over all matters pertaining to protecting the health of all individuals within the state and shall exercise those powers to prevent the introduction of disease into the state and to impose control measures to prevent the spread of disease in the state.

(d) Except as otherwise required by law, whenever this Act grants a power or imposes a duty on the

board, the power may be exercised or the duty performed by a designee of the board.

Department

Sec. 2.03. (a) The department may enter into contracts or agreements with persons necessary to implement this Act. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of identifying, reporting, preventing, or controlling those communicable diseases or conditions that have been determined to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this Act, the department shall require and evaluate epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health to establish the nature and magnitude of the hazards and to demonstrate the trends involved.

(d) The department may make inspections and investigations as authorized by this Act and other law.

ARTICLE 3. PREVENTION, REPORTING, AND INVESTIGATION OF COMMUNICABLE DISEASE

Prevention

Sec. 3.01. (a) The department may develop and maintain an ongoing program of health education for the prevention and control of communicable diseases.

(b) The department may contract for mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, and pamphlets that are intended to increase the public awareness of individual actions needed to prevent and control communicable disease.

(c) The department shall furnish the State Board of Education with recommendations and suggestions for the health curriculum in the public schools of the state.

(d) The board shall develop the immunization requirements for the children in the state and shall:

(1) cooperate with the Texas Board of Human Resources in formulating and implementing the immunization requirements for children admitted to child-care facilities; and

(2) cooperate with the State Board of Education in formulating and implementing all immunization requirements for students admitted to public and private elementary or secondary schools.

**Classification of Communicable Disease for Reporting**

Sec. 3.02. (a) The board shall identify and classify each communicable disease and health condition that must be reported under this Act. The classification must be based on the nature of the disease or condition and the severity of its impact on the public health.

(b) The board shall establish, maintain, and revise as necessary a list of reportable diseases.

**Reporting Requirements**

Sec. 3.03. (a) Every physician, dentist, and veterinarian licensed to practice in this state shall report to the local health authority, after his first professional encounter, each patient or animal he examines having or suspected of having a reportable disease.

(b) The local school authorities shall report to the local health authority those children attending school who are suspected of having a reportable disease. The board shall adopt rules establishing procedures for determining which children should be suspected and reported and procedures for their exclusion from school pending appropriate medical diagnosis or recovery.

(c) If a case of a reportable disease has not been reported as required by Subsections (a) and (b) of this section, it is the duty of the following persons to notify the local health authority or the department and to provide all information known to them concerning any person who has or is suspected of having a reportable disease:

- (1) each professional, registered nurse;
- (2) each medical laboratory director;
- (3) each administrator or director of a public or private temporary or permanent child-care facility or day-care center;
- (4) each administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;
- (5) each administrator of a home health agency;
- (6) each superintendent or superintendent's designee of a public or private school;
- (7) each administrator or health official of a public or private institution of higher learning;
- (8) each owner or manager of a restaurant, dairy, or other food handling or food processing establishment or outlet;
- (9) each superintendent, manager, or health official of a public or private camp, home, or institution;
- (10) each parent, guardian, or householder;
- (11) each health professional; and
- (12) each chief executive officer of a hospital.

**General Procedures for Reporting Communicable Disease**

Sec. 3.04. (a) Reports required under Section 3.03 of this Act shall be made to the health authority in the jurisdiction in which the individual or animal who has or is suspected of having the disease or condition is found.

(b) Each health authority shall keep a record of each case of a disease or condition reported to him.

**Reports of Death Due to a Communicable Disease**

Sec. 3.05. (a) If a physician knows or suspects that an individual he has attended during the individual's last illness has died of a reportable disease or a communicable or possibly epidemic disease that in the physician's judgment may be a threat to the public health, the physician shall immediately notify the health authority of the jurisdiction in which the death is pronounced or the department.

(b) If either the attending physician or the health authority requires further information concerning the cause of death of an individual in order to protect the public health, the physician or the health authority may request that an autopsy be performed with the consent of the survivors. If there are no survivors or consent for an autopsy is withheld by the survivors, the health authority shall order an autopsy to determine the cause of death. The results of the autopsy shall be reported to the department.

(c) If either a justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, 1965, determines that an individual's cause of death was a reportable disease or a communicable or possibly epidemic disease that in the coroner's or medical examiner's judgment may constitute a threat to the public health, the coroner or medical examiner shall immediately notify the health authority of the jurisdiction in which this finding was made or the department.

**Confidentiality of Reports**

Sec. 3.06. Reports of diseases furnished to the health authority or the department are confidential and may be used only for the purpose of this Act. Reports of disease are not public information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Information contained in the reports of disease may be used for statistical and epidemiological studies that are public information as long as an individual is not identifiable.

**Investigations**

Sec. 3.07. (a) The department shall investigate the causes of communicable diseases and methods of prevention.

(b) In special circumstances, the department may require special investigations of certain specified cases of disease so that it may evaluate the status

in this state of diseases of an epidemic, endemic, or sporadic nature. On request, each health authority shall provide the data according to the written instructions of the department.

(c) The commissioner, the commissioner's designee, or a health authority designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the performance of his duty to prevent or control the entry into or spread in the state of communicable disease by enforcing the provisions of this Act or the rules of the board adopted under this Act. In this section, "a public place or building" means all or any portion of an area, a structure, or a conveyance, regardless of ownership, that is not used for private residential purposes.

(d) Persons authorized to conduct investigations under this section may take samples or specimens of materials present on the premises, including samples or specimens of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples or specimens are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis. Persons securing the required samples and specimens may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

(e) The department may investigate the existence of communicable diseases in the state to determine the nature and extent of the diseases and to formulate and evaluate the control measures employed to protect the public health. For the purpose of the investigation, the department may administer oaths, summon witnesses, and compel the witness's attendance. The department may seek the assistance of a county or district court to compel the witness's attendance at a hearing for which the witness is summoned. A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section that is conducted outside the county in which the witness or deponent resides is entitled to receive a travel and per diem allowance to be set by rules adopted by the board. The allowance may not exceed the travel and per diem allowance authorized for state employees traveling in the state on official business.

(f) For the purpose of investigation or inspection, the commissioner, employees of the department, and health authorities have the right of entry onto any land or into any building, vehicle, watercraft, or aircraft and access to any individual, animal, or object that is in isolation, detention, restriction, or quarantine regardless of whether the isolation, detention, restriction, or quarantine is instituted by the commissioner, employees of the department, or a health authority or is a voluntary isolation, detention, restriction, or quarantine undertaken on instructions from a private physician.

#### ARTICLE 4. CONTROL OF COMMUNICABLE DISEASES

##### General Provisions

Sec. 4.01. (a) Unless specifically preempted by the board, a health authority has supervisory authority and control over the administration of communicable disease control measures in the area under the jurisdiction of the health authority, except that any control measures imposed by a health authority must be consistent with and equal to or more stringent than the control measure standards contained in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the area under the jurisdiction of the health authority may be amended, revised, or revoked by the board if the board finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) As used in this section, the term "control measures" includes, but is not limited to:

- (1) immunization;
- (2) detention;
- (3) restriction;
- (4) disinfection;
- (5) decontamination;
- (6) isolation;
- (7) quarantine;
- (8) disinfection;
- (9) chemoprophylaxis.

(d) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

##### Application of Control Measures to an Individual

Sec. 4.02. (a) If the department or health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual or the individual's parent, legal guardian, or managing conservator, if the individual is not of legal age, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in the state. All orders must be in writing and be delivered personally to the individual if the individual is of legal age or to the individual's parent, legal guardian, or managing conservator if the individual is not of legal age. In the absence of clinical or subclinical disease, the order is not effective after the disease is no longer communicable or after the longest usual incubation period for the suspected disease.

(b) An individual may be quarantined if the individual or the individual's parent, legal guardian, or

managing conservator, if the individual is not of legal age, fails or refuses to comply with the written orders of the department or health authority as required by Subsection (a) of this section and the individual is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health. The board shall identify communicable diseases that present a threat to the public health if not immediately controlled. The department or health authority may request a magistrate to issue a warrant. Based on the affidavit of the department or a health authority that the individual is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health, the magistrate may issue a warrant ordering a peace officer to take the individual into custody and to transport the individual to a hospital or other facility considered suitable by the commissioner. A jail or other similar detention facility may not be used unless the facility is specifically equipped and staffed to provide disease-control measures. The head of the hospital or other facility designated by the commissioner shall admit the individual and cooperate with the health authority and the department to implement control measures.

(c) If the individual is not of legal age, the department or health authority issuing the warrant for detention shall immediately notify the individual's parent, legal guardian, or managing conservator by registered or certified mail or by personal service.

(d) Without unnecessary delay, the individual or the parent, legal guardian, or managing conservator shall be taken before a magistrate of the county in which the individual is detained. The magistrate in clear language shall advise the individual or the parent, legal guardian, or managing conservator of the order that is alleged to have been violated. The individual or the parent, legal guardian, or managing conservator is entitled to representation by counsel should he so desire. The magistrate shall appoint counsel on request of an individual who cannot afford to retain private counsel. The county in which the individual resides shall pay all reasonable and necessary expenses of appointed counsel. If the individual is a nonresident of the state, the court shall certify the amount of the reasonable and necessary expenses of appointed counsel to the state comptroller of public accounts. The comptroller shall issue a warrant to the court-appointed attorney for the certified amount. On request by the department or health authority, a magistrate shall preside at the hospital or other facility where the individual is detained. The magistrate shall advise the individual that the individual will be released when he no longer presents a threat to the public health as determined by the health authority or the commissioner or on the granting of a writ of habeas corpus by a court of competent jurisdiction.

(e) Except as prescribed by this subsection, an individual detained shall pay the expense of the

required medical care and treatment. The medical expenses of an individual who is a resident of the state, is indigent and without the financial means to pay for part or all of the required medical care or treatment, and is not eligible for benefits under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility shall be paid by the county or hospital district of the individual's residence. The medical expenses of a nonresident individual who is indigent and without the financial means to pay for part or all of the required medical care and treatment may be paid by the state to the extent that the individual is not eligible for benefits that will pay the expenses under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program. The provider of the medical care and treatment shall certify the reasonable amount of the required medical care to the state comptroller of public accounts. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount. The department may return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides. The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

(f) An individual ordered admitted to a publicly supported hospital under this section may, at his option and at his own expense, choose to be hospitalized at a private or other proprietary hospital subject to the approval of the board or health authority.

#### Application of Control Measures to Objects

Sec. 4.03. (a) If the department or a health authority has reasonable cause to believe that an object in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may tag the object for identification with a notice of possible infection or contamination and place the object in quarantine for the period of time necessary for a medical examination or technical analysis of the samples and specimens taken from the object to reveal either the absence or the presence of the suspected infection or contamination. The department or health authority shall send notice of its action by registered or certified mail to the person who owns or controls the object. If the object is found to be free from infection or contamination, the department or health authority shall remove the quarantine and release the object to the person who owns or controls it. If the object is found to be infected or contaminated, the department or health authority by written order may require the owner or person in control of the object to impose control measures that are technically feasible to restore the object to a noninfected or noncontaminated condition. If the control meas-

ures are effective, the department or health authority shall remove the quarantine and release the object to the person who owns or controls it. If the technically feasible control measures are ineffective or if there is no technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the object to destroy it in a manner that will render it noninfected or noncontaminated to prevent the spread of infection or contamination.

(b) If a person fails or refuses to comply with the orders of the department or health authority as required by Subsection (a) of this section and the department or health authority has reason to believe that the object is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health, the department or health authority may petition the county or district court of the county in which the object is located to order the person who owns or controls the object to make necessary orders for the public health.

(c) On the filing of a petition, the court may grant injunctive relief and make temporary orders that are necessary for the health and safety of the public.

(d) The person who owns or controls the object shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the object to execute a bond in an amount not to exceed the value of the noninfected or noncontaminated object to ensure the performance of any control measures, restoration, or destruction ordered by the court. This bond shall be returned to the person when the department or health authority informs the court that the object is no longer infected or contaminated or that the object has been destroyed.

(e) If the court finds that the object is not infected or contaminated, it shall order the department or health authority to remove the quarantine tags and to release the object to the person who owns or controls it.

(f) The department shall charge the person who owns or controls the object for the cost of any control measures performed by the department's employees. The department shall deposit the payments received under this section to the credit of the General Revenue Fund to be used for the administration of this Act. A health authority shall charge the person who owns or controls the object for the cost of any control measures performed by the health authority's employees. A health authority shall return payments received to each county, incorporated municipality, or other jurisdiction in an amount proportional to that jurisdiction's or entity's contribution to the quarantine and control expense.

#### Application of Control Measures to Land, Structures, Animals, or Other Property on Land

Sec. 4.04. (a) If the department or health authority has reasonable cause to believe that a parcel of land in its jurisdiction or a structure, an animal, or other property on the land is or may be infected or contaminated with a communicable disease, the department or health authority may place the land or property in quarantine for the period of time necessary for medical examination or technical analysis of samples and specimens of materials taken from the land, structure, animal, or other property to reveal either the absence or presence of the suspected infection or contamination. The department or health authority shall send notice of its action by registered or certified mail to the person who owns or controls the land, structure, animal, or other property and shall post notice on the land and on the courthouse door. If the land, structure, animal, or other property is found to be free from infection or contamination, the department or health authority shall remove the quarantine and return control of the land or other property to the person who owns or controls the land or other property. If the land, structure, animal, or other property is found to be infected or contaminated, the department or health authority by written order may require the person who owns or controls the land to impose control measures that are technically feasible. If the control measures are effective, the department or health authority shall remove the quarantine. If the technically feasible control measures are ineffective or if there are no technically feasible control measures available for use, the department or health authority may continue the quarantine and may order the person who owns or controls the land to securely fence the perimeter of the land or any part of the land that is infected or contaminated. The department or health authority may also order the person to destroy any infected or contaminated structure, animal, or other property in a manner that will render it noninfected or noncontaminated to prevent the spread of infection or contamination or to securely seal off the infected or contaminated structure or other property to obstruct entry into the infected or contaminated areas until the quarantine is removed by the board or health authority.

(b) If a person fails or refuses to comply with the orders of the department or health authority as required by Subsection (a) of this section and the department or health authority has reason to believe that the land, structure, animal or other property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health, the department or health authority may petition the county or district court of the county or counties in which the land is located to make necessary orders for the public health.

(c) On the filing of a petition, the court may grant injunctive relief and make temporary orders that

are necessary for the health and safety of the public.

(d) The person who owns or controls the land, structure, animal, or other property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may also require the person who owns or controls the land, structure, animal, or other property to execute a bond in an amount set by the court to ensure the performance of control measures, destruction, or restoration ordered by the court. This bond shall be returned to the person when the department or health authority informs the court that the land, structure, animal, or other property is no longer infected or contaminated or that the structure, animal, or other property has been destroyed.

(e) If the court finds that the land, structure, animal, or other property is not infected or contaminated, it shall order the department or health authority to remove the quarantine and to release the land or other property to the person who owns or controls the land or property.

(f) The department shall charge the person who owns or controls the land or property for the cost of any control measures performed by the department's employees. The department shall deposit the payments received under this section to the credit of the General Revenue Fund to be used for the administration of this Act. A health authority shall charge the person who owns or controls the land or property for the cost of any control measures performed by the health authority's employees. A health authority shall return payments received to each county, incorporated municipality, or other jurisdiction in an amount proportional to that jurisdiction's or entity's contribution to the quarantine and control expense.

#### Area Quarantine

Sec. 4.05. (a) If an outbreak of communicable disease occurs in the state, the commissioner, a health authority, or two or more health authorities whose jurisdictions lie wholly or partly within the affected region may impose an area quarantine to be coextensive with the respective affected geographical area or areas in which the health authority or health authorities have jurisdiction. As appropriate in this section, "health authority" includes two or more health authorities acting under this subsection.

(b) An area quarantine may not be imposed by a health authority unless the health authority has first:

(1) consulted with and obtained the approval of the commissioner; and

(2) consulted with and obtained the approval of the governing body of each county and incorporated municipality in the geographical area over which the

health authority has jurisdiction and in whose jurisdiction the affected area is located.

(c) In the absence of preemptive action by the board under the provisions of this Act or by the governor under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes), the health authority may impose in the quarantine area under the health authority's jurisdiction the additional disease-control measures that the health authority determines are necessary and most appropriate to arrest, control, and eradicate the existing threat to the public health.

(d) If the affected geographical area lies within the jurisdiction of this state and one or more adjoining states, the department may enter into cooperative agreements with the appropriate officials or agencies of the adjoining states for:

(1) the exchange of morbidity, mortality, and other technical information;

(2) the receipt of extrajurisdictional inspection reports;

(3) the coordination of disease-control measures;

(4) the dissemination of instructions to the population of the area, operators of interstate private and common carriers, and private vehicles in transit across state borders; and

(5) the participation in other public-health activities appropriate to arrest, control, and eradicate the existing threat to the public health.

(e) During the period of area quarantine, the department or health authority may employ all reasonable means of communication to inform persons present in the quarantine area of the orders and instructions of the board or health authority. The department or health authority shall publish at least once each week during the period of area quarantine, in a newspaper of general circulation in the area, a notice of the orders or instructions currently in force with a brief explanation of their meaning and effect. Notice by publication is sufficient notice to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) An area quarantine may be terminated by the commissioner or with the commissioner's consent by a health authority.

#### Private and Common Carriers; Private Conveyances

Sec. 4.06. (a) This section applies to:

(1) all private or common carriers and private conveyances, including a vehicle, an aircraft, and a watercraft operated solely in the jurisdiction of the state; and

(2) all private or common carriers and private conveyances, including a vehicle, an aircraft, and a watercraft operated between one or more states of the United States or between the United States and

one or more foreign nations while the vehicle or craft is in the jurisdiction of the state.

(b) If the department or health authority has reasonable cause to believe that a private carrier, common carrier, or private conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the commander, captain, master, driver, or other authorized agent, owner, or operator to stop the carrier or conveyance under his control at a port of entry or a place of first landing or first arrival in the jurisdiction of the state. The department or health authority may require the commander, captain, master, driver, or other authorized agent, owner, or operator to provide a statement in a form approved by the board that includes information showing:

(1) the details of any illness suspected of being communicable that occurred during the journey;

(2) the details of any condition on board the carrier or conveyance during the journey that may lead to the spread of disease;

(3) the details of any control measures that were imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey; and

(4) any other information that is required by rules adopted by the board, including information on passengers and cargo manifests.

(c) If the department or health authority, after inspection, has reasonable cause to believe that a private carrier, common carrier, or private conveyance that has departed from or traveled through an infected or contaminated area is or may be infected or contaminated with a communicable disease, that its cargo, or a part of its cargo, or any other object on board is or may be infected or contaminated with a communicable disease, or that an individual on board has been exposed to, or is the carrier of, a communicable disease, the department or health authority may impose necessary, technically feasible control measures under the provisions of Section 4.02 or 4.03 of this Act to prevent the introduction and spread of communicable disease in the state.

(d) The owner or operator of a private carrier, common carrier, or private conveyance placed in quarantine on the order of the department or health authority, or on the order of a county or district court under the provisions of Section 4.02 or 4.03 of this Act, shall bear the expense of the control measures employed to restore the private carrier, common carrier, or private conveyance to a noninfected or noncontaminated state. The department shall charge and be reimbursed for the cost of any control measures performed by the department's employees. The board shall deposit the reimbursements to the credit of the General Revenue Fund to be used for the administration of this Act. A health authority shall charge and be reimbursed for the cost of any control measures performed by the

health authority's employees. A health authority shall return the reimbursements to each county, incorporated municipality, or other governmental entity in an amount proportional to that jurisdiction's or entity's contribution to the quarantine and control expense.

(e) The owner or claimant of any part of the cargo or other object on board the private carrier, common carrier, or private conveyance shall pay the expense of the control measures employed in a manner prescribed by Section 4.03 of this Act. The cost of services rendered or provided by the board or health authority are subject to reimbursement under the procedure prescribed by Subsection (d) of this section.

(f) A crew member, a passenger, or an individual on board the private carrier, common carrier, or private conveyance shall pay the expense of the control measures employed under the provision of Section 4.02 of this Act. The state may pay the expenses of an individual who is without the financial means to pay for part or all of the required medical care or treatment and who is not eligible for benefits under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as prescribed by Subsection (e) of Section 4.02 of this Act.

(g) A private carrier, a common carrier, a private conveyance, cargo, a crew member, a passenger, or an individual, an animal, or object placed in quarantine under this section may not be removed or may not depart from the area of quarantine until permission for removal or departure is given by the department or health authority.

(h) If the department or health authority has reasonable cause to believe that a private carrier, common carrier, or private conveyance is transporting cargo or any other object that is or may be infected or contaminated with a communicable disease through the state, the department or health authority may require that the cargo or object be transported in secure confinement or sealed within cars, trailers, holds, or compartments, as appropriate, that are secured on the order and instruction of the board or health authority.

(i) If the department or health authority has reasonable cause to believe that a private carrier, common carrier, or private conveyance is transporting cargo or any other object that is or may be infected or contaminated with a communicable disease to an intermediate or ultimate destination in the state and the intermediate or ultimate destination cannot provide the necessary facilities, the department or health authority may require that the cargo or objects in transit be unloaded at an alternate location equipped with adequate investigative and disease-control facilities.

(j) The department or health authority may proceed as authorized by Section 4.03 of this Act to

investigate and, if necessary, quarantine the cargo or object and impose any required control measure.

(k) If the department or health authority has reasonable cause to believe that a private carrier, common carrier, or private conveyance is transporting an individual who has been exposed to or is the carrier of a communicable disease, the department or health authority may require the individual, whether in transit through the state or in transit to an intermediate or ultimate destination in the state, to be isolated from other travelers and, together with his personal effects and baggage, to disembark at the first location equipped with adequate investigative and disease-control facilities. The department or health authority may proceed as authorized under Section 4.02 of this Act to investigate and, if necessary, isolate or involuntarily hospitalize the individual until discharge is approved by the department or health authority.

#### ARTICLE 5. MISCELLANEOUS PROVISIONS

##### Power to Suspend Hospital Admissions

Sec. 5.01. Except for the constitutional and statutory requirements imposed on them to care for the needy or indigent residents of the county, city, or district in which they have jurisdiction, the commissioner's court of a county, the governing body of an incorporated municipality, and the governing body of a hospital district may suspend the admission of all patients desiring admission for elective care and treatment to provide isolation and quarantine facilities during an area quarantine.

##### Limitation of Liability

Sec. 5.02. Except in cases of wilful misconduct or gross negligence, a private individual performing his duties while complying with the orders or instructions of the department or health authority issued under this Act shall not be liable for the death of or injury to persons or damage to property.

##### Exemption

Sec. 5.03. This Act does not authorize or require the medical treatment of an individual who desires treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member, except that the individual may be isolated or quarantined in an appropriate facility and must obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine. This exemption does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes) when the governor finds that a disaster has occurred or that the threat of disaster is imminent.

#### ARTICLE 6. PROHIBITED ACTS

##### Concealing Communicable Disease or Exposure to Communicable Disease

Sec. 6.01. (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the board, a health authority, or a peace officer, during the course of an investigation authorized by this Act, the fact that:

(1) he has, has been exposed to, or is the carrier of a communicable disease that constitutes a threat to the public health; or

(2) a minor child or incompetent adult of whom he is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that constitutes a threat to the public health.

(b) An offense under this section is a felony of the third degree.

##### Concealing, Removing, or Disposing of an Infected or Contaminated Animal, Object, Vehicle, Watercraft, or Aircraft

Sec. 6.02. (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation by the board, a health authority, or a peace officer as authorized by this Act.

(b) An offense under this section is a felony of the third degree.

##### Refusing Entry

Sec. 6.03. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the board, a health authority, or a peace officer presenting a valid search warrant to investigate, to inspect, or to take specimens or samples on any premises that are controlled by the person or an agent of the person acting on the person's instruction.

(b) An offense under this section is a Class A misdemeanor.

##### Violation of Court Orders Requiring Certain Control Measures

Sec. 6.04. (a) A person commits an offense if the person knowingly refuses to perform or to allow the performance of certain control measures ordered by a health authority or the department under Sections 4.02 through 4.06 of this Act.

(b) An offense under this section is a felony of the third degree.

##### Exposure of Others to Communicable Disease

Sec. 6.05. (a) A person commits an offense if:

(1) the person attends or attempts to attend a public or private place or gathering where he will be brought into contact with others if the person



knows he has a communicable disease that constitutes a threat to the public health; or

(2) the person is a parent, managing conservator, or guardian of a child or an incompetent adult and allows the child or incompetent adult to attend or attempt to attend a public or private place or gathering where the child or incompetent adult will be brought into contact with others if the person knows the child or incompetent adult has a communicable disease that constitutes a threat to the public health.

(b) An offense under this section is a Class C misdemeanor.

(c) This section does not apply if the individual is en route to or from a physician's office or medical facility and makes no intermediate stops that are not necessary to the individual's transportation.

#### Removal, Alteration, or Destruction of Quarantine Devices

Sec. 6.06. (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device in a manner that diminishes the device's effectiveness; or

(2) destroys an object the person knows is a quarantine device.

(b) An offense under this section is a Class B misdemeanor.

#### Violations of Certain Rules, Orders, or Instructions

Sec. 6.07. (a) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the board or an order or instruction of a health authority issued pursuant to a rule of the board and published during an area quarantine as required by Section 4.05 of this Act.

(b) An offense under this section is a felony of the third degree.

#### Transportation into the State of Infected or Contaminated Objects; Infected or Contaminated Private Carriers, Common Carriers, or Private Conveyances

Sec. 6.08. (a) A person commits an offense if, without first notifying the board or health authority at a port of entry or a place of first landing or first arrival in the state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that constitutes a threat to the public health;

(2) transports or causes to be transported into this state an individual whom the person knows has or is the carrier of a communicable disease that constitutes a threat to the public health; or

(3) transports or causes to be transported into this state a person, an animal, or an object by means of a private carrier, common carrier, or private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that constitutes a threat to the public health.

(b) An offense under this section is a Class A misdemeanor unless the person acted with the intent to harm or defraud another, in which case, the offense is a felony of the third degree.

[Acts 1983, 68th Leg., p. 1116, ch. 255, § 1, eff. Sept. 1, 1983.]

#### Art. 4419c. Crippled Children's Services Act

##### Short Title

Sec. 1. This Act may be cited as the Crippled Children's Services Act.

##### Definitions

Sec. 2. In this Act:

(1) "Crippled child" means a person whose physical function, movement, or sense of hearing is impaired to the extent that the person is or may be expected to be partially or totally incapacitated for educational purposes or for acquiring remunerative occupation and who:

(A) is under 21 years of age and has:

(i) a joint, bone, ossicular chain, muscle, or neurological defect or deformity, including neurofibromatosis and spina bifida; or

(ii) cancer; or

(B) has cystic fibrosis, regardless of the person's age.

(2) "Board" means the Texas Board of Health.

(3) "Cancer" means a malignant disease, including leukemia, lymphoma, and histiocytosis, characterized by unrestricted growth of abnormal cells, the natural course of which is fatal.

(4) "Department" means the Texas Department of Health.

(5) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(6) "Dentist" means a person licensed by the Texas State Board of Dental Examiners to practice dentistry in this state.

(7) "Program" means the crippled children's services program.

(8) "Rehabilitation services" means a process of physical restoration of body function destroyed or impaired by congenital defect, disease, or injury, and may include hospitalization, medical and dental care, optometric care, braces, artificial appliances, durable medical equipment, medical supplies, and occupational and physical therapy.

**Program**

Sec. 3. (a) A program is created in the department to provide rehabilitation services to crippled children who are eligible for the services. The program shall provide:

- (1) early identification of crippled children;
- (2) diagnosis and evaluation of crippled children;
- (3) rehabilitation services to crippled children; and
- (4) development and improvement of standards and services for crippled children.

(b) The program prescribed by Subsection (a) of this section may provide transportation and subsistence for eligible crippled children. The program may also provide the following services for eligible crippled children who die while hospitalized for a condition covered by the program, including:

- (1) transportation of the deceased's remains, and a parent or other person accompanying the remains, from the hospital to the place of burial within the state designated by the parent or other person legally responsible for interment;
- (2) expense of embalming if embalming is required for transportation;
- (3) cost of a casket purchased at a minimum price, if a casket is required for transportation; and
- (4) other necessary expenses directly related to the care of the deceased's remains and the return of the remains to the place of burial within the state.

(c) The State Commission for the Blind is responsible for providing services to crippled children whose sole or primary handicap is blindness or some other substantial visual handicap.

(d) The program established by this Act is separate and distinct from a financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

**Eligibility Requirements**

Sec. 4. (a) A child is not eligible to receive services provided under this Act, unless:

- (1) the child is a resident of the state;
- (2) at least one licensed physician or dentist has certified to the department that he examined the child and found the child to be a crippled child whose disability meets the medical criteria established by the board;
- (3) the physician or dentist has reason to expect that the services provided will improve the child's condition or will extend the child's ability to function independently; and
- (4) the department has determined that every person who has a legal obligation to provide services for the child is unable to pay for the entire cost of the services.

(b) A child is not eligible to receive services provided by this Act to the extent that a person who has a legal obligation to provide for the child's care and treatment is financially able to pay for all or part of the services provided by this Act. The department shall require the child or a person who has a legal obligation to provide for the child's care and treatment and who is financially able to bear a portion of the expense to pay for or reimburse the department for the portion of the cost of the services provided by the department to the child for whom application is made or by whom the services are received.

**Other Benefits**

Sec. 5. (a) In this section, "other benefit" means a benefit, other than a benefit under this Act, to which a person is entitled for payment of the costs of medical or dental care and treatment or burial, including:

- (1) benefits available from:
  - (A) an insurance policy, group health plan, or prepaid medical dental care plan;
  - (B) Title XVIII or Title XIX of the Social Security Act;<sup>1</sup>
  - (C) the Veterans Administration;
  - (D) the Civilian Health and Medical Program of the Uniformed Services; or
  - (E) workers' compensation or any compulsory employers' insurance program;
- (2) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or
- (3) benefits available from a cause of action for medical or dental expenses to a child applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this Act.

(b) A child is not eligible to receive services provided by this Act to the extent that the child or a person who has a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services provided by this Act.

(c) An applicant for or a recipient of services provided under this Act shall inform the department at the time of application or at the time the applicant receives services, of any other benefit to which the child, the child's parent, the child's managing conservator, or other person who has a legal obligation to support the child, may be entitled.

(d) The child's parent, the child's managing conservator, or other person who has a legal obligation

to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

142 U.S.C.A. § 1395 et seq. or 1396 et seq.

#### Recovery of Costs

Sec. 6. The department may recover the cost of services provided under this Act from a person who does not reimburse the department as required by Sections 4(b) and 5(d) of this Act or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

#### Modification, Suspension, or Termination of Services

Sec. 7. (a) The department may modify, suspend, or terminate services to a crippled child who is eligible for or is receiving services from the department after notice to the persons affected and an opportunity for a fair hearing.

(b) The rules adopted by the board shall contain criteria for the department's action.

(c) The board shall conduct fair hearings under the board's informal hearing rules.

#### General Provisions

Sec. 8. (a) The board shall:

(1) adopt rules prescribing the type, amount, and duration of rehabilitation and support services to be provided and the medical, financial, and other criteria for eligibility to receive services;

(2) adopt substantive and procedural rules for the selection of physicians, dentists, and hospitals for participation in the program;

(3) adopt substantive and procedural rules for the modification, suspension, or termination of services to a crippled child who is eligible for or receiving services provided under this Act; and

(4) select physicians, dentists, and hospitals to provide rehabilitation services.

(b) The department may:

(1) provide services only for conditions specified by the board;

(2) pay only for rehabilitation services provided by a physician, dentist, or hospital approved by the board, except in an emergency situation;

(3) adopt reasonable procedures and standards to govern the determination of fees and charges for program payment;

(4) take census, make surveys, and establish permanent records of crippled children;

(5) receive and expend gifts and donations for the purposes of this Act;

(6) receive funds appropriated or granted by the state or federal government to provide rehabilitation services for crippled children; and

(7) enter into contracts and agreements necessary to carry out this Act.

(c) Except as prescribed by Subsection (d) of this section, a recipient of services may select any physician, dentist, or hospital approved by the board to provide treatment. If the recipient is a minor, the person legally authorized to consent to the treatment may select the physician, dentist, or hospital.

(d) The board shall require a person selecting a physician, dentist, or hospital as prescribed by Subsection (c) of this section to use existing rehabilitation services in a location as close to the recipient's home as possible.

#### Devices and Supplies

Sec. 9. The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for crippled children. Orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for crippled children may not be considered state owned personal property and are exempt from the personal property inventory requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The state auditor shall verify the purchase of the items in the records of the department.

#### Entering Homes

Sec. 10. This Act does not entitle an employee, agent, or representative of the department, or other official agent to enter a home over the objection of a crippled child or, if the crippled child is a minor, over the objection of the child's parent, managing conservator, or guardian. This Act does not limit the authority of a parent, managing conservator, or guardian over the minor.

#### Interagency Cooperation Act

Sec. 11. The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible crippled child. A facility receiving payment under this Act shall deposit the payment in local funds.

[Acts 1945, 49th Leg., p. 298, ch. 216. Amended by Acts 1961, 57th Leg., p. 33, ch. 21, §§ 1, 2; Acts 1965, 59th Leg., p. 243, ch. 106, § 3; Acts 1965, 59th Leg., pp. 299, 300, ch. 132, §§ 1, 2; Acts 1965, 59th Leg., p. 574, ch. 291, § 3; Acts 1967, 60th Leg., p. 553, ch. 245, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 168, ch. 92, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1497, ch. 647, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1512, ch. 653, §§ 1 to 3, eff. June 13, 1979; Acts 1981, 67th Leg., p. 112, ch. 54, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 244, ch. 103, §§ 1 to 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2164, ch. 505, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2337, ch. 572, art. IV, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2352, ch. 579, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5104, ch. 929, § 1, eff. Sept. 1, 1983.]

**Art. 4419d. Repealed by Acts 1983, 68th Leg., p. 5110, ch. 929, § 2, eff. Sept. 1, 1983**

See, now, art. 4419c.

**Art. 4419e. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979**

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Human Resources Code.

**Art. 4419f. Repealed by Acts 1983, 68th Leg., p. 3404, ch. 568, § 13, eff. Sept. 1, 1983**

See, now, art. 4419g.

**Art. 4419g. Special Senses and Communication Disorders Act**

#### Short Title

Sec. 1. This Act may be cited as the Special Senses and Communication Disorders Act.

#### Purpose

Sec. 2. The purpose of this Act is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders will provide the individuals with the opportunity to achieve both academic and social status through adequate educational planning and training.

#### Definitions

Sec. 3. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.
- (3) "Department" means the Texas Department of Health.
- (4) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but less than five years of age.
- (5) "Professional examination" means a diagnostic evaluation performed by a licensed, certified, or sanctioned individual whose expertise addresses the diagnostic needs of the individual identified as having a possible special senses or communication disorder.
- (6) "Provider" means an individual, partnership, association, corporation, state agency, or political subdivision of the state that provides remedial services to individuals who have special senses and communication disorders and includes a physician, audiologist, speech pathologist, optometrist, psy-

chologist, hospital, clinic, rehabilitation center, university, or medical school.

(7) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for special senses or communication disorders.

(8) "School" means an educational institution that admits children who are five years of age or older but less than 21 years of age.

(9) "Screening" means a test or battery of tests for the rapid determination of the need for a professional examination.

(10) "Special senses" means the faculties by which the conditions or properties of things are perceived and includes vision and hearing.

#### Screening Requirements

Sec. 4. (a) The board shall adopt rules for the mandatory screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders that the board may specify. The board shall adopt a schedule for implementing the screening requirements and shall give priority to age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders. In developing the rules, the board may consider the number of individuals to be screened, the availability of personnel qualified to administer the required screening tests, the availability of appropriate screening equipment, and the availability of state and local funds for screening activities. The rules shall provide for acceptance of screening test results if the screening test has been conducted by a qualified professional utilizing acceptable screening procedures, regardless of whether that professional is under contract with the department.

(b) If the rules require an individual to be screened, the individual shall undergo approved screening tests for vision and hearing disorders and any other special senses and communication disorders specified by the board. The individual shall comply with the board's requirements as soon as possible after the individual's admission to a preschool or school and within the time period set by the board. The individual, or if the individual is a minor, the minor's parent, managing conservator, or guardian, may elect to substitute one or more professional examinations for the required screening tests.

(c) An individual is exempt from the screening requirements of this section if the screening tests conflict with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. The individual, or if the individual is a minor, the minor's parent, managing conservator, or guardian, shall submit to the admitting officer on or before the day

of admission an affidavit stating the objections to screening.

(d) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school has complied with the screening requirements set by the board or has submitted an affidavit of exemption.

(e) The chief administrator of each preschool or school shall maintain screening records for each individual who is in attendance on a form prescribed by the department, and those records must be open for inspection by the department or local health department. An individual's screening records may be transferred among preschools and schools without the specific consent of the individual, or if the individual is a minor, the minor's parent, managing conservator, or guardian.

(f) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the board. The report must be on a form prescribed by the department and must be submitted according to the board's rules.

(g) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary rather than augmented and duplicative. The department may provide technical assistance to those entities in developing screening programs.

#### Provision of Remedial Services

Sec. 5. (a) The department may provide remedial services either directly or through approved providers to individuals who have certain special senses and communication disorders and who are not eligible for special education services administered by the Central Education Agency through the public schools, but who are eligible for remedial services provided by the department.

(b) The board shall adopt rules to describe the type, amount, and duration of remedial services that the department may provide. The rules must establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services. The board may establish a schedule to determine financial eligibility and may require an individual, or if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay for or reimburse the department for a part of the cost of the remedial services provided. Remedial services may not be required without the consent of the individual, or if the individual is a minor, the minor's parent, managing conservator, or guardian.

#### Eligibility

Sec. 6. (a) In this section "other benefit" means a benefit to which an individual is entitled, other than a benefit under this Act, for payment of the costs of remedial services, including:

(1) benefits received under a personal insurance contract;

(2) payment received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(3) payments received from any other source.

(b) An individual is not eligible to receive remedial services authorized by this Act to the extent that the individual or the parent, managing conservator, or other person who has a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services. On a prior showing of good cause, the department may waive this requirement if the department finds that the enforcement of this section would tend to disrupt the administration or prevent the provision of remedial services to otherwise eligible recipients or defeat the purpose of this Act.

(c) An applicant for or recipient of remedial services authorized by this Act shall inform the department, at the time of application or at any time during eligibility and receipt of services, of any other benefit to which the applicant or recipient may be entitled or to which the parent, managing conservator, or other person who has a legal obligation to support the applicant or recipient may be entitled.

(d) The individual or the parent, managing conservator, or other person who has a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The department may recover the expenditure for services provided under this Act from a person who does not reimburse the department as required in this section or from any third party on whom there is a possible legal obligation to pay other benefits and to whom notice of the department's interests in the other benefits has been given. The department has a separate and distinct cause of action, and the commissioner of health may, without written consent, request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be ancillary or dependent on any other action. In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department first provides services to the individual to the date on which the department is reimbursed.

(f) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient

of remedial services after notice to the individual affected and the opportunity for a fair hearing. Fair hearings must be conducted in accordance with the board's informal hearing rules. The board shall adopt rules containing criteria for action under this section.

#### Additional Powers and Duties

Sec. 7. (a) The board shall adopt substantive and procedural rules necessary to administer screening activities and provide remedial services.

(b) The department may require that persons who administer special senses and communication disorders screening tests complete an approved training program, and the department may train those persons and approve training programs.

(c) The department shall monitor the quality of screening activities provided under this Act.

(d) The department may directly or through local health departments enter and inspect records maintained by a preschool or school relating to screening for special senses and communication disorders.

(e) The department may enter into contracts and agreements necessary to administer this Act, including contracts for the purchase of remedial services.

(f) The department may provide educational and other material to assist local screening activities.

(g) The department may conduct research and compile statistics relating to the provision of remedial services to individuals with special senses and communication disorders and relating to the availability of those services in the state.

(h) The department may accept appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this Act.

(i) The department shall select providers of remedial services according to criteria established in rules adopted by the board.

(j) The department shall compile and publish a report for the legislature on or before February 1 of each year describing the conduct of the program and its impact on public health.

#### Special Provisions for Speech, Language, and Hearing Screening, Professional Examination, and Remedial Services

Sec. 8. (a) A person who provides speech and language screening services authorized by this Act must be appropriately licensed or certified or trained by a person who is appropriately licensed or certified.

(b) A person who provides a professional examination or remedial services authorized by this Act for speech, language, or hearing disorders must be appropriately licensed or certified.

#### Interagency Committee

Sec. 9. (a) An interagency committee on special senses and communication disorders is established. The committee is composed of one delegate appointed by the chief administrative officer of each of the following agencies:

- (1) the State Commission for the Blind;
- (2) the Texas Commission for the Deaf;
- (3) the Texas Department of Human Resources;
- (4) the Texas Department of Mental Health and Mental Retardation;
- (5) the Central Education Agency;
- (6) the Texas Department of Community Affairs;
- (7) the Texas Department of Health;
- (8) the Texas School for the Deaf; and
- (9) the Texas School for the Blind.

(b) The committee shall adopt written procedures for the conduct of its duties and may elect officers as it finds necessary.

(c) The committee shall assist the department in coordinating among participating agencies the special senses and communication disorders screening program and the remedial services programs.

(d) The committee shall meet at least once each calendar year in Austin and at other times and locations as the committee finds necessary.

(e) Each delegate is entitled to be reimbursed by the appointing agency for expenses incurred in performing his duties under this Act. The reimbursement may not exceed the amounts specified in the General Appropriations Act as transportation and per diem allowances for state employees.

#### Children's Vision Screening Advisory Committee.

Sec. 10. (a) The board shall appoint a children's vision screening advisory committee. Appointments to the advisory committee shall be made with due regard for the race, creed, sex, religion, national origin of the appointees, and geographical representation of the members of the committee.

(b) The advisory committee is composed of:

(1) two physicians who are licensed by the Texas State Board of Medical Examiners and who specialize in ophthalmology;

(2) two optometrists who are licensed by the Texas Optometry Board, one of whom is a member of the Texas Optometric Association and one of whom is a member of the Texas Association of Optometrists; and

(3) two persons who have experience in and an interest in children's vision problems to represent the public.

(c) A person is not eligible for appointment under Subdivision (3) of Subsection (b) of this section if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the health-care field;

(2) is employed by any health care facility, corporation, or agency or by a corporation authorized to underwrite health-care insurance;

(3) governs or administers a health-care facility, corporation, or agency; or

(4) has a financial interest, other than a consumer's interest, in a health-care facility, corporation, or agency.

(d) Advisory committee members serve for staggered six-year terms, with the terms of two members expiring on August 31 of each odd-numbered year.

(e) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(f) A member of the advisory committee is entitled to be reimbursed for expenses incurred in performing the member's duties under this Act. The reimbursement is in an amount specified in the General Appropriations Act as transportation and per diem allowances for state employees.

(g) The advisory committee shall advise the board in the adoption of rules establishing standards for persons administering vision screening tests and standards for referral and follow-up.

(h) The advisory committee, after obtaining approval from the department, may invite representatives of professional and volunteer organizations to participate in its activities.

#### Children's Speech, Hearing, and Language Screening Advisory Committee

Sec. 11. (a) The board shall appoint a children's speech, hearing, and language screening advisory committee. Appointments to the advisory committee shall be made with due regard to race, creed, sex, religion, and national origin of the appointees, and geographical representation of the members of the committee.

(b) The advisory committee is composed of:

(1) a speech pathologist who is certified by the American Speech, Language, and Hearing Association;

(2) an audiologist who is certified by the American Speech, Language, and Hearing Association;

(3) a physician who is licensed by the Texas State Board of Medical Examiners and who specializes in problems of the ear, nose, and throat;

(4) a specialist in communications disorders who specializes in treatment of preschool children; and

(5) a person who has an expressed interest in children's speech, hearing, and language problems or is a parent of such a child.

(c) Advisory committee members serve for two-year terms.

(d) A vacancy on the advisory committee is filled by the board in the same manner as other appointments to the advisory committee.

(e) A member of the advisory committee is entitled to be reimbursed for expenses incurred in performing the member's duties under this Act. The reimbursement is in an amount specified in the General Appropriations Act as transportation and per diem allowances for state employees.

(f) The advisory committee shall advise the board in the adoption of rules establishing standards for persons administering speech, hearing, and language screening tests and standards for referral and follow-up, including standards for any remedial services authorized by the board.

(g) The advisory committee, after obtaining approval from the department, may invite representatives of professional and volunteer organizations to participate in its activities.

[Acts 1983, 68th Leg., p. 3394, ch. 568, §§ 1 to 11, eff. Sept. 1, 1983.]

Section 12 of the 1983 Act provides:

"Appointments. In making the initial appointments to the Children's Vision Screening Advisory Committee established by Section 10 of this Act, the Texas Board of Health shall designate two members to serve terms expiring August 31, 1985, two members to serve terms expiring August 31, 1987, and two members to serve terms expiring August 31, 1989."

**Art. 4420. Repealed by Acts 1983, 68th Leg., p. 527, ch. 109, § 4, eff. May 17, 1983; Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983**

See, now, arts. 4414b, § 1.05(a)(5), 4419b-1, § 3.07.

#### Art. 4420a. Entry of Private Residence for Health Inspection; Penalties

Sec. 1. No officer, agent or representative of the State of Texas or any instrumentality or political subdivision thereof, or any other person, may enter a private residence for purposes of making a health inspection at any time without first receiving permission from a lawful adult occupant of such residence or being authorized to inspect that particular residence for a specific public health purpose by a magistrate or by order of a court of competent jurisdiction upon a showing of a probable violation of the State Health Code or a law or ordinance pertaining to health of a political subdivision. Any evidence obtained in violation of the provisions of this Section shall be inadmissible as evidence in any criminal case prosecuted by the State of Texas or a political subdivision thereof.

Sec. 2. Any person violating the provisions of Section 1 of this Act shall be punished by confinement in the State penitentiary for a period not to exceed two (2) years or by a fine not to exceed One Thousand Dollars (\$1,000) or by both such fine and imprisonment.

Sec. 3. If any person shall knowingly turn over any evidence obtained in violation of Section 1 of this Act to the Government of the United States or

any agency or instrumentality thereof such person shall be punished by confinement in the county jail for a period not to exceed one (1) year or by a fine not to exceed Five Hundred Dollars (\$500) or by both such fine and imprisonment.

[Acts 1959, 56th Leg., 2nd C.S., p. 156, ch. 36.]

#### Art. 4420b. Industrial Homework

##### Definitions

Sec. 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 certificate shall be issued to any person under



the age of fifteen (15) years or to any person suffering from an infectious, contagious, or communicable disease, or living in a home that is not clean, sanitary, and free from infectious, contagious, or communicable disease. The Board may revoke or suspend any homemaker's certificate if it finds that the industrial homemaker 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 homemaker's certificate to assist him in performing his industrial homework.

#### Labels Required

Sec. 7. No employer shall deliver or cause to be delivered to any person any materials or articles to be manufactured by industrial homework unless there has been conspicuously affixed to each article or, if this is impossible, to the package or other container in which such goods are delivered or are to be kept, a label or other trade-mark of identification bearing the employer's name and address, printed or written legibly in English.

#### Unlawfully Manufactured Articles

Sec. 8. Any article which is being manufactured in a home in violation of any provision of this Act may be removed by the Board and may be retained until claimed by the employer. The Board shall by registered mail give notice of such removal to the person whose name and address are affixed to the article as provided in Section 7. Unless the article so removed is claimed within thirty (30) days thereafter, it may be destroyed or otherwise disposed of.

#### Records to be Kept

Sec. 9. No person having an employer's permit shall deliver or cause to be delivered or received any article for, or as a result of, industrial homework unless he shall keep in such form and forward to the Board at such intervals as it may by regulation prescribe, and on such blanks as it may provide, a record of all persons engaged in industrial homework on materials furnished or distributed by him, of all places where such persons work, of all articles which such persons have manufactured, of all agents or contractors to whom he had furnished material 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 en-

forcement of this Act. Rules and regulations necessary to carry out the provisions of this Act shall be made by the Board and violation of any such rule or regulation shall be deemed a violation of this Act.

#### Oaths and Affidavits; Hearings and Subpoenas

Sec. 11. In matters relating to this Act, the Board or its duly authorized representative may administer oaths, take affidavits, and issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents, and other evidence of whatever description; may hear testimony under oath and take or cause to be taken depositions of witnesses residing within or without this State in the manner prescribed by law for like depositions in civil actions in the Justice of the Peace Court. Subpoenas and commissions to take testimony shall be issued under seal of the Board of Health.

#### Penalties

Sec. 12. In addition to any penalties otherwise prescribed in this Act, any employer who delivers or causes to be delivered to another person any materials for manufacture by industrial homework without having in his possession a valid employer's permit as required by Section 5 of this Act, or any employer who refuses to allow the Board or its authorized representative to enter his place of business for the purpose of making investigations authorized by this Act or necessary to carry out its provisions, or who refuses to permit the Board or its authorized representative to inspect or copy any of his records or other documents relating to the enforcement of this Act, or who falsifies such records or documents or any statement which he is required by the commissioner acting under authority of this Act to make, or any employer who otherwise violates this Act or any provision of his permit, shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of not less than Twenty-five Dollars (\$25) nor more than Two Hundred Dollars (\$200) or by imprisonment for not less than thirty (30) nor more than sixty (60) days or by both such fine and imprisonment.

[Acts 1937, 45th Leg., p. 1292, ch. 481.]

#### Art. 4421. Investigations by Board

The members of said Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances, investigation of public water supplies, of any sanitary conditions, of the existence of infection, or the investigation of any matter requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provi-

sions of this chapter; and if any witness summoned by said board or any of its officers or members shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear, as for contempt of said court.

[Acts 1925, S.B. 84.]

**Arts. 4422 to 4435. Repealed by Acts 1983, 68th Leg., p. 805, ch. 190, § 2(a)(1), eff. Sept. 1, 1983**

See, now, art. 4436b.

**Art. 4436. Health Control in Cities, Towns, and Villages**

The governing body of any incorporated city, town, or village, whether organized under the general laws, the home rule provisions of the Constitution, or by special legislative Act shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or any other places in the city, town, or village which shall be unwholesome or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes stated above, and for making, filling up, altering, or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion, or any other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city, town, or village to keep the same free from weeds, rubbish, brush, and any other objectionable, unsightly, or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten (10) days after notice in writing, or by letter addressed to such owner at his post office address, or by publication as many as two (2) times within ten (10) consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city, town, or village may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such city, town, or village shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above-mentioned to be done at the expense of the city, town, or village on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the

county in which the city, town, or village is situated, a statement by the mayor or city health officer of such city, town or village of such expenses, such city, town, or village shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditure so made and ten per cent (10%) interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements.

[Acts 1925, S.B. 84. Amended by Acts 1959, 56th Leg., p. 972, ch. 453, § 1; Acts 1965, 59th Leg., p. 975, ch. 470, § 1.]

**Art. 4436a-1. Repealed by Acts 1983, 68th Leg., p. 805, ch. 190, § 2(a)(2), eff. Sept. 1, 1983**

See, now, art. 4436b.

**Art. 4436a-2. Tax Levy to Create Health Units in Counties of 22,200 to 22,500 Authorized**

Sec. 1. The Commissioners Courts of each county of this State having a population of not less than twenty-two thousand, two hundred (22,200) nor more than twenty-two thousand, five hundred (22,500) according to the last preceding Federal Census are hereby authorized to levy a tax not to exceed Ten (10) Cents on each one hundred dollars valuation upon personal or real property for the purpose of creating a county health unit and for the purpose of buying the necessary vaccines and to pay for the necessary medical services required for the immunization of school children and indigent people from communicable diseases and to pay as much as one-half or any portion thereof as they may deem reasonable and necessary for medical treatment and hospitalization of indigent people who are not paupers. Nothing herein shall be construed as being mandatory upon said Commissioners Court and is hereby declared to be optional and within the discretion of the Commissioners Courts of such counties.

Sec. 2. The Commissioners Court of each county that creates a county health unit in accordance with the provisions of Section 1 hereof, shall create and set up a fund to be known as the County Health Unit Fund, in which is to be placed the proceeds of the tax provided for in Section 1 hereof, and from which shall be drawn the funds necessary for the creation of the county health unit and for the purposes set out in Section 1 of this Act.

[Acts 1939, 46th Leg., Spec.Laws, p. 847.]

**Art. 4436a-3. Tax Levy to Create Health Units in Counties Under 22,000 Authorized**

Sec. 1. The Commissioners Court of each County of this State having a population of less than twenty-two thousand (22,000), according to the last

preceding Federal Census, is hereby authorized to levy a tax, not to exceed five (5) cents on each One Hundred Dollars valuation, upon personal or real property for the purpose of creating a County Health Unit, and for the purpose of buying necessary vaccines, and to pay for necessary medical services required for the immunization of school children and indigent people from communicable diseases, and to pay as much as one half, or any portion thereof, as they may deem reasonably necessary, for the medical treatment and immunization of indigent people who are not paupers. This Act is not to be construed as mandatory upon said Commissioners Courts, but shall only become effective in any county having a population of less than twenty-two thousand (22,000) after being approved by a majority of the property tax-paying voters of that county at an election called for that purpose by the Commissioners Court after receiving a petition signed by not less than five (5) per cent of the property taxpaying voters of said county requesting such an election.

Sec. 2. The Commissioners Court of each County which creates a County Health Unit, in accordance with the provisions of Section 1 hereof, shall create and set up a fund, to be known as "The County Health Unit Fund," in which is to be placed the proceeds of the tax provided for in Section 1, and from which shall be drawn the funds necessary for the creation of the County Health Unit, and for the purposes set out in Section 1.

[Acts 1943, 48th Leg., p. 687, ch. 380.]

#### Art. 4436a-4. County Public Health Units or Centers in Counties of More Than 100,000 Population

##### Construction or Acquisition of Buildings; Improvements; Location

Sec. 1. The Commissioners Court of any county having a population of more than one hundred thousand (100,000) inhabitants according to the last preceding or any future Federal census and which county has therefore established a county hospital under the laws of the State of Texas is hereby authorized to construct or otherwise acquire buildings to be used as county public health units or public health centers, either or both, including the acquisition of the sites therefor (said health units, health centers, and the sites therefor being hereinafter referred to as "improvements"), which improvements shall be part of the county hospital system. Such improvements need not be located adjacent to or contiguous with the main or central county hospital building or buildings, but may be located at any place or places within the county, as may be determined by the Commissioners Court. Payment for such improvements shall be made from the Constitutional Permanent Improvement Fund.

##### Payment for Improvements

Sec. 2. To pay for the improvements authorized by Section 1, the Commissioners Court is hereby authorized from time to time to issue negotiable bonds, time warrants, and certificates of indebtedness of the county and to levy and collect taxes in payment of the principal thereof and interest thereon.

##### Bonds; Taxes; Time Warrants; Certificates of Indebtedness

Sec. 3. Bonds may be issued and taxes therefor may be levied and collected in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> governing the issuance of bonds by cities, towns, and/or counties in this State. Time warrants may be issued and taxes therefor shall be levied and collected in accordance with the provisions of Chapter 163, Acts of the Forty-second Legislature of Texas, 1931, as amended (Bond and Warrant Law of 1931, as amended).<sup>2</sup> Certificates of indebtedness may be authorized by order of the Commissioners Court; shall mature in not to exceed thirty-five (35) years from their date or dates; and shall bear interest at a rate or rates not to exceed five per cent (5%) per annum (which interest may or may not be evidenced by interest coupons, as may be determined by the Commissioners Court). Said certificates shall be signed by the County Judge and attested by the County Clerk, either by their manual or facsimile signatures, as may be provided in the order authorizing the issuance thereof; and, if interest thereon is represented by coupons, such coupons shall be executed by the facsimile signatures of said County Judge and County Clerk. Said certificates shall be sold by the Commissioners Court for not less than their par value plus accrued interest. When certificates are issued hereunder, it shall be the duty of the Commissioners Court to levy and have assessed and collected a continuing annual ad valorem tax sufficient to pay the principal of and interest on said certificates as such principal and interest respectively become due and payable. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if they have been issued in accordance with the Constitution of Texas and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas. After said certificates have been so approved and registered and delivered to the purchasers thereof, they shall be incontestable. Said certificates shall be fully negotiable, and are hereby declared to be negotiable instruments under the laws of Texas.

<sup>1</sup> Article 701 et seq.

<sup>2</sup> Article 2368a.

##### Refunding Bonds

Sec. 4. Said Commissioners Court shall have the right at all times to issue refunding bonds for the

purpose of refunding bonds and certificates issued under the provisions of this Act, subject to the General Laws applicable to refunding bonds by counties and without the necessity of any notice or right to referendum vote. Said Commissioners Court shall also have the right at all times to issue refunding bonds for the purpose of refunding time warrants issued hereunder, subject to the provisions of the Bond and Warrant Law of 1931, as amended.

#### Cumulative Effect of Act

Sec. 5. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof.

[Acts 1959, 56th Leg., p. 559, ch. 250.]

### Art. 4436b. Local Public Health Reorganization Act

#### ARTICLE I. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act shall be known and may be cited as the Local Public Health Reorganization Act.

##### Purpose

Sec. 1.02. The legislature finds that in the interest of promoting effective local public health programs it is desirable to combine prior legislative authorization into one Act which will provide a consistent, yet flexible, framework for the administration of local public health programs throughout the state.

##### Definitions

Sec. 1.03. As used in this Act, unless the context otherwise requires:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the Commissioner of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Director" means the chief administrative officer of a public health district or a local health department.
- (5) "Health authority" means the physician who is to administer state and local laws relating to public health.
- (6) "Local health department" means a department of health created by the governing body of an incorporated municipality or the commissioners court of a county pursuant to Section 4.07 of this Act.
- (7) "Member" means a municipality, a county, or other governmental entity which is a participant in a public health district.
- (8) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(9) "Public health board" means an administrative or an advisory board of a public health district or a local health department.

(10) "Public health district" means a department of health established under Article IV of this Act.

(11) "Region" means a geographic area of the State of Texas as may be determined by the department.

(12) "Regional director" means the physician who is the chief administrative officer of a region.

(13) "Representative" is a person appointed to serve on a public health board of a public health district or a local health department.

#### ARTICLE II. CITIES AND COUNTIES

Sec. 2.01. The governing body of an incorporated municipality and the commissioners court of a county shall be empowered to enforce any law which is reasonably necessary to protect the public health.

Sec. 2.02. The commissioners court of each county shall appoint a physician to serve the needs of the prisoners in jails. Such appointments shall be made on terms which are acceptable to the parties.

Sec. 2.03. The governing bodies of incorporated municipalities and the commissioners courts of the counties wherein such municipalities are situated may cooperate with one another in making necessary improvements to promote the public health, and they shall provide for payment of all costs.

Sec. 2.04. The governing body of an incorporated municipality or the commissioners court of a county which has not established a public health district or a local health department may appoint a health authority to serve its jurisdiction. The regional director for the region in which the city or county is located may be appointed to serve as the health authority.

#### ARTICLE III. HEALTH AUTHORITIES

Sec. 3.01. (a) A health authority shall perform all duties which are necessary to implement and enforce any law to protect the public health and all duties as may be prescribed by the board. Such duties shall include but are not limited to the following:

- (1) establishing, maintaining, and enforcing quarantine within the health authority's jurisdiction;
- (2) assisting and aiding the board in all matters of local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation within the health authority's jurisdiction;
- (3) reporting to the board, in such manner and form and at such times as it shall prescribe, the presence of contagious, infectious, and dangerous epidemic diseases within the health authority's jurisdiction;

(4) reporting to the board on all other matters as may be proper for the board to direct; and

(5) aiding the board at all times in the enforcement of proper rules, regulations, requirements, and ordinances and in the enforcement of all sanitation laws, quarantine regulations, and vital statistics collections in the health authority's jurisdiction.

(b) The board shall hold an annual conference for health authorities and directors presided over by the commissioner or the commissioner's designee. The counties and municipalities may pay the necessary expenses incurred by their respective health authorities and/or director in attending the conference.

Sec. 3.02. (a) A health authority shall be:

(1) a competent physician who is legally qualified to practice medicine under the laws of this state and who is of reputable professional standing; and

(2) a resident of the State of Texas and of the jurisdiction to which he or she is appointed, except when a regional director is appointed under Section 2.04 of this Act.

(b) An appointee must take and subscribe to the official oath and file a copy of the oath and appointment with the board. He or she shall not be deemed legally qualified until such documents are filed.

(c) A health authority may be removed from office for cause pursuant to the personnel procedures applicable to the heads of departments of the jurisdiction in which he or she serves.

#### ARTICLE IV. HEALTH DISTRICTS

Sec. 4.01. (a) By a majority vote of each governing body, a public health district may be established by:

- (1) two or more counties;
- (2) two or more incorporated municipalities;
- (3) a county and one or more incorporated municipalities situated therein; or
- (4) two or more counties and one or more incorporated municipalities situated therein.

Sec. 4.02. A public health district is authorized to perform the public health functions that any of its members is authorized to perform unless otherwise restricted by law.

Sec. 4.03. (a) The members shall prepare a written instrument to be known as a cooperative agreement which shall set out fully the terms of the operation of the public health district including but not limited to:

- (1) organizational structure and financial administration;
- (2) procedures for modification of the cooperative agreement;
- (3) procedures for the admission, withdrawal, and expulsion of members;

(4) procedures for the dissolution of the organization; and

(5) procedures for the selection and removal of a director.

(b) The cooperative agreement may provide for the creation of an advisory or administrative public health board. The public health board may perform any function relating to the operation of the public health district required under the terms of the cooperative agreement. An "advisory public health board" shall advise members and the directors on matters of public health. An "administrative public health board" shall have the authority to adopt substantive and procedural rules which are necessary and appropriate to promote and preserve the health and safety of the public within its jurisdiction; provided that no rule adopted shall be in conflict with the laws of the state or the ordinances of any member municipality or county. The cooperative agreement shall include provisions which:

(1) describe a method for the selection of representatives to the public health board;

(2) specify the composition and number of the representatives constituting the public health board;

(3) determine the lengths of the terms of the representatives, provide that the terms be staggered, and allow for the filling of vacancies for unexpired terms;

(4) require that representatives on the public health board shall have resided within the territorial limits of the public health district for a period of three years prior to their selection;

(5) require that representatives on the public health board shall serve without compensation;

(6) describe a procedure for the removal of a public health board representative and provide substantive criteria upon which the initiation of the procedure may be based; and

(7) define the relationship between the director and the public health board.

(c) The cooperative agreement shall be approved by the governing body of each member and shall be signed by the appropriate officers of each governing body. Modification of the cooperative agreement shall be in writing and effective upon approval by the governing body of each member.

(d) A copy of the cooperative agreement and any subsequent modifications shall be included in the minutes of the governing body of each member and shall be filed with the county clerk of affected counties, the city clerk of affected municipalities, and the department.

Sec. 4.04. The members shall appoint a director of the public health district subject to approval by the board.

(a) The director shall be a physician. Nonphysicians serving as directors on the effective date of this Act may continue to serve in that capacity.

(b) The director shall serve as an ex officio non-voting member of any public health board established by the cooperative agreement.

Sec. 4.05. A school district or other governmental entity may apply to become a member of a public health district. The governing body of each member shall review the application. If a majority of each member approves the application, the school district or other governmental entity may be admitted to membership upon such terms as are acceptable to the applicant and members.

Sec. 4.06. Members shall provide for payment of costs necessary for implementation of the public health district including but not limited to the costs for:

- (1) staff salaries;
- (2) supplies;
- (3) suitable office quarters;
- (4) health and clinic centers;
- (5) health services and facilities; and
- (6) maintenance.

Sec. 4.07. (a) By a majority vote, the governing body of an incorporated municipality or the commissioners court of a county may establish a local health department.

(b) A local health department is authorized to perform all public health functions which the incorporated municipality or county is authorized to perform.

(c) The governing body of an incorporated municipality or the commissioner's court of a county shall appoint a physician as a director of the local health department subject to the approval of the board. Nonphysicians serving as directors on the effective date of this Act may continue to serve in that capacity.

(d) The governing body of an incorporated municipality may provide for the creation of an administrative or advisory public health board. The commissioners court of a county may provide for the creation of an advisory public health board. The director shall serve as an ex officio nonvoting member of any public health board established for the local health department.

Sec. 4.08. Local health departments and public health districts are authorized to charge fees to persons who receive public health services subject to the following:

- (1) no person shall be denied public health services because of inability to pay for services, and the local health department or public health district shall make provisions for a reduced fee or no fee for persons unable to pay for services in whole or in part; and
- (2) if a local health department or a public health district receives state support for the provision of public health services, then the Uniform Grant and

Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes), and standards adopted pursuant to that Act shall control where applicable.

#### ARTICLE V. PUBLIC HEALTH REGIONS

Sec. 5.01. The board may establish public health regions to provide public health services within the state.

Sec. 5.02. For each public health region created, the board shall appoint a physician to serve as regional director. The board shall establish qualifications and terms of employment of a regional director.

Sec. 5.03. The board may appoint a regional director a health authority. The regional director shall act as a health authority within the region as authorized by the board or the commissioner as follows: (1) in a jurisdiction which is not served by a public health district or a local health department; (2) in a jurisdiction which has a public health district or local health department whose health authority has failed to perform duties prescribed by the board pursuant to Section 3.01 of this Act; (3) in a jurisdiction which has a public health district or a local health department where no health authority has been appointed until the appointing authority shall fill the office; or (4) in a jurisdiction which has appointed the regional director to serve as a health authority under Section 2.04 of this Act.

[Acts 1983, 68th Leg., p. 798, ch. 190, § 1, eff. Sept. 1, 1983.]

Sections 3(b) and 4 of the 1983 Act provide:

"Sec. 3(b). Any cooperative health unit, organization, agency, or other coordinated public health organization, by whatever name called, which has heretofore been created under any prior law of this state is specifically validated and it shall, within one year of the effective date of this Act, organize itself as shall be necessary to bring it within the provisions of this Act. Such entities may charge fees for services in accordance with Section 4.08 of this Act during such transition period.

"Sec. 4. Any reference in the law to a county health officer or a city health officer means the health authority appointed pursuant to this Act."

#### Art. 4437. Hospitals

If by will or otherwise a fund of fifty thousand dollars or more was or may be left to establish and maintain a hospital in a city of ten thousand or more inhabitants, in which hospital the sick and wounded of such city or of this State may be admitted and receive medical and surgical attention, the commissioners court of the county and the governing body of the city in which said hospital shall be established, either or both, may from time to time appropriate and pay toward the maintenance of such hospital such sums of money as in the judgment of such court or body making such appropriation may be proper to provide hospital accommodations and medical and surgical attention for the sick and wounded of such county or city who are indigent.

[Acts 1925, S.B. 84.]

**Art. 4437a. Hospital Control in Counties of 200,000 or Over; Tuberculosis Control**

**Designation of Either County or City Government to Take Control**

Sec. 1. All counties in Texas having a population of 200,000 or more inhabitants as shown by the last preceding Federal Census, in which are established hospitals jointly owned and operated by any city and county, in which said hospital is located, the said counties or cities under the terms of a mutual agreement, and not otherwise, are hereby authorized to designate either the county or city government for the purpose of taking over the entire ownership and control of such hospitals upon such terms as may be mutually agreed upon between the city and county owning such hospitals and operating the same, and providing further that such portions of the tax hereinafter referred to shall, if voted by a majority of the qualified voters, be used to take care of the interest and sinking fund required by law on all outstanding bonds of the city or county heretofore issued which have been incurred against the building or maintenance of said hospitals or that may hereafter be issued. That in case it is determined by said mutual agreement for the city to take over the said hospitals and operate the same, the board of managers may be appointed by the governing body of the city in accordance with the terms of its charter or in accordance with its judgment.

**Election**

Sec. 2. That if in the judgment of the combined boards of County Commissioners and City Councils of such cities, as may be part owners of such hospitals, a countywide election to determine the future ownership and operation of the hospitals is desirable, such countywide election may be ordered on the initiative of such combined boards, and a majority vote on the questions submitted shall govern the future ownership and operation of the hospitals, the expense of such election to be paid by the Commissioners' Court from county funds.

**Tax**

Sec. 3. A direct tax of not over Fifty (50¢) Cents on the valuation of One Hundred (\$100.00) Dollars may be authorized and levied by the Commissioners Court of such county for the purpose of erecting buildings, or additions thereto, or other improvements and equipment, and for operating and maintaining such hospital; provided that all such levies of taxes shall be submitted to the qualified tax-paying voters of the county, and a majority vote shall be necessary to levy the tax. Successive elections may be held to authorize additional taxes hereunder, provided the total tax shall not exceed the maximum hereinabove provided.

**Board of Managers or Directors**

Sec. 4. The Board of Managers or Directors of such hospital shall be elected, when so taken over,

by the County Commissioners' Court, and said Board shall consist of not less than three members, or more than nine members, and when so elected shall be responsible for and have full and complete control of the management of the conduct of such hospital or hospitals, giving a report of their management at least once every quarter to the Commissioners' Court, and as much oftener as said Court may request, upon any and all acts, rules and regulations performed by them. They shall also give a quarterly financial statement to the Commissioners' Court showing all money expended and received by them and showing fully for what purposes the money has been expended.

**Free Service**

Sec. 5. The said hospital or hospitals shall give free service to all sick and injured indigent citizens of the entire county.

**Terms**

Sec. 6. Said Board of Managers shall be appointed for such terms that the terms of one-third of the number of the members of the Board will expire every two years and the term of office for such members of the Board shall be for six years.

**Tuberculosis Control**

Sec. 6A. (a) The governing bodies of the county, and of the city or cities within said county adopting the provisions hereof as herein provided, are hereby authorized to conduct a joint program of tuberculosis control within said city or cities and county, having for its object the protection of public health by the alleviation, suppression and prevention of the spread of tuberculosis. Such program may include co-operation with all public or private agencies, federal, state or local, having the same objective, and shall include providing economic aid in the discretion of the Board hereinafter created, under medical certification as hereinafter provided, to indigents suffering from tuberculosis and to dependent members of their immediate family as part of the total treatment of and as in aid in the prevention of the spread of the disease, for the protection of the public health.

(b) The County Commissioners Court is hereby authorized to levy a direct annual tax of not to exceed 10¢ on the \$100.00 valuation, which shall be in addition to the tax authorized by Section 3 herein, and the funds produced thereby shall be kept separate from other funds and shall be used solely for the purposes set forth in this section; provided that such levy of taxes shall be first submitted to the qualified taxpaying voters of the county, and a majority vote shall be necessary to levy the tax. The governing body of the city or cities acting hereunder shall likewise be authorized to levy a direct tax of not to exceed 5¢ on the \$100.00 valuation to provide funds to be used for the same purpose, and in such joint program of tuberculosis control, provided that such tax shall be first sub-

mitted to and approved by a majority vote of the taxpaying voters of said city or cities, in accordance with the city charter, or charters, which charter or charters may be amended to provide said fund by means of such tax or otherwise according to law in cities operating under general law. Such fund shall be kept separate from other city funds and shall be used only for the purpose herein stated.

(c) For the purpose of administration of this section, in the event such county and city or cities engage in such program and vote such special taxes, such city or cities and county shall have power to create a City-County Tuberculosis Control Board, to be composed of five or more members, one to be appointed by the County Health Board of the county, one by the City Health Board of the city having the largest population according to the last preceding Federal Census, one by the County Judge of the county, one by the Mayor of each city participating in such program, and one by the majority action of the District Judges of the county. Members of such Board shall serve without compensation.

(d) The first term of office for the Board members appointed by the County Health Board and by the Mayor or Mayors shall be for one year from date of appointment. The first term of office for the two Board members appointed by the City Health Board and the County Judge shall be for two years from date of appointment. The first term of the member appointed by the District Judges shall be for three years from date of appointment. Upon the expiration of the first terms, their successors shall each serve for three year terms, and such successors shall be appointed by the original appointing authority in each case. Vacancies caused by death or resignation shall be filled for the unexpired term by the original appointing authority.

(e) The Board shall have power to carry out the terms of this Section in order to alleviate, suppress and prevent the spread of tuberculosis within the county, as a public health function, subject to the provisions hereof. The funds derived from the special taxes herein authorized shall be combined together by joint action of the county and city or cities and be expended by or under the direction of such Board subject to the limitations herein; provided that such funds shall be expended to provide necessary economic aid to indigent persons suffering from tuberculosis and dependent members of their immediate family, upon certification in each case to the Board by the city or county health officer, to the effect that the persons receiving such aid are indigents, and that they are bona fide residents of the county and have been for more than six (6) months; and such funds may also be expended to provide for administration expenses hereunder, including case investigation and necessary equipment and services, but for no other purposes. By the term "bona fide residents of the county" as used herein is meant persons who have been inhabitants of the county for at least six (6) months before receiving aid or

assistance for support of themselves or their families from a public or private charity or service.

(f) The Board shall make quarterly reports to the governing boards of the county and city or cities acting hereunder, stating the condition of the fund and expenditures made therefrom, and the services performed; and the county, and city or cities participating, shall have the right to examine and audit the books and records of said Board.

(g) This section shall be cumulative of other laws, and shall not operate to repeal any other part of this title.

<sup>1</sup> So in enrolled bill; probably should read "by".

[Acts 1927, 40th Leg., p. 322, ch. 219. Amended by Acts 1945, 49th Leg., p. 466, ch. 295, §§ 1 to 3; Acts 1951, 52nd Leg., p. 107, ch. 63, § 1; Acts 1955, 54th Leg., p. 594, ch. 202, § 1.]

#### Art. 4437b. Tax for County Hospitals

That in all counties in Texas having a population of at least 202,000 inhabitants and less than 210,000 inhabitants as shown by the Census of 1920, in which are established hospitals jointly owned or operated by any city and county in which said hospital is located, a direct tax of not over ten cents on the valuation of One Hundred Dollars may be authorized and levied by the Commissioners' Court of such county for the purpose of erecting buildings and other improvements, and for maintaining such hospitals, provided that all such levy of taxes shall be submitted to the qualified taxpaying voters of the county and a majority vote shall be necessary to levy the taxes.

[Acts 1929, 41st Leg., 2nd C.S., p. 5, ch. 4, § 1.]

#### Art. 4437c. Lease of City and County Hospitals

Sec. 1. Any county in this State having a population of not less than 38,000 and not more than 39,000 according to the United States Census of 1920, shall have authority to lease any county hospital belonging to said county to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

Sec. 2. The authority herein granted to certain counties shall also extend to cities in such counties owning a joint interest with any such counties in a hospital. Any such hospital may be leased to be operated by the lessee as a hospital upon such terms and conditions as may be agreed upon by the Commissioners' Court, the proper authorities of such cities and the lessee. The action of such cities in leasing such hospital shall be evidenced by order of the proper authorities of such cities, which order shall be recorded in the minutes of said authorities.

[Acts 1930, 41st Leg., 5th C.S., p. 198, ch. 55.]



**Art. 4437c-1. Lease of City Hospital**

The governing body of any incorporated city or town (including home rule cities) having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, is hereby authorized to lease any city-owned hospital, or part thereof, to be operated by the lessee as a public hospital under such terms and conditions as may be agreed upon by such governing body and such lessee. Any such lease shall be authorized by ordinance or resolution adopted by such governing body, and the lease agreement shall be executed, on behalf of the city or town, by the mayor and the city secretary or clerk, and the seal of the city shall be impressed thereon. Such lease may cover any period of time not to exceed fifty (50) years.

[Acts 1953, 53rd Leg., p. 20, ch. 11, § 1.]

**Art. 4437c-2. Sale, Lease, or Closure of Public Hospitals****Definition**

Sec. 1. In this Act, "official action" means an ordinance adopted by the governing body of an incorporated city or town, an order issued by the commissioners court of a county, or a resolution adopted by the governing body of a hospital district.

**Sale, Lease, or Closure of Hospital**

Sec. 2. (a) The governing body of an incorporated city or town, or a hospital district by official action may order the sale, lease, or closure of all or any part of, including real property, a hospital owned and operated by the political subdivision. The official action must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the political subdivision.

(b) The governing bodies of an incorporated city or town and of a county may take any action described by Subsection (a) of this section with respect to a joint city-county hospital by official action of both governing bodies that includes the same finding of fact.

(c) The sale or closure of a hospital is contingent on the right of the voters by petition to require a referendum on the issue. The sale or closure may not take effect sooner than the expiration of the time for a petition to be filed under Section 3 of this Act and, if a valid petition is filed, the sale or closure is contingent on voter approval.

**Petition and Referendum**

Sec. 3. (a) If before the 31st day after the date on which the governing body orders that a hospital be sold or closed the governing body receives a petition signed by at least 10 percent of the qualified voters of the political subdivision requesting an election on the question, the governing body shall order and conduct an election.

(b) The number of qualified voters of the political subdivision is determined according to the most recent official list of qualified voters. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed.

[Acts 1981, 67th Leg., p. 2361, ch. 583, §§ 1 to 3, eff. Aug. 31, 1981.]

**Art. 4437d. Texas Hospital Survey and Construction Act****PART A—GENERAL****Title**

Sec. 1. This Act may be cited as the "Texas Hospital Survey and Construction Act."

**Definitions**

Sec. 2. As used in this Act:

(a) "Board" means the State Board of Health.

(b) "The Federal Act" means Public Law 725 of the Seventy-ninth Congress, approved August 13, 1946, entitled the Hospital Survey and Construction Act.<sup>1</sup>

(c) "Hospital" includes public health centers and general, tuberculosis, mental, chronic diseases, and other types of hospitals, and related facilities, such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals, but does not include any hospital furnishing primarily domiciliary care.

(d) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(e) "Nonprofit hospital" means any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

<sup>1</sup> 42 U.S.C.A. §§ 291a to 291m.

**Administration**

Sec. 3. Division of Hospital Survey and Construction. There is hereby established in the Department of Health a Division of Hospital Survey and Construction which shall be administered by a full-time salaried director under the supervision and direction of the State Board of Health. The State Board of Health, through such Division, shall constitute the sole agency of the State for the purpose of making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction, as provided in Part B of this Act.

**General Powers and Duties**

Sec. 4. In carrying out the purposes of the Act, the State Health Officer, with the advice of the Advisory Hospital Council, is authorized and directed

(a) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel of the Division and take such other action as may be necessary to comply with the requirements of the Federal Act and the regulations thereunder;

(c) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that he considers desirable to effectuate the purposes of this Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies and institutions, public or private;

(e) To accept on behalf of the State and to deposit with the State Treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this Act, and to expend the same for such purpose;

(f) To make an annual report to the Board on activities and expenditures pursuant to this Act, including recommendations for such additional legislation as the State Health Officer considers appropriate to furnish adequate hospital, clinic and similar facilities to the people of this State.

**Hospital Advisory Council**

Sec. 5. The Governor, within thirty (30) days after this Act takes effect, shall appoint a Hospital Advisory Council, hereinafter referred to as "the Council," consisting of twelve (12) members, who shall advise and consult with the State Board of Health and the State Commissioner of Health in carrying out the administration of this Act. The State Commissioner of Health shall serve as an ex officio member of said Advisory Council. Of the members of the Hospital Advisory Council first appointed, four (4) shall serve for a term of two (2) years, or until their successors shall be appointed and qualified; four (4) shall serve for a term of four (4) years or until their successors shall be appointed and qualified; and the remaining four (4) members shall serve for a term of six (6) years, or until their successors shall be appointed and qualified. Thereafter, at the expiration of the term of each member of the Council just appointed, his successor shall be appointed by the Governor for, and he shall serve for, a term of six (6) years, or until his successor shall be appointed and qualified. All members so appointed shall be confirmed by the Senate. On the

death, resignation or removal of any member, the Governor shall fill the vacancy by appointment for the unexpired portion of the term. Each member shall serve until his successor is appointed and qualified. The twelve (12) members of the Council to be appointed shall include representatives of non-governmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention or treatment of illnesses or disease, or for the provision of rehabilitation services, and at least one representative particularly concerned with education or training of health professionals, and an equal number of representatives of consumers familiar with the need for the services provided by such facilities. Council members while serving on business for the Council shall be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. The Council shall meet as frequently as the State Commissioner of Health deems necessary, but not less than once each year. Upon request by five (5) or more members, it shall be the duty of the State Commissioner of Health to call a meeting of the Council.

**PART B—SURVEY, PLANNING AND CONSTRUCTION****Coordination of Federal Act**

Sec. 7. The Board is authorized to establish methods of administration and with the approval of the Hospital Advisory Council promulgate regulations for the purpose of meeting the requirements prescribed by the Federal Act relative to survey, planning and construction of hospitals and public health centers.

**Hospital Construction Fund**

Sec. 8. The State Health Officer<sup>1</sup> is hereby authorized to accept on behalf of the State, and to deposit with the State Treasury any grant, gift or contribution and to receive Federal funds made to assist in meeting the cost of carrying out the purpose of this Act, and to expend the same for such purpose. When such gifts, grants, contributions or moneys from the Federal Government are received, the State Health Officer shall deposit same in the State Treasury in a separate account from all other public moneys to be known as the Hospital Construction Fund, and any disbursements from this fund shall be made by warrants issued by the Comptroller of Public Accounts on claims filed and approved by the State Health Officer. Moneys received from the Federal Government for a construction project approved by the Surgeon General of the United States Public Health Service shall be deposited to the credit of this fund, and shall be used solely for the payments to applicants for works performed

and for purchases made in carrying out approved projects.

<sup>1</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1. See art. 4418b-1.

#### PART C—MISCELLANEOUS

##### Severability

Sec. 9. If any provision of this Act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

[Acts 1947, 50th Leg., p. 948, ch. 405. Amended by Acts 1965, 59th Leg., p. 312, ch. 144, § 1; Acts 1971, 62nd Leg., p. 2357, c. 721, § 1, eff. June 8, 1971.]

#### Art. 4437e. Hospital Authority Act

##### Creation; Title

Sec. 1. Hospital Authorities without taxing power may be created as hereinafter provided. This law shall be known as the "Hospital Authority Act."

##### Definitions

Sec. 2. As used in this law, "City" means any incorporated city or town in this State;

"Governing Body" means the council, commission or other governing body of a City;

"Authority" means a Hospital Authority created under this Act;

"Board" or "Board of Directors" means the board of directors of the Authority;

"Bond" or "Bonds" means bonds or notes;

"Bond Resolution" means the resolution authorizing the issuance of revenue bonds;

"Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority;

"Trustee" means the trustee under the Trust Indenture;

"Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.<sup>1</sup>

<sup>1</sup> Classified as art. 4437e-2.

##### Ordinance Creating Authority; Territory; Body Politic and Corporate; Powers

Sec. 3. When the Governing Body of a City shall find that it is to the best interest of the City and its inhabitants to create a Hospital Authority, it shall pass an ordinance creating the Authority and designating the name by which it shall be known. If the Governing Bodies of two (2) or more Cities shall find that it is to the best interest of such Cities to

create an Authority to include such Cities, each Governing Body shall pass an ordinance creating the Authority and designating the name by which it shall be known. The Authority shall comprise only the territory included within the boundaries of such City or Cities and shall be a body politic and corporate. It shall have the power of perpetual succession, have a seal, may sue and be sued and may make, amend and repeal its bylaws.

##### Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the ordinance creating the Authority adopted by the Governing Body of the City or ordinances creating the Authority adopted by the Governing Bodies of the Cities, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the City or by the Governing Bodies of the Cities, and they shall serve until their successors are appointed as hereinafter provided. If Authority includes more than one City, each Governing Body shall appoint an equal number of Directors unless otherwise agreed by the Cities. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the City or the Governing Bodies of the Cities for two (2) year terms. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the City or each of the Cities, as the case may be, for terms not to exceed two (2) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such City shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

(c) Notwithstanding any other provisions of law to the contrary, when an authority created under this Act has been financed pursuant to the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes), the governing body of a city or the governing bodies of the cities may thereafter by ordinance direct that the members of the board of directors may be selected by the governing body or bodies from a list of nominees submitted to it by the board of directors; that in the event a nominee is rejected by the governing body or bodies, the board of directors shall name another nominee or nominees for such office. The governing body or bodies shall then make appointments from these and any other nominees offered by members of the governing body or bodies. Such governing body or bodies may also provide for a reduction in the number of members on the board of directors (but not less than seven) and for a limitation on the successive terms a director may serve, and the same shall thereafter be controlling as to such authority.

**Officers; Quorum; Committees; Manager or Executive Director; Sale, Lease, or Closure of Hospital; Legal Counsel**

Sec. 5. The Board of Directors shall elect from among their members a president and vice-president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional nonvoting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the

Hospital and to employ and discharge employees. The Board may sell, lease, or close the Hospital as otherwise provided by law and may employ legal counsel.

**Transfer, Destruction, or Disposal of Records; Retention of Medical Records**

Sec. 5A. (a) Except as provided in Subsection (b) of this section, the City Governing Body may authorize the Board of Directors of a Hospital Authority governed by this Act to transfer, destroy, or otherwise dispose of Hospital Authority records that are:

- (1) more than five (5) years old; and
- (2) determined by the Board of Directors to be of no further use to the Hospital Authority as official records.

(b) The City Governing Body may not authorize the disposal of any medical record. All medical records, and any other records considered by the Board of Directors as necessary to preserve, may be microfilmed and retained by a Hospital Authority as provided by Chapter 158, Acts of the 64th Legislature, Regular Session, 1975 (Article 6574c, Vernon's Texas Civil Statutes).

**Construction, Operation and Equipment of Hospitals; Location; Sale of Property**

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital need not be located within the City or Cities.

(b) The Authority may sell any of its property without an election to a political subdivision of the State for the fair market value of the property if:

(1) the Board of Directors has notice of its intention to sell the property, a description of the property, and the scheduled date of the sale published in a newspaper or newspapers providing general circulation in the Authority once each week for two consecutive weeks, the first publication at least 14 days before the scheduled date of the sale; and

(2) a petition requesting an election on a proposition for or against the sale, signed by 10 percent or more of the qualified voters residing in the Authority is not presented to the secretary or president of the Board of Directors before the scheduled date of the sale.

(c) If a petition described in Subdivision (2), Subsection (b) of this section is presented to the secretary or president of the Board of Directors before the scheduled date of the sale, the property may be sold to a political subdivision only if an election on the proposition is held and a majority of the qualified voters voting in the election favor the sale. The Board shall call the election on receiving the petition or may call the election on its own motion if no petition is filed. The Board shall determine and the order calling the election shall specify the date,

place, or places of holding the election, the form of ballot, and the presiding judge, alternate judge, and clerks for each voting place. Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), does not apply to the election. A substantial copy of the election order shall be published in a newspaper or newspapers of general circulation in the Authority once a week for two consecutive weeks, the first publication to appear at least 30 days before the election date. The form of the ballots at the election shall be in conformity with Section 61, Texas Election Code, as amended (Article 6.05, Vernon's Texas Election Code), so that ballots may be cast for or against the following proposition: "The sale of ..... by the ..... Hospital Authority." The Board shall canvass the returns and announce the results. Except as specifically provided in this section, the election shall be governed by the Texas Election Code.

(d) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority, or any prior restrictions or limitations placed on the use of the property, or (2) any agreement entered into either prior to or after the effective date of this Section 6(d) between the Authority and a non-profit corporation under the provisions of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975.<sup>1</sup> The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c-12, Vernon's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction, in a newspaper with general circulation in each City of the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(d) is intended to affect or amend the powers granted to the Authority by Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975.

<sup>1</sup> Article 4437e-2.

#### Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any designated part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a

chattel mortgage on its personal property, or by both.

#### Procedure for Bond Issue; Requisites; Maturity; Sales; Registration

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

#### Legal and Authorized Investments

Sec. 8a. All bonds issued under this Act, as amended, shall be legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies of all kinds and types, and for the interest and sinking funds and other public funds of any issuer, as such term is defined in this Act. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and of any issuer, as such term is defined in this Act, to the extent of the value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

#### Bond Resolution; Publication; Referendum

Sec. 9. (a) Before authorizing the issuance of bonds, other than refunding bonds, the Board of Directors shall cause a notice to be issued stating that it intends to adopt a resolution (herein called "Bond Resolution") authorizing the issuance of the bonds, the maximum amount thereof, and the maximum maturity thereof. The notice shall be published once each week for two (2) consecutive weeks in a newspaper or newspapers having general circulation in the Authority, the first such publication shall be at least fourteen (14) days prior to the day set for adopting the Bond Resolution.

(b) If, prior to the day set for the adoption of the Bond Resolution, there is presented to the secretary or president of the Board of Directors a petition signed by not less than ten per cent (10%) of the qualified voters residing within the boundaries of the City or Cities comprising the Authority, who own taxable property in the Authority and who have duly rendered the same for taxation to the City in which such property is located or situated,

requesting an election on the proposition for the issuance of the bonds, the bonds shall not be issued unless an election is held and a majority vote is in favor of the bonds. Such election shall be called and held in accordance with the procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of 1925, as amended,<sup>1</sup> with the Board of Directors, president and secretary performing the functions therein assigned to the governing body of the City, the mayor and city secretary respectively. If no such petition is filed the bonds may be issued without an election. It is provided, however, that the Board of Directors may call such election on its own motion without the filing of the referendum petition.

<sup>1</sup> Article 701 et seq.

#### **Junior Lien Bonds; Parity Bonds**

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

#### **Money Set Aside Out of Bond Sale Proceeds**

Sec. 11. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

#### **Refunding Outstanding Bonds**

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature<sup>1</sup> or other applicable law.

<sup>1</sup> Article 717k.

#### **Approval of Bonds by Attorney General; Registration; Incontestability; Negotiability**

Sec. 13. Bonds issued under this Act and the record relating to their issuance shall be submitted to the Attorney General of Texas and if he finds that they have been issued in accordance with this law and constitute valid and binding obligations of the Authority and are secured as recited therein he shall approve them, and they shall be registered by Comptroller of Public Accounts of the State of Texas who shall certify such registration thereon. Thereafter they shall be incontestable. The bonds shall be negotiable and shall contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

#### **Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions**

Sec. 14. Unless the Hospital is being leased, it shall be operated by the Authority without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the hospital shall be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

#### **Depositories**

Sec. 15. The Authority may select a depository or depositories according to the procedures provided by law for the selection of city depositories or it may award its depository contract to the same depository or depositories selected by the City or Cities and on the same terms.

**Tax Exemption**

Sec. 16. Recognizing the fact that the property owned by Authority will be held for public purposes only will be devoted exclusively to the use and benefit of the public, it shall be exempt from taxation of every character.

**Eminent Domain Acquisition of Property; Easements**

Sec. 17. For the purpose of carrying out any power conferred by this Act, Authority shall have the right to acquire the fee simple title to land and other property and easements by condemnation in the manner provided by Title 52, Revised Civil Statutes as amended,<sup>1</sup> relating to eminent domain. Authority is hereby declared to be a municipal corporation within the meaning of Article 3268 of said Title 52. The amount of and character or interest in land, other property and easements thus to be acquired shall be determined by the Board of Directors.

<sup>1</sup> Article 3264 et seq. (generally repealed; see, now, Property Code, § 21.001 et seq.)

**Investment of Funds and Proceeds of Bonds**

Sec. 18. The law as to the security for and the investment of funds, applicable to Cities, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bonds may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

**Donations, Gifts and Endowments**

Sec. 19. The Board of Directors is authorized to accept donations, gifts and endowments to be held and administered as may be required by the respective donors, to the extent that such requirements would not contravene law.

[Acts 1957, 55th Leg., p. 1379, ch. 472. Amended by Acts 1963, 58th Leg., p. 1273, ch. 487, § 1; Acts 1975, 64th Leg., p. 1904, ch. 612, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1309, ch. 517, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1358, ch. 539, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 502, ch. 233, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1603, ch. 678, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2362, ch. 583, § 4, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 847, ch. 195, § 1, eff. May 24, 1983; Acts 1983, 68th Leg., p. 5268, ch. 968, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1975 amendatory act, § 2 of Acts 1977, 65th Leg., p. 1309, ch. 517, and § 2 of Acts 1979, 66th Leg., p. 1604, ch. 678, provided:

"If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

**Art. 4437e-1. Leases, Agreements to Manage or Operate, Sale, or Closure by Hospital Authorities; Referendum on Sale or Closure**

Sec. 1. In addition to any other powers which it may now or hereafter have, the governing body of any hospital authority created as provided in the Hospital Authority Act (Vernon's Annotated Civil Statutes, Article 4437e) or the County Hospital Authority Act (Vernon's Annotated Civil Statutes, Article 4494r) is hereby authorized: (a) to lease to any person any hospital, or part thereof, owned by said hospital authority to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the governing body and the lessee; (b) to enter into an agreement with any person for the management and/or operation of any hospital, or part thereof, owned by said hospital authority under such terms and conditions as may be satisfactory to the governing body and the other contracting party or parties; (c) to sell a hospital or part of a hospital owned by the hospital authority; and (d) to close a hospital or part of a hospital owned or operated by the hospital authority.

Sec. 2. The word "person" where used in this Act includes individual, corporation, organization, government or governmental subdivision or agency, estate, trust, partnership, association, and any other legal entity.

Sec. 3. (a) Any such sale, lease, closure, or agreement shall be authorized by resolution adopted by such governing body and shall be executed, on behalf of the authority, by the presiding officer and the secretary of the governing body, and the seal of the authority shall be impressed thereon.

(b) The sale or closure of a hospital is contingent on the right of the voters by petition to require a referendum on the issue. The sale or closure may not take effect sooner than the expiration of the time for a petition to be filed under Section 4 of this Act and, if a valid petition is filed, the sale or closure is contingent on voter approval.

Sec. 4. (a) If before the 31st day after the date on which the governing body authorizes the sale or closure of a hospital the governing body receives a petition signed by at least 10 percent of the qualified voters of the political subdivision requesting an election on the question, the governing body shall order and conduct an election. The number of qualified voters of the authority is determined according to the most recent official list of qualified voters.

(b) If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed.

[Acts 1973, 63rd Leg., p. 1377, ch. 528, eff. June 14, 1973. Amended by Acts 1981, 67th Leg., p. 2363, ch. 581, § 5, eff. Aug. 31, 1981.]

**Art. 4437e-2. Hospital Project Financing Act****Short Title**

Sec. 1. This Act may be cited as the "Hospital Project Financing Act."

**Purpose**

Sec. 2. It is hereby found, determined, and declared that it is the policy of the State of Texas that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded hospital projects, as defined in this Act. It is essential that the people of this state have access to adequate medical care and health facilities and that such facilities be provided with appropriate additional means to assist in the development and maintenance of the public health. It is the purpose of this Act to enable certain issuers, as defined in this Act, to provide the facilities and structures, at a reasonable cost, which are determined to be needed by the various issuers; therefore the issuance of revenue bonds and notes by such issuers as herein provided for the promotion of medical care, public health, and medical research, including training and teaching, is hereby declared to be in the public interest and a public purpose. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

**Definitions**

Sec. 3. When used in this Act, unless the context requires a different definition:

(a) "Authority" means a hospital authority created and established in accordance with Chapter 472, Acts of the 55th Legislature, 1957, as amended (Article 4437e, Vernon's Texas Civil Statutes); or Chapter 122, Acts of the 58th Legislature, 1963 (Article 4494r, Vernon's Texas Civil Statutes); or any other public health authority presently existing or created hereafter by law in this state.

(b) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(c) "Cost" as applied to a hospital project, as herein defined, means and includes any and all costs of a hospital project, and, without limiting the generality of the foregoing, "cost" as applied to a hospital project and used in this Act shall include the following:

(1) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, and interests of all kinds in land related to a hospital project;

(2) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as, or in conjunction with, a hospital project;

(3) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing a hospital project;

(4) the cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project;

(5) the cost of all machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project so that it may be placed in operation;

(6) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of a hospital project during construction and for a maximum of two years after completion of construction;

(7) any and all cost incurred in connection with the financing of a hospital project, including without limitation, the cost of financing, legal, accounting, and appraisal fees, expenses, and disbursements; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(8) all direct and indirect costs of the issuer, as herein defined, incurred in connection with providing a hospital project, including, without limitation, reasonable sums to reimburse the issuer for time spent by its employees with respect to providing a hospital project and the financing thereof; and

(9) the cost of all fees, charges, and expenses incurred in connection with the authorization, preparation, sale, issuance, and delivery of any bonds or notes issued in accordance with the terms of this Act.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(e) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(f) "Governing body" means, with reference to an issuer, as herein defined, the board of directors, council, commission, commissioners court, trustees, or similar body charged by law with the governance of an issuer.

(g) "Hospital project" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be required or necessary for medical care, research, training, and teaching, any one or all, within this state, irrespective of whether such property is in existence or to be provided after the making of such



finding. The use of the singular "hospital project" herein shall also include the plural "hospital projects" unless the context clearly requires a different connotation. Without limiting the generality of the foregoing, and when found by the governing body of an issuer to be so required, necessary, or convenient, "hospital project" shall include the following:

(1) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(2) any structure suitable for use as a hospital, clinic, health facility, extended care facility, out-patient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(3) any structure suitable for use as a multi-unit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(4) any structure suitable for use as a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment;

(5) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health care personnel;

(6) any property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(7) any other structure, facility, or equipment related to, or essential to, the operation of any health facility or system except that a hospital project shall not include any nursing home licensed as such, or which would be required to be licensed as such, under the authority of the State of Texas. "Hospital project" may include any combination of one or more of the foregoing.

(h) "Issuer" means any authority, city, county, or district.

(i) "Non-profit corporation" means (1) a non-profit corporation established under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes), or any other similar statute, or (2) an association, foundation, trust, cooperative, or similar person or organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which incurs a contractual obligation with an issuer with respect to a hospital project in accordance with the provisions of this Act. The use of the singular "non-profit corporation" herein shall also include the plural "non-profit corporations" unless the context clearly requires a different connotation.

#### Payment of Bonds or Notes

Sec. 4. Bonds or notes issued in accordance with the provisions of this Act shall not be deemed to constitute general obligations of the State of Texas, the issuer, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them but such bonds or notes shall be payable solely from revenues of the hospital project for which they are issued and/or from such other revenues as may be provided by a non-profit corporation. No money of the State of Texas or any political subdivision or agency of this state, whether raised from taxation or any other source, except for revenue of the hospital project being financed with the bonds, shall ever be used to pay the principal of, redemption premium, if any, or interest on any revenue bonds or notes or refunding bonds or notes issued under this Act. All such revenue bonds or notes shall contain on the face thereof statements to the effect (a) that neither the State of Texas, the issuer, nor any political subdivision or agency of the State of Texas shall be obligated to pay the same or the interest thereon except from the revenues pledged thereto and (b) that neither the faith, credit, nor the taxing power of the State of Texas, the issuer, or any political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds or notes. The issuer shall not be authorized to incur financial obligations under this Act which cannot be paid from the proceeds of the bonds or notes, revenues derived from operating a hospital project, or any other revenues as may be provided by a non-profit corporation, in accordance with the provisions of this Act. In no event shall any appropriation be made by the Legislature of Texas or any issuer to pay all or any part of any cost of a hospital project or any operating cost of such hospital project in accordance with the provisions of this Act. The issuer shall be paid, out of money from the proceeds of the sale and delivery of its revenue bonds or notes issued in accordance with the provisions of this Act, an amount of money equal to all of the issuer's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds or notes, including, without limitation, all financing, legal, printing, and other expenses and costs incurred in issuing such bonds or notes, plus an amount of money equal to the compensation paid any of such issuer's employees for the time such employees spent on activities related to the issuance, sale, and delivery of such bonds or notes. All such costs and expenses shall be deemed to be a "cost" of a hospital project as defined in Section 3(c) of this Act.

#### Powers of Issuer

Sec. 5. In addition to all other powers which it may now or hereafter have, each issuer is authorized and empowered as follows:

(a) to provide, or cause to be provided by a non-profit corporation, by acquisition (whether by pur-

chase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more hospital projects located within this state, and within or partially within the issuer's boundaries; provided that with respect to the acquisition of one or more hospital projects, (a) the issuer shall only acquire such hospital project from a non-profit corporation which has been in existence and has operated such hospital project for a period of at least three years prior to the date of acquisition by the issuer and (b) the issuer affirmatively finds that the cost of such hospital project is not more than (1) the actual audited cost of the hospital project to the date of acquisition or (2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer, the cost of which appraisal shall be a cost of the hospital project; provided that as to a city, a hospital project may be situated outside its territorial limits if it is within its extraterritorial jurisdiction as provided by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes); and further provided that as to a city, a hospital project may be situated within the territorial limits of any other city if the governing body of such other city shall consent to the former city providing such hospital project;

(b) to cause title to a hospital project provided in accordance with the provisions of this Act to be vested in a non-profit corporation; provided that if the governing body of the issuer deems it advisable to so vest title in a non-profit corporation, such issuer may retain a mortgage interest in such hospital project, which mortgage interest shall expire if and when all bonds or notes of the issuer sold to provide such hospital project have been paid or provision has been made for their final payment;

(c) to enter into leases or other contracts with a non-profit corporation with respect to any hospital project whereby such non-profit corporation shall use, operate, or acquire such hospital project, and such leases or contracts may be for such payment and upon such terms and conditions as the governing body may deem advisable; and to sell such hospital project to any non-profit corporation, including a non-profit corporation using such hospital project, such sale to be by installment payments or otherwise, and to be fully consummated if and when all bonds or notes of the issuer issued to provide such hospital project have been paid or provision has been made for their final payment; provided that during the time the bonds or notes or interest thereon remains unpaid there is no failure to make any payments owing under any lease or contract at the time and in the manner as the same become due; and

(d) to refund outstanding obligations, mortgages, or advances issued, made, or given by a non-profit corporation for the cost of a hospital project.

#### Eminent Domain

Sec. 6. No issuer shall have the power under this Act to acquire any hospital project, or any part thereof, to be sold or leased under this Act, by the exercise of the power of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold or leased, under the provisions of this Act; provided that the governing body of the issuer determines that (a) such use will not interfere with the purpose for which such land was originally acquired or that such land is no longer needed for such purpose, (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under the authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended by Chapter 108, Acts of the 63rd Legislature, 1973.

#### Issuance of Bonds or Notes

Sec. 7. (a) Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of negotiable revenue bonds or notes or any other evidences of indebtedness for the purpose of paying all or any part of the cost of a hospital project. The bonds or notes of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, not exceeding 40 years from their date, as may be determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be determined by the issuer.

(b) The principal of, redemption premium, if any, and the interest on such bonds or notes shall be payable from and secured by a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of the hospital project for which such bonds or notes have been issued and/or from such other revenues, if any, as may be provided by a non-profit corporation, all as specified by the resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(c) One or more series of bonds or notes may be issued for each hospital project or any hospital projects may be combined in one or more series of bonds or notes if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each hospital project may be considered separately with respect to the provisions of Sections 8 and 9 of this Act.

(d) The issuer shall determine the form of the bonds or notes, including any interest coupons to be attached thereto, and shall determine the denomination or denominations of the bonds or notes and the place or places of payment of principal, redemption premium, if any, and interest. Provision may be made for execution of the bonds or notes and cou-

pons, if any, under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j-1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds, notes, or coupons shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds or notes may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the issuer may determine, and provisions may be made for the registration of any coupon bonds or notes as to the principal alone and also as to both principal and interest, and provision may be made for the conversion of coupon bonds or notes into registered bonds or notes without coupons and for the reconversion into coupon bonds or notes of any registered bonds or notes without coupons. If the duty of such conversion or reconversion is imposed upon a trustee in a trust agreement, the substituted bonds or notes need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer shall sell the bonds or notes at such price or prices as shall be determined by the governing body of the issuer.

(e) The proceeds of the bonds or notes shall be used solely for the payment of the cost of the hospital project for which the bonds or notes were issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds or notes shall exceed the cost of the hospital project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into reserve funds, and provisions for such funds may be made in the resolution authorizing the bonds or notes or any instruments securing the same. The proceeds from the sale of the bonds or notes may be invested: (1) in direct, indirect, or guaranteed obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or any other instrument securing the bonds or notes; or (2) in certificates of deposit of any bank or trust company which deposits are secured by such obligations. Any bank or trust company with trust powers may be designated by the governing body to act as depository of the proceeds of the bonds or notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) Prior to the preparation or issuance of definitive bonds or notes, the issuer may issue interim

receipts or temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes when such bonds or notes shall have been executed and are available for delivery. Such interim receipts or temporary bonds or notes shall be for a maximum term of two years. The issuer shall submit such interim receipts or temporary bonds or notes to the Attorney General of Texas in accordance with Subsection (i) of this Section 7.

(h) Bonds or notes may be issued in accordance with the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau, or agency of the State of Texas, and without any proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this Act.

(i) After issuance of the bonds or notes is authorized and before the bonds or notes may be delivered to the purchaser thereof, the bonds or notes and the proceedings authorizing their issuance and securing the bonds or notes shall be presented to the Attorney General of Texas for examination. Where such bonds or notes recite that they are secured by a pledge of all or any part of the revenues of the issuer to be derived from any lease or other contract, such contracts shall also be submitted to the Attorney General of Texas. If the attorney general finds that such bonds or notes have been duly authorized in accordance with the constitution and laws of the State of Texas and that such contracts, if any, submitted to him securing and relating to the bonds or notes have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts. The bonds or notes when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration, the bonds or notes and any and all contracts submitted therewith shall be valid and binding obligations in accordance with their terms, and shall be incontestable in any court or other forum.

(j) Nothing in this Act shall supercede the provisions of the state certificate of need law.

(k) Before authorizing the issuance of any bonds or notes or calling an election on any matters authorized by this Act, the issuer shall deposit with the chief administrative officer of the issuer a full and complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the names of the owners of the non-profit corporation for whom the hospital project is to be constructed. All of the information deposited or required to be deposited by this section is public information.

**Resolution for Issuance of Bonds or Notes;  
Publication; Protest of Issuance; Election**

Sec. 8. Before issuing any bonds or notes in accordance with the provisions of this Act, the gov-

erning body of an issuer shall adopt a resolution declaring its intention to do so and stating the maximum amount of bonds or notes proposed to be issued, the purpose for which the bonds or notes are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of such bonds or notes. A substantial copy of such resolution shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the tentative date fixed in such resolution and the third publication shall be made not less than 10 days prior to the tentative date fixed in such resolution for the authorization of the bonds or notes. If at least 5 percent or 20,000 of the qualified electors of the issuer, whichever is less, shall file a written protest against the issuance of such proposed bonds or notes at no later than the close of business the business day before the tentative date specified for the authorization of such bonds or notes, then an election on the question of the issuance of such bonds or notes shall be called and held as herein provided. If no such protest is filed, then such bonds or notes may be issued by the issuer without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, that the governing body of an issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds or notes as provided herein.

#### Election on Issuance of Bonds or Notes

Sec. 9. If an election is called, notice thereof shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the date fixed for such election, and the third publication shall be made not less than 10 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to bond elections in cities, except as modified by the provisions of this Act. The order calling the election shall specify the date of such election, the place or places of holding the election, and the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the Election Code of the State of Texas. The form of ballot shall be in conformity with the applicable provisions of such election code and the ballots shall provide for voting for or against the following proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects." As soon as practicable after such election is held, the governing body of the issuer shall convene and canvass the returns of the election, and in the event a majority of the voters voting in such election approves the proposition, such governing body shall so find and declare and shall be authorized to proceed with the authorization of bonds or notes. No election shall again be

called on the proposition of issuing revenue bonds or notes for any hospital project which has been defeated by a majority of the voters voting in an election within six months of the proposed new election, and no bonds or notes shall be issued for any such hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of such bonds or notes.

#### Leases and Other Contracts; Terms

Sec. 10. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein, or refunding or substitution bonds or notes issued in lieu of such bonds or notes, are fully paid or provision has been made for their final payment.

#### Refunding Bonds or Notes

Sec. 11. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds or notes for the purpose of refunding any bonds, notes, or other evidences of indebtedness then outstanding, issued to provide a hospital project, which bonds, notes, or evidences of indebtedness may or may not have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, notes, or evidences of indebtedness. The bonds, notes, or evidences of indebtedness previously issued and to be refunded by the revenue refunding bonds or notes described in this Section 11 need not have been originally issued by the issuer of the revenue refunding bonds or notes. The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer, the refunding bonds or notes may be issued in exchange or substitution for outstanding bonds, notes, or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds, notes, or other evidences of indebtedness.

#### Securing Bonds or Notes by Trust Agreement

Sec. 12. (a) Any bonds or notes issued under the provisions of this Act may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of Texas. Any such trust agreement may pledge or assign lease income, contract payments, fees, or any other charges to be received from a non-profit corporation. Such bonds or notes, within the discretion of the governing body of the issuer, may be additionally secured by a mortgage, a deed of trust lien, or other security interest upon a designated hospital project vesting in the trustee

power to sell such hospital project for the payment of the indebtedness, power to operate such hospital project, and all other powers and authority for the further security of the bonds or notes.

(b) The trust agreement may evidence a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of any hospital project for the payment of principal of, redemption premium, if any, and interest on such bonds or notes as the same shall become due and payable and may provide for the creation and maintenance of reserves. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the issuer and the non-profit corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which such bonds or notes shall have been issued, and the custody, safeguarding, and application of all money. Any such trust agreement may set forth the rights and remedies of the bondholders or noteholders and of the trustee, and may restrict the individual right of action by bondholders or noteholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders or noteholders and may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes. All expenses incurred by any issuer in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the hospital project with respect to which the bonds or notes have been issued.

**Default in Payment of Bonds or Notes; Enforcement by Mandamus or by Appointment of Receiver**

Sec. 13. Any agreement or contract made in accordance with the provisions of this Act may contain a provision that, in the event of a default in the payment of the principal of, redemption premium, if any, or the interest on bonds or notes issued in accordance with, or relating to, such agreement, or in the performance of any agreement contained in the proceedings, mortgage, or instruments relating to such bonds or notes, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with such resolution, mortgage, or instruments.

**Foreclosure of Mortgage to Secure Bonds or Notes**

Sec. 14. Any mortgage to secure bonds or notes issued in accordance with the provisions of this Act may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the property secured by the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds or notes secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

**Members of Governing Body; Method of Selecting and Term of Office**

Sec. 15. If an authority issues bonds or notes in accordance with the provisions of this Act, notwithstanding any provision of law, and under no circumstances, shall the method of selecting and the term of office of any of the members of the governing body of such authority be prescribed in the resolution authorizing the issuance of such bonds or notes, the trust agreement securing such bonds or notes, or any other agreement relating to such bonds or notes.

**Authority of Governing Body**

Sec. 16. Except as limited by the provisions of this Act, each governing body of an issuer shall have full and complete authority with respect to bonds or notes of such issuer, lease agreements in which such issuer is lessor, sales agreements, and all other contracts and the provisions thereof.

**Tax Exemption for Bonds or Notes**

Sec. 17. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds or notes issued by it and their transfer and the interest therefrom, including any profits made from the sale thereof, shall at all times be free from taxation by the State of Texas or any municipality or political subdivision thereof.

**Bonds or Notes as Securities**

Sec. 18. Bonds or notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title I, Business & Commerce Code),<sup>1</sup> and shall be exempt securities under the Texas Securities Act, as amended (Article 581-1, et seq., Vernon's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this Act shall not be a security within the meaning of the Texas Securities Act.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

**Bonds or Notes as Legal and Authorized  
Investments and Security**

Sec. 19. Unless the bonds and notes issued under this Act are ineligible for investments in accordance with the criterion established in other statutes, rulings, or regulations of the State of Texas or the United States, then the bonds and notes under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

**Expenses of Relocation, Rerouting, Altering  
Construction, etc.**

Sec. 20. In the event any issuer, in the exercise of the power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, cable television transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer or the non-profit corporation. Such expense shall be paid from the proceeds of the sale of the bonds or notes. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

**Severability**

Sec. 21. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1975, 64th Leg., p. 285, ch. 126, eff. Sept. 1, 1975.]

**Art. 4437e-3. Texas Hospital Equipment Financing Act**

**Title of Act**

Sec. 1. This Act may be cited as the "Texas Hospital Equipment Financing Act."

**Legislative Findings and Purpose**

Sec. 2. It is hereby found, determined, and declared that health-related equipment, as defined in this Act, in many portions of this state is presently obsolete, inadequate, or insufficient; that the cost of providing such health-related equipment within this state has in many cases become excessive; and that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded methods of providing such health-related equipment. It is the purpose of this Act to establish the Texas Hospital Equipment Financing Council, the board of trustees of which shall be comprised of the members of the hospital advisory council, as created under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes), or shall be appointed by the hospital advisory council, as hereinafter provided, and to enable the financing council and the participating health-care providers, as herein defined, to provide at a reasonable cost health-related equipment, as herein defined, which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state. It is therefore determined and declared as a matter of public policy that the establishment of the financing council, as herein defined, the issuance of revenue bonds and notes by the financing council, and the exercise of the other powers of the financing council, all as herein provided, are in the public interest and in furtherance of an important public purpose. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

**Definitions**

Sec. 3. When used in this Act, unless the context requires a different definition, the following terms shall mean as follows:

(1) "Act" means the Texas Hospital Equipment Financing Act.

(2) "Board" means the board of trustees of the financing council, as herein defined.

(3) "Bonds" means revenue bonds, notes, interim certificates, bond anticipation notes, or other evidences of indebtedness of the financing council, as herein defined, issued pursuant to this Act, including refunding bonds.

(4) "Cost" as applied to health-related equipment, as herein defined, means and includes any and all costs of or related or incidental to such equipment and, without limiting the generality of the foregoing, shall include the following:

(A) the cost of the acquisition, repair, reconditioning, restoration, modification, refinancing, or installation of any such health-related equipment;

(B) the cost of any property interest in such health-related equipment including an option to purchase or a leasehold interest;

(C) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of such health-related equipment;

(D) the cost of financing charges and interest prior to acquisition and installation of such health-related equipment and for a maximum of two years after such acquisition and installation and start-up costs related to such health-related equipment and for a maximum of two years after such acquisition and installation;

(E) any and all costs paid or incurred in connection with the financing of such health-related equipment, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory, and consulting fees, expenses, and disbursements; the cost of any policy of insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(F) all direct or indirect costs of the financing council, as herein defined, and all direct or indirect costs, if any, of the hospital advisory council, as herein defined, incurred in connection with providing such health-related equipment, including without limitation reasonable sums to reimburse such financing council and, if necessary, the hospital advisory council for time spent by its agents or employees with respect to providing such health-related equipment and the financing and refinancing thereof; and

(G) any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for health-related equipment, as herein defined, by the financing council; any program for the sale or lease of such health-related equipment to any participating health-care provider, as herein defined; and any program for loans to such participating health-care providers or to any entity which will provide loans to any participating health-care provider in either case to enable such providers to purchase such health-related equipment.

(5) "Financing council" means the Texas Hospital Equipment Financing Council created and existing under the provisions of this Act as a public benefit corporation and constituted authority for the purposes set forth in this Act.

(6) "Health facility" means and includes any health-care facility which is utilized in providing medical care, medical research, or the training or

teaching of health-care personnel, any one or all, within this state and, without limiting the generality of the foregoing, shall include a public or private hospital, kidney disease treatment facility, radiation therapy facility, and alcoholism and drug treatment facility, so long as such health-care facility shall be licensed by the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Texas Commission on Alcoholism or any successor or successors to such entities, and health facility shall also include any facility or building related to any health-care facility such as a pharmacy, laboratory, laundry facility, and food service and preparation facility.

(7) "Health-related equipment" means and includes any equipment which will improve medical care, research, training, or teaching, any one or all, in this state.

(8) "Hospital advisory council" means the Texas Hospital Advisory Council, as established under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes).

(9) "Participating health-care provider" means a public or private, profit or nonprofit corporation, association, foundation, trust, cooperative, agency, body politic, or similar person or organization authorized by the laws of this state to provide or operate a health facility, as herein defined, and which, pursuant to the provisions of this Act, contracts with or borrows from the financing council, as herein defined, or any entity which will provide loans for the financing or refinancing of the lease or other acquisition of health-related equipment, as herein defined, as provided in this Act.

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

(11) "Trustee" means any member of the board, as herein defined.

The use of a singular term herein shall also include the plural of such term, and the use of a plural term herein shall also include the singular of such term, and words of the masculine, feminine, or neuter gender shall include other genders unless the context clearly requires a different connotation.

**Texas Hospital Equipment Financing Council;  
Creation; Powers and Duties**

Sec. 4. There is hereby created a nonmember, nonstock public benefit corporation to be known as the Texas Hospital Equipment Financing Council with the powers herein set forth for the purpose of providing at a reasonable cost health-related equipment which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state, which purpose is hereby declared to be a public purpose of this state. The exercise by the financing council of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public purpose of the state, acting by and through the financing council, in promoting the general health, wel-

fare, and prosperity of the state and all of its citizens. Neither the state nor the hospital advisory council shall be authorized to lend its credit or grant or loan any public money or thing of value in aid of the financing council.

**Board of Trustees; Composition; Terms; Reappointment; Vacancies; Eligibility**

Sec. 5. (a) The board of the financing council shall consist of 12 members, entitled trustees.

(b) The members of the hospital advisory council shall serve, ex officio, as trustees. Each such member shall serve as a trustee during the entire time such person is a member unless such member shall decline to serve by so notifying the hospital advisory council in writing in which event the hospital advisory council by majority vote shall appoint a person to serve as a trustee in lieu of such member.

(c) If all or any of the trustees are appointed by the hospital advisory council, each trustee so appointed shall hold office for a term expiring on July 17 of each odd-numbered year. Each trustee so appointed shall hold office until a successor is appointed and has qualified by executing the surety bond required by this Act of each trustee. Appointments to the hospital advisory council shall be made with due regard for the race, creed, sex, religion, and national origin of the appointees and the geographical distribution of the members of the hospital advisory council.

(d) Each trustee shall be eligible for reappointment.

(e) Any vacancy in the office of a trustee appointed by the hospital advisory council shall be filled by majority vote by the hospital advisory council. Any such vacancy, except for a vacancy resulting from the expiration of the term of such trustee, shall be filled for the unexpired term only.

(f) To be eligible to serve as a trustee appointed by the hospital advisory council, a person shall be a qualified voter of the state. Members and employees of the hospital advisory council are eligible to serve as trustees. No officer, director, or employee of a participating health-care provider shall be eligible to serve as a trustee. Any trustee appointed by the hospital advisory council having any pecuniary interest in any participating health-care provider shall resign from the board prior to the authorization of any bonds for the benefit of such participating health-care provider, and such vacancy shall be filled as otherwise provided in this Act.

**Board of Trustees; Compensation; Officers; Quorum; Resolutions; Majority Action; Meetings; Surety Bonds; Personal Liability; Bylaws; Committees; Indemnification**

Sec. 6. (a) The trustees shall serve as such without compensation, except that each trustee shall be reimbursed for his or her actual expenses incurred in the performance of his or her duties hereunder to the extent authorized by the board.

(b) The board shall elect one of the trustees as chairman, who shall preside at all meetings of the board and perform such other duties as are prescribed by the board and this Act. The board shall elect one of the trustees as vice-chairman to perform the duties of the chairman when the chairman is not present or is incapable of performing his duties. The board shall elect a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties as prescribed by the board. The board may elect a treasurer to perform duties prescribed by the board. The offices of secretary and treasurer may be held by one person, and the holder of each of these offices need not be a trustee. The board may appoint one or more persons who need not be trustees to be assistant secretaries who may perform any duty of the secretary.

(c) The chairman, vice-chairman, secretary, and, if elected, the treasurer and any assistant secretaries of the board shall be elected at the first meeting of the board after all trustees have been appointed and qualified for office by executing the surety bond required by this Act of each trustee. Thereafter, officers of the board shall be elected at the first meeting of the board on or following July 17 of each odd-numbered year, or at any time necessary to fill a vacancy.

(d) The chairman is the chief executive and administrative officer of the board. In addition to any other powers and duties prescribed by the board and this Act, the chairman shall administer the duties and functions of the board.

(e) Seven of the members of the board shall constitute a quorum for the transaction of business by the board.

(f) The board shall act and proceed by and through written resolutions adopted by the board. The act of the majority of the trustees present at a meeting at which a quorum of the board is present shall be the act of the board.

(g) The board shall hold regular meetings at any location within the state and at times specified by written resolution of the board and shall hold special meetings at any location within the state when called by the chairman of the board or any two of the trustees.

(h) Written notice of the date, hour, place, and subject of each meeting of the board must be posted at least 72 hours preceding the scheduled time of the meeting by the secretary of state, who may publish such notice in the Texas Register. In the case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any action taken by the board at a meeting on a subject for which notice as required in this subsection has not been given is voidable.

(i) Prior to taking office as trustee, each trustee shall execute a surety bond in the penal sum of



\$10,000, conditioned on the faithful performance of the duties of trustee, executed by a surety company authorized to transact business in this state and filed with the Secretary of State of Texas. The surety bond shall be kept in force at all times thereafter, and the cost shall be paid by the financing council.

(j) A trustee shall not be liable personally for any bonds issued or contracts executed by the financing council.

(k) The initial bylaws of the financing council shall be adopted by the board. The power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the board. The bylaws may contain any provisions for the regulation or management of the affairs of the financing council not inconsistent with law, including this Act.

(l) The board, by resolution adopted by a majority of the trustees present at a meeting at which a quorum of the board is present, may designate one or more committees, which committees shall, however, not have the authority of the board in the management of the financing council. Membership on such committees may but need not be limited to trustees.

(m) The financing council shall indemnify any trustee or officer or former trustee or officer of the financing council for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been a trustee or officer, except in relation to matters as to which he shall have been guilty of gross negligence or misconduct in respect of the matter in which indemnity is sought.

(n) If the financing council has not fully indemnified him, the court in the proceeding in which any claim against such trustee or officer has been asserted, or any court having the requisite jurisdiction of an action instituted by such trustee or officer on his claim for indemnity, may assess indemnity against the financing council or its receiver or trustee for the amount paid by such trustee or officer in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the financing council), and any expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of gross negligence or misconduct in respect of the matter in which indemnity is sought.

#### Rights and Powers of Financing Council

Sec. 7. The financing council shall have all the rights and powers necessary or convenient to accomplish the purposes of the financing council as set forth in this Act, including without limitation the powers:

(1) to provide or cause to be provided by a participating health-care provider by acquisition, lease, fabrication, repair, reconditioning, or installation one or more items of health-related equipment to be located within a health facility in this state;

(2) to lease as lessor any item of health-related equipment for such rentals and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any item of health-related equipment for such price and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or any part of the cost of any health-related equipment, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of an item of health-related equipment, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the board may deem advisable and as are not in conflict with provisions of this Act, and such loans may be made to a participating health-care provider or to any bank, savings and loan association, or other entity which will directly or indirectly provide such financing or refinancing;

(6) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold property as security for the payment of funds so loaned or invested;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with health-related equipment, or any interest therein, wherever situated, as the purposes of the financing council shall require;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to sue and be sued and plead and be impleaded in its own name;

(10) to contract for services with engineers, attorneys, accountants, and health-care and financial experts and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(11) to select its depository or depositories, subject only to the provisions of this Act and any

covenants with respect to the bonds issued pursuant to this Act;

(12) to procure and pay premiums on insurance of any type whatsoever in amounts and from insurers as the financing council deems necessary or advisable;

(13) to appoint agents of the financing council for such period of time as the financing council may determine and define their duties;

(14) to have a corporate seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced on instruments of any nature required or authorized to be executed by its proper officers;

(15) to make and alter bylaws, not inconsistent with the laws of this state, for the administration and regulation of the affairs of the financing council; and

(16) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the financing council is organized. Provided, however, that the financing council shall not be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part directly or indirectly health-related equipment, revenues derived from the operation or ownership of health-related equipment, or any other revenues, including insurance proceeds, as may be provided by a participating health-care provider, any one or more; provided further, however, that nothing in this Act shall be interpreted to bestow upon the financing council the power of taxation, the power of eminent domain, the police power, or any equivalent sovereign power of this state or the hospital advisory council. Nothing in this section grants any authority to officers or trustees of the financing council for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the bylaws or in any other laws of this state. Authority of officers and trustees to act beyond the scope of the purpose or purposes of the financing council is not granted by any provision of this section.

**Inapplicability of Administrative Procedure and Texas Register Act and Public Bidding Requirements**

Sec. 8. The financing council is not an "agency" as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and is not subject to the provisions of such Act. The financing council is not a political subdivision or body politic of the state, is prohibited from using any money of the state or the hospital advisory council, and, therefore, shall not

be subject to public bidding requirements of the state.

**Provision of Health-Related Equipment for Operation by Health-Care Providers in Health Facilities; Powers of Financing Council**

Sec. 9. In addition to the other powers and duties of the financing council, the financing council is specifically authorized to initiate a program of providing health-related equipment to be operated by participating health-care providers in health facilities located within the state. In this regard, the financing council shall be authorized to exercise the following powers:

(1) to establish financial eligibility standards for participating health-care providers;

(2) to obtain or aid in obtaining from any department, agency, or instrumentality of the United States or the state or any private company any insurance or guarantee as to, or of, or for the payment or repayment of loan payments, rent payments on any lease or principal, redemption premium, or interest, or any part thereof, on any bonds;

(3) to enter into any agreement, contract, or other instrument with respect to any insurance and to accept payment in the event of damage to or destruction of any health-related equipment;

(4) to enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, or letter of credit, to accept payment in such manner and form as provided therein in the event of default by a participating health-care provider or other entity to which a loan has been made, and to assign any such insurance or guarantee as security for bonds issued by the financing council;

(5) to procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the financing council or to secure the payment of any loan, lease, or purchase payment owed by a participating health-care provider to the financing council, including the power to pay the cost of obtaining such letter of credit;

(6) to enter into an agreement with any entity securing the payment of bonds issued pursuant to this Act, authorizing said entity to approve the participating health-care providers that can receive reimbursement for or finance or refinance health-related equipment with proceeds from the bonds secured by said entity and to approve any banks, savings and loan associations, or other entities to which the financing council may loan its funds to finance or refinance directly or indirectly the cost of health-related equipment for participating health-care providers; and

(7) to loan to any participating health-care provider or a bank or savings and loan association or other entity under an installment purchase contract or loan agreement money to reimburse, finance, or

refinance directly or indirectly the cost of specific items of health-related equipment for a participating health-care provider and to take back a secured or unsecured promissory note evidencing such loan upon such terms and conditions as the financing council may approve.

#### Experts, Agents, and Independent Contractors

Sec. 10. (a) The financing council may employ such experts and agents and may contract with such independent contractors as it may see fit, and it may delegate to such experts, agents, and independent contractors the power to manage the routine affairs of the financing council required or permitted by this Act, including the processing of any applications from any health-care providers for loans from the financing council for the financing of health-related equipment and for the lease or purchase from the financing council or financing by the financing council of health-related equipment.

(b) Notwithstanding anything set forth in Subsection (a) of this section, the financing council shall not delegate to any employee, expert, agent, or other person any of the following specific duties and powers:

(1) the power to issue, sell, and deliver bonds, as more specifically provided elsewhere in this Act; or

(2) the power to establish financial eligibility standards for participating health-care providers.

#### Payment of Financing Council Expenses; Borrowing

Sec. 11. All expenses of the financing council incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act, and no liability under this Act shall be incurred by the financing council beyond the extent to which money shall have been provided under this Act by the sale of bonds or by participating health-care providers; except that, for the purposes of meeting the necessary expenses of initial organization and operation of the financing council for the period commencing with the organization of the financing council and continuing until such a date as the financing council derives money from funds provided to it under the authority of this Act, the financing council is empowered to borrow such money as the financing council may require. Such money borrowed by the financing council shall subsequently be charged to and apportioned among participating health-care providers. No expenses of the financing council shall be paid by the hospital advisory council, and the hospital advisory council and each member shall incur no liability under this Act. The hospital advisory council shall not lend money to the financing council.

#### Bonds

Sec. 12. (a) The financing council is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of health-relat-

ed equipment and to make either directly or indirectly through banks, savings and loan associations, or other entities loans to participating health-care providers as provided elsewhere in this Act.

(b) The bonds shall be dated, shall bear interest at such rate or rates (fixed or variable), shall mature at such time or times not exceeding 20 years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the financing council. The bonds, including any interest coupons to be initially attached thereto, shall be in such form and denomination or denominations and payable at such place or places and may be executed or authenticated in such manner as the financing council may determine. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon or in registered form, or both, or may be payable to a specific person as the financing council may determine, and provision may be made for the registration of any coupon bonds as to principal alone, for the conversion of coupon bonds into fully registered bonds without coupons, and for the reconversion into coupon bonds of any fully registered bonds without coupons. The duty of conversion or reconversion may be imposed upon a bank as trustee in a trust agreement.

(c) The principal of and redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part health-related equipment, revenues derived from operating health-related equipment, including insurance proceeds, or any other revenues as may be provided by a participating health-care provider, or a bank, savings and loan association, or other entity to which a loan is made, any one or more.

(d) The financing council shall sell the bonds at such price or prices as it shall determine at public or private sale. The net effective interest rate, calculated in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), on any bonds may not exceed 15 percent.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of health-related equipment and, at the option of the financing council, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such

manner and under such restrictions, if any, as may be determined by the financing council. The financing council shall be paid, out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act, an amount of money equal to all of the financing council's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to the employees, if any, of the financing council for the time such employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

(f) Any bond resolution or related trust agreement, trust indenture, indenture of mortgage, or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to: (1) pledging or assigning the revenues generated by health-related equipment or pledging or assigning the mortgage, lease, or other security given or to be given by participating health-care providers (whether or not identified at the time of issuance of such bonds) with respect to which such bonds are to be issued or other specified revenues of the financing council; (2) the rentals, fees, and other amounts to be charged, the schedule of principal payments, and the sums to be raised in each year thereby and the use, investment, and disposition of such sums; (3) setting aside the reserves or sinking funds and the regulation, investment, and disposition thereof; (4) limitations on the use of health-related equipment financed or to be financed by the proceeds of the sale of such bonds; (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the terms upon which additional bonds may rank on a parity with or be subordinate or superior to other bonds; (7) the refunding of outstanding bonds; (8) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given, and restrictions on the individual rights of action by bondholders; (9) omissions which shall constitute a default in the duties of the financing council to holders of its bonds and providing the rights and remedies of such holders in the event of default; and (10) any other matters relating to the bonds which the financing council deems desirable. In addition to the foregoing, bonds of the financing council may be secured by a pooling of leases, of loan agreements, or of mortgages or other securities (whether or not such leases, loan agreements, or mortgages or other securities exist at the time of sale and delivery of such bonds or are agreed to by the financing council or granted to the financing council thereafter) whereby the financing council

may assign its rights as lessor and pledge rents under two or more leases of health-related equipment with two or more participating health-care providers as lessees or assign its rights as lender and pledge loan payments under two or more loan agreements relating to two or more items of health-related equipment with two or more participating health-care providers as borrowers or assign its rights as mortgagee and pledge mortgages from two or more participating health-care providers, banks, savings and loan associations, or other entities, upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued.

(g) Neither the trustees nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of issuance thereof.

(h) Prior to the preparation or issuance of definitive bonds, the financing council may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Such interim receipts or temporary bonds shall be for a maximum term of three years.

(i) The financing council shall have the power to purchase its bonds out of any available funds thereof. The financing council may hold, pledge, cancel, or resell such bonds subject to and in accordance with the resolution or trust indenture relating to such bonds.

(j) All bonds and appurtenant interest coupons, if any, shall be deemed to be "securities" within the meaning of Chapter 8, Business & Commerce Code, notwithstanding anything in Section 8.102 thereof to the contrary.

#### Refunding Bonds

Sec. 13. The financing council is hereby authorized to issue, sell, and deliver its bonds for the purpose of refunding any bonds of the financing council then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other terms thereof, the rights of the holders thereof, and the rights, duties, and obligations of the financing council in respect thereof shall be governed by the provisions of this Act insofar as the same shall be applicable. Within the discretion of the financing council, such refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds.

#### Securities Act; Exemptions

Sec. 14. Bonds issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall be exempt securities under The Securities Act, as amended (Article 581-1 et seq., Ver-

non's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this Act shall not be a security within the meaning of The Securities Act.

**Obligations Relating to Payment of Bonds; Impairment of Rights and Remedies of Bondholders**

Sec. 15. (a) The financing council's bonds issued under the provisions of this Act shall not constitute obligations of the hospital advisory council, the Texas Department of Health, the state, or any political subdivision or agency thereof or a pledge of the faith and credit of any of them. The issuance of bonds under the provisions of this Act shall not directly or indirectly or contingently obligate the state or any political subdivision or agency thereof to levy any form of taxation therefor or to make any appropriation for their payment. All bonds issued by the financing council pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or of any trust indenture or mortgage or deed of trust executed as security therefor.

(b) Each bond of the financing council shall contain on its face a statement to the effect that (1) the state is not obligated to pay the principal of and redemption premium, if any, or interest on such bond and (2) neither the faith and credit nor the taxing power of the state is pledged, given, or loaned to such payment.

(c) The state hereby pledges to and agrees with the holders of any bonds issued under this Act that the state will not limit or alter the rights hereby vested in the financing council to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged. The financing council is authorized to include this pledge and undertaking for the state in any agreement with the holders of such bonds.

**Construction With Other Laws**

Sec. 16. (a) This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient within itself for the creation of the financing council authorized herein and all actions by the financing council authorized hereby without reference to any other general or special laws or specific acts or any restrictions contained therein; and in any case, to the extent of any conflict or inconsistency between any provision of this Act and any other provisions of law, this Act shall prevail and control; provided, however, that the financing council shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to

carry out any power or authority expressed or implied granted by this Act.

(b) Notwithstanding any provision of this Act, nothing in this Act shall exempt the financing council or any participating health-care provider from compliance with the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

**Taxation**

Sec. 17. Any health-related equipment, including any leasehold estate therein, owned by the financing council which would otherwise be taxable to the financing council under the provisions of the Property Tax Code but for the purposes and nonprofit nature of the financing council shall be assessed to the participating health-care provider using such health-related equipment or, if more than one such participating health-care provider exists, to such providers in proportion to the value of the rights of such providers to use such health-related equipment, all to the same extent and subject to the same exemptions from taxation, if any, as if such health-related equipment were owned by such participating health-care provider or providers. Each participating health-care provider shall be considered to be the owner of any health-related equipment being used by such participating health-care provider for the purposes of taxes levied or imposed by this state or any political subdivision of this state. It is hereby declared as a matter of public policy that the financing council shall be engaged exclusively in the performance of charitable functions and shall be exempt from all taxation by this state and every municipal corporation and political subdivision hereof. All bonds issued by the financing council hereunder, their transfer, the interest thereon, and any profits from the sale or exchange thereof shall at all times be free from taxation by this state or any municipal corporation or political subdivision hereof.

Sec. 18. [Adds Tax Code, § 151.3131].

**Bonds as Legal Investments; Eligibility to Secure Deposits**

Sec. 19. Unless the bonds issued under this Act are ineligible for investments in accordance with the criterion established in other statutes, rulings, or regulations of the state or the United States, then the bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the state. Such bonds shall be eligible to secure the deposit of any and all public funds of the state and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the state, and they shall be lawful and sufficient security for said deposits at their face value when accompanied

by all unmatured coupons, if any, appurtenant thereto.

**Replacement; Mutilated, Lost, Stolen, or Destroyed Bonds or Interest Coupons**

Sec. 20. The financing council may provide procedures for the replacement of any mutilated, lost, stolen, or destroyed bond or interest coupon.

**Conflicts of Interest; Trustees and Employees of Financing Council**

Sec. 21. No trustee or employee of the financing council shall have any direct or indirect financial interest in any bond issue or in any transaction pursuant to this Act to which the financing council is a party.

**Discrimination in Programs or Activities**

Sec. 22. No person in the state shall, on the grounds of race, color, religion, national origin, age, or sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act.

**Liberal Construction**

Sec. 23. This Act shall be construed liberally to effect the legislative intent and the purposes of this Act, and all powers herein granted shall be broadly interpreted to effect such intent and purposes and not as a limitation of powers.

**Compliance with Texas Health Planning and Development Act**

Sec. 24. No lease, sale, or other transaction involving any health-related equipment shall be eligible for financing under this Act until the participating health-care provider complies with the requirements, if any, of the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

**Perfection of Security Interests**

Sec. 25. Any security interest granted by the financing council may be perfected in the manner and with the effect specified in Chapter 9, Business & Commerce Code, as amended, any provision in Section 9.104 of such code to the contrary notwithstanding.

**Status as Nonprofit Public Benefit Corporation; Alteration by Legislation; Access to Books and Records; Dissolution**

Sec. 26. (a) The financing council shall be a nonprofit public benefit corporation, and no part of its net earnings remaining after its bonds and its expenses have been paid shall inure to the benefit of any person other than the state.

(b) The legislature may in its sole discretion and at any time alter the structure, organization, programs, or activities of the financing council, subject only to any limitation provided by the constitution

and the laws of the state and of the United States relating to the impairment of contracts entered into by the financing council. Representatives of the hospital advisory council shall have access at any time to all books and records of the financing council.

(c) Whenever all bonds and obligations of the financing council have been paid and discharged or adequate provision has been made therefor the legislature may dissolve the financing council.

(d) Whenever dissolution of the financing council occurs the title to all funds and properties then owned by the financing council shall automatically vest in the state without any further conveyance, transfer, or act of any kind whatsoever.

(e) The dissolution of the financing council shall not take away or impair any remedy available to or against the financing council or its trustees or officers for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the financing council may be prosecuted or defended by the financing council in its corporate name. The trustees and officers shall have the power to take such corporate or other action that shall be appropriate to protect such remedy, right, or claim.

**Waiver of Notice**

Sec. 27. Whenever any notice is required to be given to any trustee under the provisions of this Act or under the provisions of the bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

**Severability**

Sec. 28. In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, it being intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word has not been included herein.

[Acts 1983, 68th Leg., p. 3732, ch. 577, §§ 1 to 17, 19 to 28, eff. Aug. 29, 1983.]

**Art. 4437f. Hospital Licensing Law**

**Title**

Sec. 1. This Act may be cited as the "Texas Hospital Licensing Law."

**Definitions**

Sec. 2. For the purpose of this Act:

(a) The term "person" means any individual, firm, partnership, corporation, association or joint stock company, and includes any receiver, trustee, assignee, or other similar representative thereof.

(b) The term "general hospital" means any establishment offering services, facilities, and beds for use beyond twenty-four (24) hours for two (2) or more non-related individuals requiring diagnosis, treatment of care for illness, injury, deformity, abnormality, or pregnancy, and regularly maintaining at least clinical laboratory services, diagnostic X-ray services, treatment facilities which would include surgery and/or obstetrical care, and other definitive medical or surgical treatment of similar extent.

(b)(1) The term "special hospital" means any establishment offering services, facilities and beds for use beyond twenty-four (24) hours for two (2) or more non-related individuals who are regularly admitted, treated and discharged and require services more intensive than room, board, personal services and general nursing care and which has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities and/or other definitive medical treatment and has a medical staff in regular attendance, and maintains records of the clinical work performed for each patient.

The definition of "hospital" does not include those facilities licensed pursuant to the provisions of Article 4442c, Acts 1953 Legislature, page 1005, Chapter 413.

The definition of "hospital" does not include those institutions licensed pursuant to Articles 5547-88 to Article 5547-99 of the Mental Health Code.

The definition of "hospital" does not include facilities maintained or operated by the Federal Government or agencies thereof, nor does it include facilities maintained or operated by the State of Texas or agencies thereof. The definition of "hospital" does, however, include those facilities maintained or operated by "governmental" or "governmental unit" as those terms are defined in Section 2, Subsection (d) of this Act.

(c) The term "licensing agency" means the State Board of Health.

(d) The term "governmental" or "governmental unit" means any hospital district, county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(e) The term "medical staff" means that physician or group of physicians, licensed to practice medicine by the Texas State Board of Medical Examiners, who by action of the governing body of a hospital, are privileged to work within and use the facilities of a hospital for or in connection with the observation, care, diagnosis or treatment of individuals who are, or may be, suffering from any disease

or disorder, mental or physical, or any physical deformity or injury.

**Purpose of Act**

Sec. 3. The purpose of this Act is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

**Necessity of License**

Sec. 4. After January 1, 1960, no person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain a hospital in this state without a license obtained under the provisions of this law.

**Rules and Regulations; Licensing Director; Appointment; Duties; Qualifications**

Sec. 5. The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt, amend, promulgate, and enforce such rules, regulations, and minimum standards as may be designed to further the purposes of this Act. Provided, however, that the rules, regulations, or minimum standards so adopted, amended, promulgated, or enforced shall be limited to safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Provided, however, that any rules, regulations, or standards set shall first be approved by the State Board of Health, and after they have been so approved, shall be approved also by the Attorney General as to their legality, and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State.

The Commissioner of Health shall appoint, with the advice and consent of the State Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of such Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

**Compliance With Rules and Regulations**

Sec. 6. Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this Act shall be given a reasonable length of time within which to comply with such rules, regulations and standards, but in no event longer than six (6) months. Provided, however, that the Licensing Agency may extend the length of time within which to comply with such rules beyond six (6) months upon sufficient showing that it will require addition-

al time to complete compliance with such rules, regulations, and standards.

**Applications for License; Approval; Fees; Disposition**

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars and Fifty Cents (\$2.50) per bed; but in no event shall the total fee be less than One Hundred Dollars (\$100.00) or more than Two Thousand Dollars (\$2,000.00).

**Issuance of License; Renewals**

Sec. 8. Upon receipt of an application for license, and the license fee, the Licensing Agency shall issue a license if it finds that the applicant and the hospital comply with the provisions of this Act, and the rules, regulations, or standards promulgated hereunder. Each such license, unless sooner suspended, cancelled, or revoked, shall be renewable annually upon payment of the prescribed fee.

**Cancellation, Revocation or Suspension of License; Proceedings; Appeals; Reissuance of License; Injunctions; Venue**

Sec. 9. The Licensing Agency shall have the authority to deny, cancel, revoke, or suspend a license in any case where it finds there has been a substantial failure to comply with the provisions of this Act or the rules, regulations, or standards promulgated under this Act, or for the aiding, abetting, or permitting the commission of any illegal act, or for conduct detrimental to the public health, morals, welfare and safety of the people of the State of Texas.

Proceedings under this Article shall be initiated by filing charges with the Licensing Agency, in

writing and under oath. Said charges may be made by any person or persons. If upon investigation of such charge or charges it is found that such charge or charges appear to have merit, then the chairman of the Licensing Agency shall set a time and place for hearing, and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least ten (10) days prior thereto. When personal service is impossible, or cannot be effected, the Licensing Agency shall cause to be published once a week for two (2) successive weeks a notice of the hearing in a newspaper published in the county wherein the respondent was last known to be, and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of hearing shall not be less than ten (10) days after the date of the last publication of the notice. At said hearing the respondent shall have the right to appear, either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Licensing Agency. The Licensing Agency shall thereupon determine the charges upon their merits.

Any hospital whose license has been cancelled, revoked, or suspended by the Licensing Agency may, within twenty (20) days after the making and entering of such order, take an appeal to any of the District Courts in the county that the hospital is so located in, but the decision of the Licensing Agency shall not be enjoined or stayed except on application to such District Court after notice to the Licensing Agency.

The proceedings on appeal shall be a trial de novo as such term is commonly used and intended in an appeal from the Justice Court to a County Court, and which appeal shall be taken in any District Court of the county where the license has been issued.

Upon application, the Licensing Agency may reissue a license to a hospital whose license has been cancelled, revoked, or suspended when it feels that the reasons bringing about such cancellation, revocation, or suspension have been corrected. Any such applications for reissuance shall be made in such manner and form as the Licensing Agency may require.

The Licensing Agency shall not be bound by strict rules of evidence or procedure in the conduct of its proceedings but the determinations shall be founded on sufficient legal evidence to sustain it.

The Licensing Agency shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said actions for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

The venue for any suit seeking to enjoin the violation of any of the provisions of this Act shall lie



in the county wherein such violation is alleged to have occurred.

The Licensing Agency shall be represented by the Attorney General and/or the County or District Attorneys of this state.

Before entering any order denying, cancelling, or suspending a license, the Licensing Agency shall hold a hearing in accordance with the procedures set out in this Section.

#### **Failure to Comply with Health Planning and Development Act**

Sec. 9A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act<sup>1</sup> requiring a certificate of need or an exemption certificate.

<sup>1</sup> Article 4418h.

#### **Transferability of License; Posting**

Sec. 10. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

#### **Inspection**

Sec. 11. Any officer, employee, or agent of the Licensing Agency may enter and inspect any hospital at any reasonable time to assure compliance with, or to prevent a violation of this Act.

#### **Stenographers or Inspectors; Assistants; Employment**

Sec. 12. The Licensing Agency shall have the power to employ the services of stenographers, inspectors, and other necessary assistants in carrying out the provisions of this Act.

#### **Advisory Council; Membership; Terms; Vacancies; Compensation**

Sec. 13. The Governor shall appoint a Hospital Licensing Advisory Council consisting of nine (9) members as herein provided:

(a) Three (3) physicians who are duly licensed by the Texas State Board of Medical Examiners and who are engaged in the active practice of medicine; one of whom shall be a member of the staff of a hospital of less than fifty (50) beds;

(b) Three (3) hospital administrators actively engaged in the field of hospital administration for a period of not less than two (2) years; one of whom shall be an administrator of a hospital with less than fifty (50) beds and one of whom shall be an administrator of a hospital with not more than one hundred (100) beds;

(c) Three (3) members representing the general public.

All members shall serve for a term of six (6) years except that the original appointment shall be made so that the terms of three members is for two (2) years, the terms of three members is for four (4) years, and the terms of three members is for six (6) years. Members whose terms expire shall hold office until their successors shall be appointed and qualified. In the event of a vacancy occurring before the expiration of a member's term, the appointment shall be for the unexpired term. Members while serving or acting in their official capacities on the official business of the Hospital Licensing Advisory Council shall receive compensation at the rate of Twenty Dollars (\$20.00) per day and shall also be entitled to receive actual and necessary travel and subsistence expenses while so serving away from their place of residence.

#### **Duty of Advisory Council; Special Meetings**

Sec. 14. It shall be the duty of the Hospital Licensing Advisory Council to consult and advise with the Licensing Agency in matters of policy affecting the administration of this Act, in the development of rules, regulations, and standards provided for hereunder, and to review, and make recommendations with respect to rules, regulations, and standards authorized hereunder, prior to their promulgation by the Licensing Agency as specified herein.

Special meetings of the Hospital Licensing Advisory Council may be called at the request of the chairman of the State Board of Health or at the request of any three (3) or more members of the Hospital Licensing Advisory Council.

#### **Disclosure of Information Received by Agency**

Sec. 15. Information received by the Licensing Agency through reports, inspections, or as otherwise authorized under this law, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding brought under Section 9 of this Act.

#### **Violation; Penalties**

Sec. 16. Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not more than One Hundred Dollars (\$100.00) for the first offense and not more than Two Hundred Dollars (\$200.00) for each subsequent offense. Each day shall constitute a separate offense.

#### **Medical Staff Memberships**

Sec. 17. No provision or provisions of this Act shall in any way change, or modify, the authority or power of the Board of Managers, Board of Trustees, Board of Directors, or Governing Body of any hospital, as that term is defined herein, to make such rules, standards, or qualifications for "Medical Staff" membership, as they in their sole discretion

may deem necessary or advisable, or to grant or refuse membership on such "Medical Staff."

[Acts 1959, 56th Leg., p. 505, ch. 223. Amended by Acts 1962, 57th Leg., 3rd C.S., p. 92, ch. 32, § 1; Acts 1975, 64th Leg., p. 832, ch. 323, § 5.04, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1056, ch. 387, § 5, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 377, ch. 81, § 12(a), eff. Sept. 1, 1983.]

Section 12(m) of the 1983 amendatory act provides:

"Except for Subsections (e) and (k) of this section, this section applies only to an application for a license, registration, document, or service filed on or after the effective date of this section. An application filed before the effective date of this section is covered by applicable law in effect on the date the application was filed."

**Art. 4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population**

**Establishment; Eligibility of Institutions as Members; Name; Purposes; Terms and Conditions**

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Hospital Laundry Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "laundry system" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish the association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

**Definitions**

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) "Eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A&M University System, The University of Texas System, and Texas Woman's University; nonprofit health-related institutions; and cooperative associations created to provide certain systems as defined in Subsection (2), Section 2, Chapter 195, Acts of the 64th Legislature, Regular Session, 1975 (Article 4447r; Vernon's Texas Civil Statutes), a unit of which is situated in any county of this State having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such compo-

nent institutions may be a member of any one or more associations.

(2) "Laundry system" shall include buildings in which soiled or infected clothing, uniforms, or linens are laundered; land or estates in land (whether leasehold or other interest) as a site for such buildings and access thereto; equipment and appliances for the laundry operation; supplies for the laundry operation; clothing, uniforms, and linens; automotive and other personal property appropriate for delivery and pick up services; and other property and equipment incidental and appropriate to the operation of laundry facilities.

**Powers, Rights and Functions**

Sec. 3. Associations established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) to acquire by purchase, lease, or otherwise lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the laundry system, and to own, hold, improve, develop, and manage any real estate so acquired, and to construct or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate, and to encumber and dispose of any lands or estates in lands and any buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise any personal property appropriate or reasonably incidental to the laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing, cloths, and fabrics and the transportation and distribution of these articles, and to encumber and dispose of any such personal property;

(4) to acquire by purchase or otherwise any uniforms, clothing, or linen for its members;

(5) to borrow or raise money without limit as to amount; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights and other choses in action; to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchased, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association.

**Use of Public Funds Prohibited**

Sec. 4. No public funds appropriated to any department of the State government or to any State institution shall be used in establishing any association authorized by this Act.

**Authority to Incorporate**

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas, which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

**Cooperative and Nonprofit Requirements; Franchise Tax Exemption; Annual Written Report; Disposition of Surplus Revenue**

Sec. 6. Associations established under this Act shall be purely co-operative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. Associations shall nevertheless file a written report to the Secretary of State showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from the laundry system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

**Loans to Members Prohibited**

Sec. 7. Associations established under this Act shall not have the power to loan money to their members.

**Limitation on Powers; Utilization of Loans; Costs of Services as Charge**

Sec. 8. Associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of the laundry system may be accomplished in whole or in part with the proceeds of loans obtained from any public or private source. Such associations are authorized to furnish laundry services from the laundry system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

**Indebtedness by Borrowing, Bonds, Etc., Authorized; Payment from Revenue Pledged**

Sec. 9. Associations established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes from time to time in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the laundry system.

Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the laundry system or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of the association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, notes, or other evidences of obligations out of funds, other than those specifically pledged to the payment thereof.

**Bonds as Legal Investments and Security for Deposits**

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivision of the State of Texas and for all public funds of the State of Texas or its agencies, including the permanent school fund. Such bonds will be eligible to secure the deposit of any and all public funds of the State of Texas, cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto, if any.

**Membership; Transferability; Bylaws; Voting Rights; Suspension or Expulsion; Disposition of Contractual Obligations and Property**

Sec. 11. (a) Membership in associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization of the association by the organizers thereof, or by the Board of Directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the management of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In the case of expulsion, the association shall pay to the member such amount and at such time as may be fixed in its bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by the association in its bylaws.

(d) All amounts paid or property conveyed or transferred to the association by expelled members not returned as hereinabove provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

#### Liability of Members

Sec. 12. Unless otherwise herein provided, the members of the association established hereunder shall not be responsible to the association or to its creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease.

#### Cumulative Effect

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

#### Purposes of Act; Tax Free Status

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this State, and for the improvement of their properties and industries, the association in carrying out the purposes of this Act will be performing an essential public function under the constitution, and the association shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the association.

[Acts 1971, 62nd Leg., p. 105, ch. 56, §§ 1 to 14, eff. April 12, 1971. Amended by Acts 1977, 65th Leg., p. 1231, ch. 476, §§ 4 to 6, eff. June 15, 1977; Acts 1981, 67th Leg., p. 1776, ch. 389, § 24, eff. Jan. 1, 1982.]

Section 15 of the 1971 Act provides:

"If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional work, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth."

Section 7 of the 1977 amendatory act provided:

"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 this 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."

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

#### Art. 4437g. Internship or Residency of Foreign Medical School Graduates

Notwithstanding any provision of law to the contrary, no hospital licensed by this state or operated by the state or a political subdivision, or which

receives state financial assistance, directly or indirectly, shall require a Texas resident and who is also a citizen of the United States and who possesses a diploma issued to him by a medical school outside the United States which is listed in the World Directory of Medical Schools published by the World Health Organization to take any examination as a condition to commencing an internship or residency in that hospital other than an examination which is required by the Texas State Board of Medical Examiners to be taken by graduates of medical schools in the United States prior to allowing them to commence internships or residencies. No hospital may require, as a condition to commencing an internship or residency, the completion of any prior period of internship or graduate clinical training or the certification of the Educational Council for Foreign Medical Graduates.

[Acts 1973, 63rd Leg., p. 1766, ch. 645, § 1, eff. June 16, 1973.]

#### Art. 4437h. Surveys and Inspections of Health Care Facilities

##### Purpose

Sec. 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health, the Texas Department of Human Resources, the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcoholism, and those agencies with which each contracts, who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicitous rules and regulations.

##### Definitions

Sec. 2. For the purposes of this Act:

(1) "Health care facility" shall have the same definition as that given in the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes).

(2) "Inspection" means all surveys, inspections, investigations, and other procedures necessary for a state agency or a division or unit thereof to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

##### Only Necessary Inspections to be Made; Acceptance of Equivalent On-Site Inspections

Sec. 3. State agencies shall make or cause to be made only such inspections necessary to carry out the various obligations imposed on each agency by applicable state and federal law and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a

division or unit of the inspecting agency. A state agency shall coordinate its health care facility inspections both internally and with those required by other state agencies so as to insure that the requirements of this section are met.

**Licensing Inspections; Exemptions; Certification of Nursing Homes**

Sec. 4. (a) All hospitals licensed by the Texas Department of Health which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89-97),<sup>1</sup> by the Texas Department of Mental Health and Mental Retardation, or by the Texas Commission on Alcoholism, which have obtained accreditation from the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or another national accreditation body for the offered services, shall not be subject to additional licensing inspections under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or by the licensing agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit any applicable fees and submit a copy of the most recent survey results or inspection results report from the accreditation body in order to be issued a license by the appropriate licensing agency.

(b) The Texas Department of Human Resources, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcoholism shall establish procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of the Medical Assistance Program (Chapter 32, Human Resources Code) and federal laws and regulations relating to Titles XVIII and XIX of the Social Security Act.<sup>2</sup> The procedures established under this section shall provide for use by the affected agencies of information collected by those agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facilities under their jurisdiction.

(c) The Texas Department of Health shall coordinate all licensing or certification procedures conducted by the state health-related organizations covered by this section.

Secs. 5, 6. Repealed by Acts 1983, 68th Leg., p. 948, ch. 221, § 1, eff. Aug. 29, 1983.

[Acts 1977, 65th Leg., p. 1055, ch. 387, §§ 1 to 4, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2492, ch. 652, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5458, ch. 1025, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> 42 U.S.C.A. § 1395 et seq.

<sup>2</sup> 42 U.S.C.A. §§ 1395 et seq. and 1396 et seq.

**Art. 4438. Indigent Sick**

If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. [Acts 1925, S.B. 84.]

**Art. 4438a. Emergency Diagnoses and Services; Denial for Inability to Pay; Discriminatory Practices**

Sec. 1. (a) No officer, employee, or member of the hospital medical staff of a general hospital shall deny emergency services available at the hospital to a person diagnosed by a licensed physician as requiring emergency services because the person is unable to establish his ability to pay for the services or because of race, religion, or national ancestry. In addition, the person needing the services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(b) An officer or employee of a general hospital may not deny a person in need of emergency services access to diagnosis by a licensed physician on the staff of that hospital because the person is unable to establish his ability to pay for the services or because of race, religion, or national ancestry. In addition, the person needing the services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(c) In this Act, "emergency services" means services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide for the care of a woman in active labor if the hospital is so equipped and, if the hospital is not so equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(d) An employee of a general hospital that does not have physician services available at the time of the emergency is not in violation of this section if, after a reasonable good faith effort, a physician fails to provide or delegate the provision of medical services as required by state statutes.

Sec. 2. (a) An officer, employee, or member of the hospital medical staff of a general hospital who recklessly violates the provisions of Section 1 of this Act commits an offense. An offense under this subsection is a Class B misdemeanor, except that if the offense results in permanent injury, permanent disability, or death, the offense is a Class A misdemeanor.

(b) An officer, employee, or member of the hospital medical staff of a general hospital who knowing-

ly or intentionally violates Section 1 of this Act commits an offense. An offense under this subsection is a Class A misdemeanor, except that if as a direct result of the offense the person denied emergency services dies, the offense is a felony of the third degree.

Sec. 3. Nothing in this Act shall be construed to relieve a person who otherwise has the ability to pay of his obligation to pay for services provided by a hospital.

Sec. 4. By October 1, 1983, each hospital to which this Act applies shall provide written notice of the provisions of this Act to all officers, employees, members of the medical staff, and other appropriate personnel who deal with access to and delivery of emergency services.

[Acts 1975, 64th Leg., p. 1331, ch. 495, §§ 1 to 3, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 2137, ch. 388, §§ 1, 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"This Act applies only to offenses committed on or after the effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

#### Art. 4438b. Reimbursement of Hospital for Transporting Infant to its Neonatal Intensive Care Unit

##### Definition

Sec. 1. In this Act, "level III neonatal intensive care unit" means a neonatal care unit that complies with standards adopted by the American Academy of Pediatrics.

##### Transportation Cost

Sec. 2. A hospital that agrees to admit an infant into its level III neonatal intensive care unit shall pay for that portion of the cost of transporting the infant to the hospital from any location in this state that the hospital administrator determines cannot be paid by a member of the infant's immediate family or other person legally liable for the infant's support through personal means, through insurance, or through a benefit system that pays for transportation for that purpose.

##### Reimbursement

Sec. 3. A hospital is entitled to be reimbursed by the state for funds it spends under Section 2 of this Act.

##### Administration of Reimbursement Funds

Sec. 4. The Texas Department of Health shall administer the state funds for reimbursement of hospitals under this Act.

##### Rules

Sec. 5. The Texas Department of Health shall adopt rules that provide procedures for applying for

reimbursement under this Act and that establish guidelines for qualifying for reimbursement under this Act.

##### Funding

Sec. 6. (a) The Texas Department of Health is authorized to expend an amount not to exceed \$100,000 each year of the biennium from earned federal funds or private donations to implement this Act.

(b) For the fiscal year beginning September 1, 1983, not more than \$14,436 of the funds appropriated under Subsection (a) of this section may be used for salaries. For the fiscal year beginning September 1, 1984, not more than \$15,300 of the funds appropriated under Subsection (a) of this section may be used for salaries.

(c) For the biennium beginning September 1, 1983, not more than \$2,160 of the funds appropriated under Subsection (a) of this section may be used for equipment.

[Acts 1983, 68th Leg., p. 2214, ch. 415, eff. Aug. 29, 1983.]

Art. 4439. Repealed by Acts 1977, 65th Leg., p. 316, ch. 149, § 1, eff. May 13, 1977

See, now, art. 4477, rules 3 and 13.

Art. 4440. Repealed by Acts 1959, 56th Leg. p. 379, ch. 181, § 28

See, now, art. 4477-11.

Arts. 4441, 4441a. Repealed by Acts 1983, 68th Leg., p. 2399, ch. 493, § 2, eff. Aug. 29, 1983

See, now, art. 4445d, § 3.02.

Art. 4442. Repealed by Acts 1959, 56th Leg., p. 505, ch. 223 § 19

See, now art. 4437f.

Art. 4442a. Day Nursery for Care and Custody of Children

##### Membership; Term; Vacancies; Oath

Sec. 1. Every person, association or corporation, whether operating for charity or revenue, who shall own, conduct or manage a day nursery, children's boarding home, or child placing agency, or other place for the care or custody of children under fifteen years of age, or who shall solicit funds in this State for any such place or institution, shall obtain an annual license from the State Board of Health, which license shall be issued without fee, and under such reasonable and uniform rules and regulations as said Board shall prescribe. Provided that if said funds are solicited by said associations or corporations through any agent or agents thereof, only one such license shall be required by each said association or corporation for each county of the State of Texas in which county said funds are solicited.

**Visitation and Inspection by State Board of Health**

Sec. 2. The State Board of Health shall have authority to visit and inspect all such places and institutions embraced within this Act at all reasonable times to ascertain if the same are being conducted in conformity with law or if any conditions exist which need correction.

**Record of Children Placed in Custody of Others**

Sec. 3. Any person, association or corporation licensed to keep and care for children, as provided in Section 1 of this Act, who shall place out or give to any person the care and custody of any child, shall keep and preserve a record of the full name of such child, the actual or apparent age of such child, the names and residence of its parents so far as known, and name and residence of the person with whom such child is placed; and if the child is removed from the care or custody of the person with whom it was placed the fact of such removal and the disposition of such child shall be entered on the record.

**Quarterly Reports to State Board of Health**

Sec. 4. Such person, association or corporation shall report to the State Board of Health quarterly and at such times as said Board shall direct, specifying the matters and things required in the record mentioned in the next preceding Section.

**Visitation of Children Placed in Custody of Others**

Sec. 5. The State Board of Health, or such person as it may authorize, may visit any child so placed, who has not been legally adopted, with a view to ascertaining whether such child is being properly cared for and living in moral surroundings.

**Complaints Against Persons Mistreating Child**

Sec. 6. Whenever the State Department of Health has reason to believe that any person having the care or custody of a child placed out and not legally adopted, is an improper person for such care or custody, or subjects such child to cruel treatment, or neglect, or immoral surroundings, it shall cause complaint to be filed in the proper Juvenile Court.

**Traffic in Placement of Minor Children Prohibited; Restraining Practice**

Sec. 6-a. It shall be unlawful for any person, association or corporation operating as a licensed child placing agency, as defined in said Chapter 204 of the Acts of the Regular Session, 41st Legislature, to charge or receive compensation in cash, or in anything of value, for the placement and/or transfer of guardianship of a child under fifteen (15) years of age, and such act or attempted act, shall be deemed as trafficking in the sale and placement of minor children; and such person, association or corporation, may be enjoined in a suit brought by the Attorney General of the State of Texas, or district or county attorney of any county in which said act or acts may have occurred; provided that

nothing herein shall be deemed to prohibit, (1), a parent or guardian paying a reasonable amount for the board of a child in a private foster home, or (2), a licensed child placing agency or institution receiving from a parent or guardian a reasonable amount for the current board of a child in a private foster home or institution.

**Cumulative Remedy**

Sec. 6-b. The remedies and penalties provided in Section 1 hereof shall be cumulative of all other remedies and penalties now provided by Statute in such cases.

**Penalty**

Sec. 7. 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. Amended by Acts 1935, 44th Leg. p. 170, ch. 69 §§ 1, 2.]

**Art. 4442a-1. Adult Day Care Act**

Secs. 1 to 5. Repealed by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, § 3(b), eff. Sept. 1, 1983.

**Rights of Persons Attending Facility**

Sec. 5A. (a) In addition to other rights a person attending an adult day care or adult day health care facility has as a citizen, a person attending a facility who is 55 years of age or older has the rights prescribed by Chapter 102, Human Resources Code.

(b) The licensing agency and the department shall require each adult day care or adult day health care facility to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

Secs. 6 to 10. Repealed by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, § 3(b), eff. Sept. 1, 1983.

Sec. 11. Repealed by Acts 1981, 67th Leg., p. 1792, ch. 391, § 6, eff. Aug. 31, 1981.

[Acts 1979, 66th Leg., p. 1509, ch. 562, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 1791, ch. 391, §§ 1 to 6, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5163, ch. 936, § 3, eff. Sept. 1, 1983.]

**Repeal**

*This article was repealed by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, § 3(b), eff. Sept. 1, 1983, without reference to the addition of § 5A to this article by Acts 1983, 68th Leg., p. 5163, ch. 936, § 3.*

For subject matter of the repealed provisions, see, now, Human Resources Code, § 103.001 et seq.

Art. 4442b. Repealed by Acts 1953, 53rd Leg. p. 1005, ch. 413 § 16

See, now, art. 4442c.

**Art. 4442c. Convalescent and Nursing Homes and Related Institutions**

**Purpose**

Sec. 1. The purpose of this Act and the Licensing Agency created herein is to promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards; (1) for the treatment of individuals in institutions of the character defined and covered herein; and (2) for the establishment, construction, maintenance and operation of such institutions which in the light of advancing knowledge will promote safe and adequate treatment of individuals in institutions.

**Definitions**

Sec. 2. (a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act shall apply to:

- (1) a hotel or other similar place that furnishes only food and lodging, or either, to its guests;
- (2) a hospital;
- (3) an establishment conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with;
- (4) an establishment that furnishes only baths and massages in addition to food, shelter and laundry;
- (5) an institution operated by persons licensed by the Texas State Board of Chiropractic Examiners; or
- (6) a facility operated within the jurisdiction of a state or federal governmental agency, including but not limited to the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, the State Commission for the Blind, the Texas Commission on Alcoholism, the Texas Department of Corrections, and the Veterans' Administration, where the facility is primarily engaged in training, habilitation, rehabilitation, or education of clients or residents, and such facility has been certified through inspection or evaluation as having met

standards established by the state or a federal governmental agency.

"Institution" also means any place or establishment in or at which any person receives, treats or cares for, overnight or longer, within a period of twelve months, four or more pregnant women or women who have within two weeks prior to such treatment or care had a child born to them; provided, however, that this definition shall not include women who receive maternity care in the home of a relative within the third degree of consanguinity or affinity, nor shall it include general or special hospitals licensed in pursuance of or as those terms are defined in the Texas Hospital Licensing Law. Nothing in this Act shall be construed to prohibit an institution, as defined in this subdivision, from simultaneously caring for pregnant women and other women under 50 years of age.

"Institution" also means a foster care type residential facility providing room and board to fewer than four persons unrelated within the second degree of consanguinity or affinity to the proprietor and who, in addition to room and board, because of his physical or mental limitation or both, requires a level of care and services suitable to the needs of the individual which contribute to his health, comfort, and welfare; provided, however, that such institution shall be subject to licensure only upon written application for participation in the intermediate care program provided by Federal law as it now reads or may hereafter be amended.

(b) "Person" means any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(c) "Government unit" means the state or any county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(d) "Licensing Agency" means the Texas Department of Health.

(e) "Respite care" means the provision by an institution of room, board, and care at the level ordinarily provided for permanent residents of the institution to a person for not more than two weeks for each stay in the institution.

(f) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(g) "Elderly person" means a person who is 65 years of age or older.

(h) "Handicapped person" means a person whose physical or mental functioning is sufficiently impaired to require medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(i) "Hospital" has the meaning given to the term by the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes).



**Licensure**

Sec. 3. After the effective date of this law no person or governmental unit, acting severally or jointly with any other person or governmental unit, shall establish or conduct or maintain an institution, as defined herein, in this State without obtaining a license pursuant to the provisions of this Act.

**Application for License**

Sec. 4. An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder. The application shall be accompanied by a license fee which shall be in the sum of Fifty Dollars (\$50) plus Two Dollars (\$2) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said Agency for its use in the administration and enforcement of this Act.

Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violator of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

**Fire Safety Requirements**

Sec. 4A. (a) The Licensing Agency shall require all nursing homes and custodial care homes and major additions over One Hundred Thousand Dollars (\$100,000) to existing nursing homes and custodial care homes which are approved for construction or conversion after September 1, 1979, to comply with the 1976 edition of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code (Pamphlet No. 101) of the National Fire Protection Association.

(b) After September 1, 1979, those building sections of a licensed nursing home or custodial care home, regardless of ownership, which have complied with or without waiver, with either the 1967 or 1973 edition of the Life Safety Code of the National Fire Protection Association will be recognized as meeting licensing requirements for fire safety as long as they continue to be in substantial compliance with either the 1967 or 1973 code edition.

(c) The requirements of this section do not preclude an institution from conforming to a higher or additional fire safety standard or provision where required by federal law or regulation. Where provisions of this section conflict with federal laws or regulations adopted after September 1, 1979, then the federal requirements prevail, if required for participation in federal programs.

(d) As provided in the 1976 edition of the Life Safety Code, the Licensing Agency shall have discretionary powers to grant exceptions to the code under certain conditions or in the interest of common and uniform applicability.

(e) Fire safety requirements for institutions other than nursing homes or custodial care homes shall be as determined by the Licensing Agency.

**Change of Administrators**

Sec. 4B. When an institution hires a new administrator or person designated as the chief manager, the institution shall notify the Licensing Agency in writing and pay a \$20 administrative fee.

**Inspection**

Sec. 5. The Licensing Agency or its duly authorized representative shall have the right to enter upon the premises at all reasonable times in order to make whatever inspection it deems necessary in accordance with the rules and regulations prescribed by the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

**Denial or Revocation of License; Hearings and Review**

Sec. 6. The Licensing Agency, after providing notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke the license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. The notice to the licensee shall be effected by registered mail or by personal service, and it shall set forth the particular reasons for the proposed action and fix a date, not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing or upon default of the licensee, the Licensing Agency shall make a written determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee.

The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served unless the applicant or licensee within such thirty (30) day period appeals the decision to the District Court pursuant to the provisions of this law.

This procedure governing the hearing authorized by this Section shall be in accordance with rules promulgated by the Licensing Agency. A full and complete record shall be kept of all procedures in accordance with rules promulgated by the Licensing Agency. Witnesses may be subpoenaed by either party and their testimony taken in person, or by deposition under such regulations and for such purposes as the Licensing Agency may prescribe in its rules of procedure.

#### Failure to Comply with Health Planning and Development Act

Sec. 6A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act<sup>1</sup> requiring a certificate of need or an exemption certificate.

<sup>1</sup> Article 4418h.

#### Emergency Suspension and Closing Order

Sec. 6B. (a) If the Licensing Agency finds an institution operating in violation of the standards prescribed by this Act and the violations create an immediate threat to the health and safety of a resident in the institution, the Licensing Agency shall suspend the license or order an immediate closing of the institution or part of an institution; and the Licensing Agency shall by rule provide for resident placement during the period of suspension to assure the health and safety of the residents in said institution.

(b) The order suspending a license under Subsection (a) of this section is immediately effective upon written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering an institution or part of an institution closed is valid for 10 days after the effective date.

#### Appointment of Trustee

Sec. 6C. (a) The legislature finds that the closing of nursing and convalescent homes for violations of laws and regulations may, in certain circumstances, have an adverse effect on both the residents of the facilities and the families of the residents. It is the purpose of this Act to provide for the appointment of a trustee to assume the operations of these facilities in a manner calculated to emphasize resident care and reduce resident trauma.

(b) Persons holding a controlling interest in a nursing or convalescent home at any time may request the licensing agency to assume the opera-

tion of the nursing home through the appointment of a trustee. Upon receiving a request for a trustee, the licensing agency may, if it considers the appointment desirable, enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions considered appropriate by both parties. The agreement shall specify all terms and conditions of the trustee's appointment and authority and shall preserve all rights of the facility residents as granted by law. A trustee appointment made in accordance with this subsection terminates at the time specified by the parties or at the time when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

(c) The licensing agency may request the attorney general to bring an action in the name and on behalf of the State of Texas for the appointment of a trustee to operate a nursing or convalescent home when any of the following conditions exist:

- (1) the facility is operating without a license;
- (2) the licensing agency has suspended or revoked the existing license of the facility;
- (3) revocation or suspension procedures have been initiated and, in the opinion of the licensing agency, there is an imminent threat to the health and safety of the residents pending a final determination on license suspension or revocation;

(4) the facility is closing and arrangements for relocation of residents to other licensed facilities have not been made prior to closure; however, the duties of a trustee appointed under this subsection shall be limited to assuring an orderly and safe relocation of the facility's residents as quickly as possible;

(5) the licensing agency determines that an emergency exists that presents an immediate threat to the health and safety of residents of the facility.

(d) If, after hearing, the court finds that involuntary appointment of a trustee is necessary, the court shall appoint a trustee to take charge of the facility. When possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

(e) A trustee appointed pursuant to this section is entitled to a reasonable fee as determined by the court. The trustee may petition the court to order the release to the trustee of any payment due for care and services provided to the residents that has been withheld, such as payment withheld by the Texas Department of Human Resources at the recommendation of the Texas Department of Health. The funds may include Medicaid, Medicare, insurance or other third-party payments, or medical expenses borne by the resident that may be withheld by a governmental agency or other entity during the appointment of the trustee.

**Rules, Regulations and Enforcements**

Sec. 7. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the institution and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least two unannounced inspections per year shall be mandatory; further inspections may be required by the Licensing Agency;

(g) For at least two unannounced inspections in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspections at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly, except that this subsection does not apply to an institution that provides maternity care;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and a superior grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade. The agency shall not award a superior grade to an institution if the institution has violated state or federal laws or regulations during a period of 12 months prior to the grading inspection. The agency shall cancel a superior grade granted to an institu-

tion if (1) the institution fails to meet the criteria established for a superior grade; or (2) the institution has violated state or federal laws or regulations. For the purposes of this subsection, a "violation of state or federal laws or regulations" means a violation of a law or regulation which affects the health, safety, or welfare of the residents of an institution; resident funds; the confidentiality of records of a resident; the financial practices of an institution; and the control of medication within an institution. If a superior grade is cancelled, the institution is prohibited from advertising the superior grade. This subsection does not apply to an institution that provides maternity care.

(j) The Licensing Agency shall require one medical examination per resident per year. The details of this examination will be specified by the Licensing Agency.

(k) Unless another state or federal requirement prohibits, the Licensing Agency shall allow a licensed facility to operate a portion of the facility under the standards of a lesser licensing category. The Licensing Agency shall determine the rank of licensing categories and shall establish procedures and standards to accommodate a facility's operation under the lower category. Unless federal requirement prohibits, the operation of a portion of a facility under the standards of a lesser licensing category shall not constitute abandonment of the higher category of service under the certificate of need program, as provided in the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

**Language Requirements Prohibited**

Sec. 7A. No institution may prohibit a resident or employee from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

**Rights of Residents**

*Text of section as added by Acts 1983, 68th Leg., p. 5163, ch. 936, § 2*

Sec. 7B. (a) In addition to other rights a resident in an institution has as a citizen, a resident who is 55 years of age or older has the rights prescribed by Chapter 102, Human Resources Code.

(b) The Licensing Agency shall require each institution to implement and enforce Chapter 102, Human Resources Code.

## Permits to Administer Medication

*Text of section as added by Acts 1983, 68th Leg., p. 5170, ch. 940, § 1*

Sec. 7B. (a) A person may not administer medication to a resident of an institution unless the person (1) holds a current license under State law which authorizes the licensee to administer medication; or (2) holds a current permit issued under this section and acts under the authority of a person who holds a current license under State law which authorizes the licensee to administer medication.

(b) The Texas Board of Health shall adopt rules establishing:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident of an institution;

(2) curricula to train persons to administer medication to a resident of an institution;

(3) minimum standards for the approval of programs to train persons to administer medication to residents of institutions and for rescinding the approval; and

(4) the allowable and prohibited acts and practices of a permit holder.

(c) An application for the approval of a training program shall be made to the Licensing Agency on a form and under rules prescribed by the Texas Board of Health. A training program that meets the minimum standards adopted under Subsection (b) of this section shall be approved by the Licensing Agency and such approval may be reviewed annually by the Licensing Agency.

(d) The Licensing Agency shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit. It shall require satisfactory completion of continuing education courses approved by the Licensing Agency for renewal of a permit under this section.

(e) Application for issuance or renewal of a permit shall be made to the Licensing Agency on a form and under rules prescribed by the Texas Board of Health. A nonrefundable application fee determined by the Texas Board of Health shall accompany the application. Applicants who meet the minimum requirements adopted under Subsection (b) of this section and successfully complete the examination and continuing education requirements under Subsection (d) of this section shall be issued a permit or renewal of the permit, by the Licensing Agency which shall be valid for one year.

(f) The Texas Board of Health shall establish reasonable and necessary fees based on the estimated amount that is projected by the Licensing Agency to be required to administer its functions not to exceed:

Combined permit application and examination fee .....	\$15
Renewal permit application fee .....	5.

(g) All fees received by the Licensing Agency under this section shall be deposited in the state treasury to the credit of the general revenue fund and shall be appropriated to the Licensing Agency for the purpose of defraying the costs of this section.

(h)(1) The Licensing Agency is authorized to take the following disciplinary actions for the violation of any provisions of this section or rules adopted under this section:

(A) suspension, emergency suspension, revocation, or nonrenewal of a permit; and

(B) rescission of training program approval.

(2) Except as provided by Subdivision (3) of this subsection for an emergency suspension, the procedure by which the Licensing Agency takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the Licensing Agency's rules for a formal hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(3) The Licensing Agency shall issue an emergency order to suspend any permit issued under this section if the Licensing Agency has reasonable cause to believe that the conduct of any permit holder creates an imminent danger to the public health or safety. An emergency suspension is effective immediately without a hearing upon notice to the permit holder. On written request of the permit holder, the Licensing Agency shall conduct a hearing not earlier than the 10th day nor later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and an appeal from a disciplinary action related to the hearing are governed by the Licensing Agency's rules for a formal hearing and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A permit issued under this section is not transferable.

(j)(1) A person commits an offense if the person knowingly administers medication to a resident of an institution and the person:

(A) does not hold a current license under State law which authorizes the licensee to administer medication; or

(B) does not hold a current permit issued by the Licensing Agency under this section.

(2) An offense under this subsection is a Class B misdemeanor.

**Compliance by Institutions in Operation**

Sec. 8. An institution which is in operation at the time of the promulgation of any rules or regulations or standards in accordance with this Act shall be given a reasonable time in accordance with rules and regulations set up by the Licensing Agency within which to comply with such rules or regulations or standards.

**Respite Care**

Sec. 8A. (a) An institution that is licensed under this Act may provide respite care for an elderly or handicapped person according to a plan of care that is filed at the institution and agreed upon between the institution and the person arranging the respite care before the institution admits the person for the care.

(b) The plan of care must be signed by a licensed physician if the person for whom respite care is arranged needs medical care or treatment. If the person does not need medical care or treatment, the plan of care must be signed by the person arranging for the respite care.

(c) The institution may keep an agreed plan of care for not longer than six months from the date it is received and during that period admit a person for respite care as frequently as is needed and as accommodations are available.

(d) An institution that offers respite care shall notify the licensing agency in writing that it is offering respite care.

(e) The licensing agency, at the time of ordinary licensing inspections, or at other times if the agency determines necessary, shall inspect the institution's records of respite care services, the physical accommodations available for respite care, and the plan of care records to insure that the respite care services comply with the licensing standards of this Act and with any rules the licensing agency may adopt to regulate respite care services.

(f) The licensing agency may suspend the license of an institution that provides respite care that does not comply with the licensing standards of this Act. The licensing agency may require an institution to cease providing respite care if the agency determines that the respite care does not meet the standards required by this Act and that the institution cannot comply with those standards in the respite care it provides. The licensing agency may suspend the license of an institution that continues to provide respite care after receiving an order in writing from the licensing agency that it is to cease.

(g) The licensing agency may adopt rules for the regulation of respite care provided by a licensed institution.

**Inspections and Consultations**

Sec. 9. The Licensing Agency shall make or cause to be made such inspections and investigations as it deems necessary. The Licensing Agency

shall hold at least one open hearing a year in each licensed institution to hear any complaints of substandard care or licensing violations; provided, however, an institution that provides maternity care is exempt from this specific requirement. The Licensing Agency shall notify the institution, the designated closest living relatives or legal guardians of the institution's residents, and other appropriate State or Federal agencies that work with the institution of the time, place, and date of the hearing. The Licensing Agency may exclude an institution's administrators and personnel from the hearing. The Licensing Agency shall notify an institution of any complaints received at the hearing. The Licensing Agency shall provide a summary of the complaints without identifying the source thereof to the licensed institution. The Licensing Agency shall determine and implement a mechanism to notify confidentially the complainant of the results of the investigation which followed the complaint. It is further provided that the Licensing Agency shall wherever possible utilize the services and consultation of other State and local agencies in carrying out its responsibility under the provisions of this Act and shall use wherever possible the facilities of the Texas Department of Human Resources especially in setting up and maintaining standards with reference to the humane treatment of the individuals in the institutions.

The Licensing Agency is hereby given the authority to cooperate with local public health officials of any county or incorporated city in carrying out the provisions of this Act and may in its discretion delegate to said local authorities the power to make the inspections and recommendations to the Licensing Agency in accordance with the terms and provisions of this Act.

**Judicial Review**

Sec. 10. Any applicant or licensee aggrieved by the decision of the Licensing Agency, after a hearing, may within thirty (30) days after the mailing or service of notice of the decision as provided in Section 6, file a notice of appeal in the District Court of the county in which the institution is located or to be located, and serve a copy of the notice of appeal upon the Licensing Agency. Thereupon the Licensing Agency shall promptly certify and file with the Court a copy of the record and decisions including the transcript of the hearings on which the decision is based. The court may affirm, modify, or reverse the decision of the Licensing Agency and either the applicant or licensee or the Licensing Agency or State may apply for such further review as is provided by law. Such trial shall be de novo in the District Court. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved except as the Court otherwise orders in the public interest for the welfare and safeguard of the persons in the institution.

**Injunction; Temporary Restraining Order;  
Appointment of Trustee**

Sec. 11. (a) When the Licensing Agency finds that a person's violations of the standards prescribed by this Act create an immediate threat to the health and safety of the residents of an institution, the Licensing Agency may petition the district court for a temporary restraining order to restrain the person from continuing the violations.

(b) When a person violates the licensing requirements or the standards prescribed by this Act, the Licensing Agency may petition the district court for an injunction to prohibit a person from continuing the violation or to restrain or prevent the establishment, conduct, management, or operation of an institution without a license under this Act. A suit for a temporary restraining order or other injunctive relief must be brought in the judicial district that includes the county of the alleged violation.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this Act, the district court shall grant the injunctive relief if the facts warrant.

(d) At the request of the Licensing Agency, the attorney general shall institute and conduct the suits authorized in Subsections (a) and (b) of this section and Section 6C of this Act, in the name of the State of Texas, including the appointment of a trustee to operate a nursing or convalescent home under appropriate orders of the court.

**Penalties**

Sec. 12. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars (\$200) for the first offense and not more than One Hundred Dollars (\$100) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

(c) Except as expressly provided by this Act, any person commits an offense if he intentionally, knowingly, or recklessly discloses to any unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs. An offense under this subsection is a Class B misdemeanor.

(d) An "unauthorized person" as used in this section is defined as any person, organization, agency, or entity other than the Texas Department of

Health, the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, any other statewide organization for the elderly, any ombudsman or representative of the Texas Department on Aging, any representative of other agencies or organizations when Medicare/Medicaid surveys are made concurrently with licensing inspections, or any other person, organization, agency, or entity authorized by law to make inspections or to accompany inspectors.

(e) Any person convicted of a violation of Subsection (c) of this section is ineligible for state employment.

Sec. 13. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, § 11, eff. July 22, 1977.

**Annual Report of Licensing Agency and Directory**

Sec. 14. (a) The Licensing Agency shall prepare annually a full report of the operation and administration of the Act together with such recommendations and suggestions as it deems advisable, and such report shall be submitted to the Governor and the Legislature not later than the first day of October each year.

(b) The Licensing Agency shall prepare and publish annually and keep current a directory of all licensed institutions coming within the purview of this Act. The directory shall contain the name and address of the institution, the name of the proprietor or sponsoring organization, and such other pertinent data which the Licensing Agency considers to be useful and beneficial to those persons interested in institutions operated in accordance with provisions of this law. Copies of the directory shall be made available to the public.

**Federal Funds; Personnel**

Sec. 15. Provided that in addition to the appropriation of the fees for the purpose of carrying out the provisions of this Act, the Licensing Agency is authorized to accept from the Federal Government any funds that may be allocated by said Government to the Licensing Agency for administrative expenses; and the said Licensing Agency can use such funds so allocated in addition to the fees appropriated for the purpose of carrying out the provisions of this Act.

The Licensing Agency is hereby authorized and empowered to employ such personnel as is necessary for properly administering the provisions of this Act.

**Reports of Abuse and Neglect**

Sec. 16. (a) **Persons Required to Report.** (1) Any person or any owner or employee of an institution having cause to believe that an institution resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons shall report in accordance with Section 16(b).

(2) Each institution employee shall be required to sign a statement that he or she realizes his or her criminal liability for failure to report such abuses as a condition of employment by the institution.

(b) Contents of Report. (1) Nonaccusatory reports reflecting the reporting person's belief that an institution resident has been or will be abused or neglected or has died of abuse or neglect shall be made to:

- (A) the Licensing Agency; or
- (B) any local or state law enforcement agency.

(2) All reports must contain the name and address of the institution resident, the name and address of the person responsible for the care of the resident, if available, and any other relevant information.

(3) All reports received by any local or state law enforcement agency shall be referred to the Licensing Agency or to the agency designated by the court to be responsible for the protection of the institution resident.

(4) An oral report shall be made immediately on learning of the abuse or neglect and a written report shall be made within five days to the same agency. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports. Anonymous reports about a specific individual, accusing the individual of abuse or neglect, need not be investigated.

(c) Immunities. Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed because of the making of the report or reports. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or with malice are not protected by this section. A person making a bad faith, malicious, or reckless report is subject to the criminal penalty of a Class A misdemeanor, in addition to any civil penalties.

(d) Privileged Communications. In any proceeding regarding the abuse or neglect of an institution resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

(e) Investigation and Report of Receiving Agency. (1) The Licensing Agency or the agency designated by the court to be responsible for the protection of institution residents shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the institution resident.

(2) In the investigation the agency shall determine:

(a) the nature, extent, and cause of the abuse or neglect;

(b) the identity of the person responsible for the abuse or neglect;

(c) the names and conditions of the other institution residents in the institution;

(d) an evaluation of the persons responsible for the care of the institution residents;

(e) the adequacy of the institution environment; and

(f) any other data required by the Licensing Agency.

(3) The investigation shall include a visit to the resident's institution and an interview with the subject institution resident. If admission to the institution, or any place where the institution resident may be, cannot be obtained, the district court, upon cause shown, shall order the persons responsible for the care of the institution resident, or the person in charge of any place where the institution resident may be, to allow entrance for the interview and investigation.

(4) If, before the investigation is complete, the opinion of the Licensing Agency is that immediate removal is necessary to protect the institution resident from further abuse or neglect, the Licensing Agency shall file a petition for temporary care and protection of the institution resident.

(5) The agency designated by the court to be responsible for the protection of the institution resident or the Licensing Agency shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the district attorney and the appropriate law enforcement agency.

(f) Central Registry. The Licensing Agency shall establish and maintain in Austin, Texas, a central registry of reported cases of institution resident abuse or neglect. The Licensing Agency may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with hospitals and clinics in the exchange of these reports.

(g) Failure to Report; Penalty. (1) A person commits an offense if the person has cause to believe that an institution resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Subsection (a)(1).

(2) An offense under this section is a Class A misdemeanor.

(h) Confidentiality. The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the regulations adopted by the investigating agency.

### Prohibition of Remuneration

Sec. 17. (a) No institution may receive remuneration, either monetary or otherwise, from any individual, corporation, company, or agency which furnishes services or materials to the institution or its occupants for a fee.

(b) The Licensing Agency may seek the revocation of the license of an institution that violates the prohibition in Subsection (a) of this section.

[Acts 1953, 53rd Leg., p. 1005, ch. 413. Amended by Acts 1959, 56th Leg., p. 505, ch. 223, § 18; Acts 1965, 59th Leg., p. 228, ch. 100, § 1; Acts 1969, 61st Leg., p. 2108, ch. 721, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 51, ch. 34, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 682, ch. 288, § 1, eff. June 11, 1973; Acts 1975, 64th Leg., p. 832, ch. 323, § 5.05, eff. May 28, 1975; Acts 1977, 65th Leg., 1st C.S., p. 49, ch. 2, §§ 1 to 7, 9, 11, eff. July 22, 1977; Acts 1979, 66th Leg., p. 1903, ch. 771, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1962, ch. 775, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 865, ch. 309, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2564, ch. 684, §§ 1 to 6, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 378, ch. 81, §§ 12(b), (c), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 945, ch. 220, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3822, ch. 595, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4533, ch. 746, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5163, ch. 936, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5170, ch. 940, § 1, eff. Sept. 1, 1983.]

Section 8 of the 1977 Act provides as follows:

"(a) The Department of Public Welfare shall contract those medical functions and quality of care functions, including quality assurance and consultation, level of care determination, periodic medical review, utilization review, and related program support, pertaining to long-term care regulation and services performed by the Medical Assistance Unit under the authority of the State Department of Public Welfare to the Texas Department of Health. The contract shall include all provisions necessary to ensure compliance with federal law and regulations, including submission of reports and other information requested by the State Department of Public Welfare, for purposes of Title XIX of the Social Security Act. After January 1, 1978, if the Governor of Texas makes a finding that the public interest will be served, he shall direct the Department of Public Welfare to request a waiver from the Department of Health, Education, and Welfare to allow the Texas Department of Health to perform those medical and quality of care functions pertaining to long-term care regulation and services performed by the Medical Assistance Unit of the State Department of Public Welfare.

"(b) If a contract is executed or a waiver is obtained, the funds, personnel, equipment, and central office supporting personnel relating to the functions described in Subsection (a) are to be included in the contract between the State Department of Public Welfare and the Texas Department of Health or transferred by the waiver.

"(c) The functions of eligibility determination, health related social services, vendor drug program, and provider payments related to long-term care are not included in the programs to be contracted under this section."

Section 12(m) of Acts 1983, 68th Leg., p. 386, ch. 81, provides:

"Except for Subsections (e) and (k) of this section, this section applies only to an application for a license, registration, document, or service filed on or after the effective date of this section. An application filed before the effective date of this section is covered by applicable law in effect on the date the application was filed."

Art. 4442c-1. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(3), eff. May 28, 1975

See, now, the Health Planning and Development Act, classified as art. 4418h.

Art. 4442d. Nursing Home Administrators Licensure Act

#### Short Title

Sec. 1. This Act may be cited as the "Texas Nursing Home Administrators Licensure Act."

#### Definitions

Sec. 2. For the purposes of this Act and as used herein:

(1) "board" means the "Texas Board of Licensure for Nursing Home Administrators";

(2) "nursing home administrator" means the person who administers, manages, supervises, or is in general administrative charge of a nursing home, irrespective of whether or not such individual has an ownership interest in such home, and whether or not his functions and duties are shared with one or more other persons;

(3) "nursing home" means any institution or facility now or hereafter licensed as a "nursing home" or "custodial care home" by the Texas State Department of Public Health under the provisions of Article 4442C, Vernon's Texas Civil Statutes or any amendment thereto;

(4) "practice of nursing home administration" means the performance of acts by any person which amounts to the administration, management, supervision, and general administrative charge of a nursing home, whether or not such functions and duties are shared with one or more individuals.

#### Creation and Composition of Board

Sec. 3. (1) There is hereby created the Texas Board of Licensure for Nursing Home Administrators which shall consist of nine (9) members. The Commissioner of Human Resources for the State of Texas, or his designee, and the Commissioner of Health of the Texas Department of Health, or his designee, shall be ex officio nonvoting members of the board. Such designees shall be chosen from those representatives of the respective departments who are actively assigned to and are engaged in work in the nursing home field. One member shall be a physician duly licensed by the State of Texas; one member shall be an educator connected with a university program in public health or medical or nursing home care administration within the State of Texas or a psychiatrist whose field includes geriatric or institutional psychiatry, or a psychologist whose field includes clinical psychology or educational psychology. Four (4) members shall be duly licensed nursing home administrators of the State of Texas; however, at least one of these four shall represent a nonproprietary nursing home. Three



(3) members must be representatives of the general public who are not licensed under this Act.

(2) Appointments to the board shall be made by the Governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(3) At least one nursing home administrator member of the board shall be connected with, and representative of, a non-proprietary home and one administrator member may, in addition to being a qualified nursing home administrator, be also a duly licensed professional registered nurse licensed by the Board of Nurse Examiners of the State of Texas.

(4) Appointed members of the board serve staggered terms of six (6) years with the terms of three (3) members expiring on January 31 of each odd-number year. Vacancies on the board shall be filled by appointment for the unexpired portion of the term.

(5) All appointive members of the board who are nursing home administrators shall hold degrees from an accredited four year college or university and shall have special interest, background, and experience in the field of care for the aged. They shall be residents of the State of Texas and citizens of the United States and shall be of good character.

In lieu of the degree requirement above specified an appointee who is a nursing home administrator representative may nevertheless qualify by submitting to the Governor satisfactory evidence of two (2) years of practical experience as a nursing home administrator for each year, whether one or more, of four (4) years of college and such appointee shall receive credit toward his qualifications for each full year of credits earned by him in an accredited college or university.

(6) Appointive members may be removed by the Governor for just cause after notice and hearing.

(7) No person shall be eligible for appointment as a nursing home administrator representative unless he is the holder of a nursing home administrator's license under the provisions of this Act.

(8) No person shall be eligible for service on this board as a nursing home administrator representative unless he is the holder of a nursing home administrator's license under the provisions of this Act and is currently serving as a nursing home administrator.

(9) All money collected under this Act shall be deposited in the state treasury in a designated separate account in the name of the board and shall be subject to appropriation by the legislature only for use by the board.

(10) The Texas Board of Licensure for Nursing Home Administrators is subject to the Texas Sunset Act,<sup>1</sup> and unless continued in existence as provided

by that Act the board is abolished, and this Act expires effective September 1, 1991.

(11) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

<sup>1</sup> Article 5429k.

#### Restrictions on Board Members, etc.

Sec. 3A. (1) A member of the board or an employee of the board or of the Texas Board of Health who carries out the functions of the board may not:

- (a) be an officer, employee, or paid consultant of a trade association in the nursing home industry;
- (b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the nursing home industry; or
- (c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(2) Members of the board, except those members who are duly licensed nursing home administrators, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in nursing homes as officers, directors, partners, owners, employees, attorneys, or paid consultants of the nursing homes or otherwise.

(3) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board or serve as a member of the board.

#### Organization of the Board

Sec. 4. (1) As soon as practicable after appointment, appointive members of the board shall be certified by the Governor's office and shall take the constitutional oath of office for officers of the State of Texas. The board shall elect from its appointive members a chairman and vice chairman and these officers shall be elected to serve for one (1) year or so much thereof as shall remain, and elections for these offices shall be held annually thereafter for the term of a year. Elections to fill vacancies shall be held in the same manner for the balance of any unexpired term. The board shall appoint a person to be executive director to the board who shall serve at the pleasure of the board and who shall be the chief executive officer to the board but not a mem-

ber thereof. The executive director shall have such powers and shall perform such duties as may be prescribed by law or delegated to him by the board under its rules and regulations. Suitable office space, equipment and supplies and additional agents or employees as may be required for discharging the functions of the board shall be provided within the limits of the funds available to the board as hereinafter provided for. The board shall adopt an official seal which shall be affixed to licenses, certificates and other official documents of the board.

(2) The executive director and such other person as the board may designate, as an alternate, shall act as fiscal agent for the board and shall be responsible for the receipt, deposit, safekeeping and disbursement of all funds of the agency, provided, however, that at all times the board shall cause to be maintained in force a fidelity bond covering the executive director and such other person in an amount which shall at all times exceed any reasonable expectations as to the total amount of funds to be held at any one time to the account of the board. At no time shall the fidelity bond or bonds be for an amount less than \$25,000.00.

(3) The board shall hold not less than four meetings per year after due notice thereof and at any meeting a majority of the board shall constitute a quorum. Board members shall receive a per diem of \$25.00 while engaged in board business together with actual and necessary expenses.

(4) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(5) The Texas Board of Licensure for Nursing Home Administrators shall be administratively attached to the Texas Department of Health. The department shall provide administrative assistance to the board; and the department and the board shall coordinate administrative responsibilities in order to avoid unnecessary duplication and in furtherance of the objective of providing quality nursing home services. The department shall submit the board's budget requests to the legislature. The department and the board shall share investigative staff and other employees. However, the board may employ its own additional investigative staff.

#### Exclusive Jurisdiction

Sec. 5. The board shall have exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this Act and the holder of a license under the provisions of this Act shall be deemed to be qualified to serve as the administrator of any nursing home for all purposes.

#### Functions and Duties of the Board

Sec. 6. It shall be the function and duty of the board to:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator and standards which must be met by licensees, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators and satisfactorily perform the duties of nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act; and

(8) on request, provide to each individual who fails an examination administered by the board an analysis of the individual's performance on the examination.

**Prohibition of Operation or Practice Without  
a License**

Sec. 7. Effective July 1, 1970, no nursing home in the State may operate unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license issued pursuant to this Act. No person shall after such date practice or offer to practice nursing home administration in this State or use any title, sign, card or device to indicate that he is a nursing home administrator, unless such person shall have been duly licensed as a nursing home administrator as required by this Act.

**Posting of Complaint Information Sign**

Sec. 7A. There shall at all times be prominently displayed in every nursing home regulated by the state, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the Texas Board of Licensure for Nursing Home Administrators and which shall contain a statement informing consumers that complaints against nursing home administrators can be directed to the board.

**Rulemaking Authority**

Sec. 8. (a) The Board shall have the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in Section 1908 of the Social Security Act,<sup>1</sup> the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered or abolished without the approval of a two-thirds majority of the Board.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

<sup>1</sup>42 U.S.C.A. § 1396g.

**Qualifications for Licensure**

Sec. 9. The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

- (1) he is at least 18 years of age, of good moral character, and sound in mental and physical health;
- (2) he has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be conducted by or in coopera-

tion with an accredited postsecondary educational institution and which course shall be so designed as to content and so administered as to present sufficient knowledge of the proper needs to be served by nursing homes; laws governing the operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to enable him to administer, supervise and manage a nursing home;

(3) he has passed an examination administered by the board and designed to test for competence in the subject matters referred to in subsection (2) hereof;

(4) that applicant submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school or secondary school approved and recognized by the educational authorities of the State in which such school is located, or a political division thereof, or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being certified by a State educational authority or a political division thereof; and

(5) that applicant has complied with all other qualifications and requirements as may have been established by rule and regulation of the board.

**Licenses and Fees**

Sec. 10. (1) The Board shall license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid for the period issued until surrendered for cancellation or suspended or revoked for violation of this Act or rules and regulations issued pursuant hereto.

(2) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the board. The license remains valid and is subject to renewal for 30 days after the expiration date of the license. The board shall notify each person licensed under this Act of the expiration date of the person's license and the amount of the fee that is required for its renewal. The notice shall be mailed at least 30 days before the expiration date of the license. A person renews an unexpired license or a license that has been expired for 30 days or less by paying to the board the renewal fee. A person renews a license that has been expired for more than 30 days but less than one year by paying to the board the renewal fee plus \$50. A person may not renew a license that has been expired for one year or more, but the person may obtain a new license by applying for the license in the manner that a person applies for an original license. Renewals of licenses shall be granted as a matter of course, unless the board

finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances, as would constitute grounds for suspension or revocation of a license.

(3) Each person licensed as a nursing home administrator shall pay an initial license fee to be fixed by the board which shall not exceed \$150. Renewal licenses shall be issued biennially at a fee to be set by the board which shall not exceed \$150 for the biennium. Reasonable fees shall be set by the board for the issuance of copies of public records in its office as well as for certificates or transcripts and duplicates of lost instruments. Each applicant for examination and license shall accompany the application with an examination fee not to exceed \$150 which shall not be refundable, for investigation, processing, and testing purposes. Upon the certification by any department, division, board or agency of the State of Texas of the necessity therefor, all examination fees and license fees provided for herein shall be waived for any employee of such state entity so long as such person remains an employee of the State of Texas and does not serve as a nursing home administrator of a nursing home operated other than by such state entity. The board shall set the fees in amounts that produce sufficient money for administering this Act.

(4) The board may issue a nursing home administrator's license for the regular fee to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State; and that the applicant is otherwise qualified; and that the other state gives similar recognition and endorsement to nursing home administrators licenses of the State of Texas.

(5) The board shall have authority to receive and disburse funds received pursuant to Section 1908(e)(1) of the Social Security Act<sup>1</sup> or from any other Federal source of funds or grants for the furtherance of board duties and responsibilities hereunder.

(6) Deleted by Acts 1979, 66th Leg., p. 1231, ch. 591, § 4, eff. Sept. 1, 1979.

<sup>1</sup> 42 U.S.C.A. § 1396g(e)(1).

#### Disciplinary Action

Sec. 11. (1) The board shall be authorized to revoke, suspend, or refuse to renew, a nursing home administrator's license after due notice and hearing upon the following grounds or any of them:

(a) upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this Act or the rules adopted in accordance therewith;

(b) upon proof that such licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home of which he is administrator;

(c) upon proof that the licensee was guilty of fraud in securing his license;

(d) upon proof of the intemperate use of alcohol or drugs which in the opinion of the board creates a hazard to patients;

(e) upon proof of a judgment of a court of competent jurisdiction finding the licensee insane;

(f) upon proof that such licensee has been convicted in a court of competent jurisdiction of a misdemeanor or a felony involving moral turpitude; and

(g) upon proof that the licensee has been grossly negligent in his duties as a nursing home administrator.

(2) The board shall have jurisdiction to hear all disciplinary charges brought under the provisions of this Act against persons licensed as nursing home administrators and upon such hearings shall determine such charges upon their merits. Proceedings under this Act shall be begun by filing with the board written charges under oath. Such charges may be preferred by any person and after notice in writing of not less than fifteen (15) full days, stating the place and date of the hearing, accompanied by a copy of the complaint or charges, the board, or a majority thereof, shall hold a hearing on said charges, cause a written record to be made of the evidence given at the hearing, accord the person charged a right to present evidence, be represented by an attorney, and to cross-examine the witnesses. In this connection the board shall be authorized to issue subpoenas for witnesses at the hearing, either at the request of the person cited or on behalf of the board or its representative; to compel the attendance of witnesses, and administer oaths to witnesses. Disobedience of a subpoena duly issued by the board or by its executive director under its direction, shall constitute a contempt of the board which shall be enforceable by any district court sitting in the county in which the hearing is being held upon petition of the board and the presentation to the court of evidence of wilful disobedience and if the district judge is of the opinion and finds that the subpoena was wilfully disobeyed, such judge shall be authorized to punish a subpoenaed witness in like manner and to the extent provided in like cases in civil actions in the district courts of Texas.

(3) Strict rules of evidence shall not apply in a hearing before the board but all decisions of the board shall be supported by sufficient legal and competent evidence.

(4) The failure of the nursing home to comply with Texas State Department of Health requirements for licensure of nursing homes may be considered by the board in determining whether the licensee meets standards for licensure as a nursing home administrator.

(5) If a written complaint is filed with the board or the Texas Board of Health relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status

of the complaint until the complaint is finally resolved.

(6) The board must within 31 days from the date of filing of the complaint determine whether a hearing shall be held on such complaint or whether such complaint shall be dismissed and shall notify both the person who filed the complaint and the person against whom the complaint has been filed of the board's decision.

(7) If the board determines that a hearing should be held on a complaint, the board shall designate a hearing officer to conduct the hearing on the complaint. The hearing shall be held within 61 days from the date that the written complaint was filed unless such time is extended in writing by the board.

(8) The hearing officer shall keep a complete record of the hearing and shall transmit the record to the board when completed.

(9) The hearing officer shall forward to the board the complete record of the hearing not later than 30 days from the date of the hearing along with the hearing officer's recommendations concerning what disciplinary action, if any, should be taken by the board with respect to the complaint.

(10) The board shall take action on such complaint by written order not later than the 120th day following the filing of the complaint, unless the date for hearing was delayed pursuant to Subsection (7) of this section, in which case the deadline for the order is extended accordingly. Copies of the order and the record of the hearing shall be filed together in the office of the board, indexed, and made available for public inspection.

(11) The board shall maintain an information file on each complaint it receives.

#### Injunction

Sec. 11A. A person who violates Section 7 of this Act or who engages in conduct that is grounds for revocation or suspension of the person's license under Section 11 of this Act, on petition of the board, may be enjoined or restrained by a district court from practicing nursing home administration.

#### Restoration of Licenses

Sec. 12. The board may, in its discretion, reissue a license to any person whose license has been revoked under such rules and regulations as the board may prescribe.

#### Review

Sec. 13. (1) Any person aggrieved by any action of the board, whether it be a failure to license, or the revocation or suspension of a license, shall have a right to a review of the board's action. First, a person feeling aggrieved by action of the board shall, within ten (10) days following the board's decision or action, file a motion for rehearing with the board which the board shall act on within fifteen

(15) days and notify the person affected by such action in writing concerning the decision of the board on the motion for rehearing. If such action of the board is adverse to the person affected, he may, within thirty (30) days after the board's adverse action on his motion, file a written petition in a district court of Travis County, Texas, complaining of the action of the board and seeking to set aside or modify such action. A decision or action of the board shall not be suspended by the filing of a motion for rehearing or by the filing of a petition for review in the district court of Travis County, Texas, but such board action will only be suspended by injunctive order issued by a court of competent jurisdiction. The venue of any action against the board or any of its members concerning official action of the board shall be exclusively in Travis County, Texas.

(2) Any notice required to be given under this section shall be deemed sufficient if sent by registered or certified mail to the person charged at the address shown on his most recent license application or application for renewal of license. When no such address is available the board shall cause to be published once a week for two consecutive weeks a notice of the hearing in a newspaper published in the county where the person charged was last known to practice nursing home administration, and shall mail a copy of such charges and such notice to such person's last known address. When publication of the notice is necessary, the date of the hearing shall be not less than ten days after the date of the last publication of the notice.

#### Penalties

Sec. 14. On and after July 1, 1970, it shall be unlawful and constitute a misdemeanor for any person to hold himself out as a nursing home administrator or to act or serve in the capacity of a nursing home administrator unless he is the holder of a license as a nursing home administrator issued in accordance with the provisions of this Act and any person who violates this section or any other provision of this Act, shall, upon conviction be punished by imprisonment in the County Jail for not less than one day nor more than thirty days, or by fine of not less than \$100.00 nor more than \$1,000.00, or by both such imprisonment and fine.

#### Assistance by Attorney General

Sec. 15. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this requirement shall not relieve the local prosecuting officers of any of their duties under the law as such.

#### Annual Report

Sec. 16. An annual report shall be made by the board to the Governor on or before March 15th of each year which shall set forth in summary the

activities of the board for the preceding calendar year and its fiscal condition.

[Acts 1969, 61st Leg., p. 1356, ch. 411, eff. June 2, 1969. Amended by Acts 1971, 62nd Leg., p. 2425, ch. 773, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 3369, ch. 1031, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 143, ch. 74, § 1, eff. May 7, 1973; Acts 1973, 63rd Leg., p. 627, ch. 266, § 16, eff. June 11, 1973; Acts 1975, 64th Leg., p. 1116, ch. 420, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.012, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1226, ch. 591, §§ 1 to 7, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 855, ch. 302, §§ 1 to 3, eff. June 8, 1981.]

Section 6 of the 1979 amendatory act provided:

"Membership. (a) In making the initial appointments of public members to the Texas Board of Licensure for Nursing Home Administrators, the governor shall designate one public member for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985.

"(b) A person holding office as a member of the Texas Board of Licensure for Nursing Home administrators on September 1, 1979, other than the ex officio members, who satisfies the provisions of this Act, continues to hold office for the term for which the member was originally appointed."

#### Art. 4443. Omitted

The article, derived from Acts 1923, p. 68, contained provisions identical with Acts 1927, 40th Leg., p. 260, ch. 182, §§ 1, 2, incorporated in art. 4443a, and is, therefore, omitted.

#### Art. 4443a. Federal Aid Accepted

Sec. 1. That the State of Texas hereby accepts the provisions of the Act of Congress<sup>1</sup> mentioned in the caption hereof and the State Board of Health is hereby authorized and directed through its bureau of Child Hygiene to co-operate with the Federal Children's Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent, or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this Act, shall, by virtue of this Act, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them or of the person standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents or either of them or the person standing in loco parentis, or having the custody of such child. Nothing in this Act shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose.

All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential, and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public

welfare shall demand that it be disclosed, or used in furtherance of public welfare.

Sec. 2. The Treasurer of the State of Texas is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board.

[Acts 1927, 40th Leg., p. 260, ch. 182.]

<sup>1</sup> Act Nov. 23, 1921, c. 135, §§ 1 to 14, 42 Stat. 224 to 226, as amended, repealed as of June 30, 1929, by Act Jan. 22, 1927, c. 53, § 2, 44 Stat. 1024.

#### Art. 4444. Repealed by Acts 1961, 57th Leg., 1st C.S., p. 156, ch. 42, § 14

#### Arts. 4445, 4445a. Repealed by Acts 1983, 68th Leg., p. 2899, ch. 493, § 2, eff. Aug. 29, 1983

For subject matter of former arts. 4445 and 4445a, see, now, art. 4445d, §§ 2.01 et seq. and 3.01, respectively.

Acts 1983, 68th Leg., p. 1141, ch. 255, adopted the Communicable Disease Prevention and Control Act (art. 4419b-1) and repealed certain provisions relating to quarantine and disinfection and to powers and duties of the State Board of Health. Section 3 of said Act provides:

"The following statutes are not affected by this Act: Article 4445, Revised Statutes; Chapter 548, Acts of the 51st Legislature, Regular Session, 1949 (Article 4445a, Vernon's Texas Civil Statutes); Chapter 537, Acts of the 61st Legislature, Regular Session, 1969 (Article 4445c, Vernon's Texas Civil Statutes); the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes); the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes); and Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes)."

#### Art. 4445b. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

See, now, Family Code, § 35.03.

#### Art. 4445c. Repealed by Acts 1983, 68th Leg., p. 2899, ch. 493, § 2, eff. Aug. 29, 1983

See, now, art. 4445d, § 4.01 et seq.

Acts 1983, 68th Leg., p. 1141, ch. 255, adopted the Communicable Disease Prevention and Control Act (art. 4419b-1) and repealed certain provisions relating to quarantine and disinfection and to powers and duties of the State Board of Health. Section 3 of said Act provides:

"The following statutes are not affected by this Act: Article 4445, Revised Statutes; Chapter 548, Acts of the 51st Legislature, Regular Session, 1949 (Article 4445a, Vernon's Texas Civil Statutes); Chapter 537, Acts of the 61st Legislature, Regular Session, 1969 (Article 4445c, Vernon's Texas Civil Statutes); the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes); the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes); and Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes)."

#### Art. 4445d. Texas Venereal Disease Act

##### ARTICLE I. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act shall be known and may be cited as the Texas Venereal Disease Act.

**Definitions**

Sec. 1.02. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the Commissioner of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Standard serologic test" means tests and procedures for the diagnosis or evaluation of syphilis as may be approved by the Texas Board of Health.
- (5) "Venereal disease" means an infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations of whatever kind between two persons and that produces or might produce a disease in or otherwise impair the health of either person or might cause an infection or disease in a fetus in utero or a newborn.

**Scope**

Sec. 1.03. Syphilis, gonorrhoea, chancroid, granuloma inguinale, condyloma acuminata, genital herpes simplex infection, and genital and neonatal chlamydial infections, including lymphogranuloma venereum, are venereal diseases within the scope of this Act. The board is authorized to make rules that add, delete, or otherwise modify the list of venereal diseases subject to this Act.

**Health Authority**

Sec. 1.04. A health authority is a physician designated to administer state and local laws relating to public health.

**ARTICLE II. DISEASE DETECTION,  
REPORTING, AND TREATMENT**

**Reportable Diseases**

Sec. 2.01. (a) Syphilis and gonorrhoea are declared to be venereal diseases that are reportable to the department.

(b) The board may adopt rules which require other venereal diseases to be reported to the department as necessary for the public health. Before the board requires other venereal diseases to be reported, the board must find that the disease:

- (1) causes significant morbidity or mortality; and
- (2) can be cost-effectively screened, diagnosed, and treated in a public health control program.

(c) Reporting of venereal diseases other than those designated as reportable is not required. The board is authorized to establish and to use funds appropriated to the department for the maintenance of registries of those venereal diseases that are not required to be reported, provided that any information provided to such a registry shall be on a voluntary basis.

**Procedures**

Sec. 2.02. (a) A physician who diagnoses or treats a reportable venereal disease and every administrator of a hospital, dispensary, or charitable or penal institution in which there is a case of reportable venereal disease shall report the case within a reasonable period of time to one of the following:

(1) the director of the local health department if the case is diagnosed or treated in a city or county which has a local health department; or

(2) the director of the department's public health region in which the case is diagnosed or treated where there is no local health department.

(b) A director of a local health department or a public health region shall report weekly to the department all cases reported to him or her.

(c) The board shall prescribe the form and method of reporting under Subsections (a) and (b) of this section which may be in writing, by telephone, by electronic data transmission, or by other means. The board may require the reports to contain any information necessary to achieve the purposes of this Act including the (1) name, (2) address, (3) age, (4) sex, and (5) race of the infected person.

(d) The board shall adopt rules establishing procedures to ensure that all reports made pursuant to this section are kept confidential and protected from release to unauthorized persons.

**Duty to Instruct**

Sec. 2.03. It shall be the duty of every physician and of every other person who examines or treats a person having a venereal disease to instruct him or her in measures for preventing the spread of such disease and of the necessity for treatment until cured or free from the infection.

**Control Measures**

Sec. 2.04. If the department or a health authority knows that a person is infected with a venereal disease or is reasonably suspected of being infected based upon laboratory evidence or exposure to a reported case of venereal disease, the department or health authority may implement control measures which are necessary to prevent the introduction, transmission, and spread of the disease within the state.

(a) The department or health authority is authorized to instruct a person who is known to be infected with a venereal disease or who is reasonably suspected of same to place himself or herself under the medical care of a licensed physician for examination or treatment. The physician shall furnish notification to the department or health authority that such person examined or treated is free from such venereal disease infection.

(b) If a person refuses or fails within a reasonable time to comply with the instructions of the

department or health authority as required in Subsection (a) of this section, the department or health authority may order the person to place himself or herself under the medical care of a licensed physician for examination or treatment within a reasonable time. The orders shall be in writing and delivered personally or by registered or certified mail. If the person is a minor whose consent to treatment has not been obtained under Section 35.03, Family Code, the orders shall be sent to the minor's parent, legal guardian, or managing conservator. The person shall furnish notification to the department or health authority of the name and address of the physician visited.

(c) If a person fails or refuses to comply with the written orders of the department or health authority as required in Subsection (b) of this section and the department or health authority knows that the person is infected with a reportable venereal disease or is reasonably suspected of being infected based upon laboratory evidence or exposure to a reported case of a reportable venereal disease, the department or health authority may request a magistrate to issue a warrant. Based upon the sworn affidavit of the department or a health authority that the person is infected with a reportable venereal disease or is reasonably suspected of being infected based upon laboratory evidence or exposure to a reported case of a reportable venereal disease, the magistrate shall issue a warrant ordering any peace officer to take the person into custody and immediately transport him or her to the nearest venereal disease clinic or other facility suitable for examination. If found to be infected with a reportable venereal disease, the infected person may be detained for treatment.

(d) Nothing in this section shall be construed to deny a person, as an exercise of religious freedom, to rely solely on spiritual means through prayer to prevent or cure disease, provided that the person complies with all control measures, other than treatment, imposed by the health authority or the department that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease.

#### Services

Sec. 2.05. The board is authorized to enter into contracts with physicians to provide services to persons who are infected or who are reasonably suspected of being infected with a venereal disease if:

- (1) no local or regional health department venereal disease control program services are available;
- (2) the person in need of examination or treatment is unable to pay for the services; and
- (3) there is an immediate need for examination and/or treatment of the person.

WTSC Civil Statutes—3

### ARTICLE III. PRENATAL TESTING AND PROPHYLACTIC TREATMENT OF NEWBORNS

#### Serologic Testing During Pregnancy

Sec. 3.01. (a) Every physician or other person permitted by law to attend a pregnant woman during gestation or at the delivery of the infant resulting from such pregnancy shall, in the case of each woman so attended, take or cause to be taken a sample of the blood of such woman at the time of first examination and visit and submit such sample to a laboratory approved pursuant to Article IV of this Act for a standard serologic test for syphilis. The physician or person in attendance shall retain a report of each case for a period of nine months and deliver the report to any successor in the case who shall be presumed to have complied with the provisions of this section.

(b) Within 24 hours of delivery, the physician or other person in attendance shall take or cause to be taken a sample of blood from the mother of the infant and submit such sample to a laboratory approved pursuant to Article IV of this Act for a standard serologic test for syphilis. A sample of blood from the umbilical cord of the infant in lieu of the maternal blood may be submitted.

(c) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy and on the maternal blood or the umbilical cord blood of the newborn infant in accordance with Subsections (a) and (b) of this section.

#### Prophylactic Treatment of Newborns

Sec. 3.02. (a) Every physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used in the child's eyes a one percent solution of silver nitrate or other prophylactic solution approved by the board within two hours of birth in order to prevent ophthalmia neonatorum in the newborn.

(b) The department shall furnish silver nitrate solution free of charge to health-care providers if the newborn's financially responsible adult is unable to pay.

(c) No charge shall be made by the health-care provider for silver nitrate solution which is received free of charge from the department.

### ARTICLE IV. LABORATORY PROFICIENCY CERTIFICATION AND NOTIFICATION PROCEDURES

#### Certification

Sec. 4.01. All state, county, city, and private laboratories which conduct standard serologic tests for syphilis on blood samples submitted to them pursuant to Section 3.01 of this Act shall be certified by the department.



**Standards**

Sec. 4.02. For the purpose of certifying laboratories, the board shall adopt rules establishing:

- (1) minimum standards of proficiency for laboratories conducting standard serologic tests;
- (2) procedures for the inspection and monitoring of laboratories conducting standard serologic tests;
- (3) criteria for issuance, suspension, and revocation of laboratory proficiency certification to perform standard serologic tests; and
- (4) criteria for approval and disapproval of serologic tests and procedures.

**Fees**

Sec. 4.03. Standard serologic tests required in Section 3.01 of this Act shall be executed for and a report submitted to any physician without charge by a state, county, or city laboratory.

**Names of Approved Laboratories**

Sec. 4.04. The commissioner shall provide all county clerks with the names of the approved laboratories within their counties and shall notify them of any additions, suspensions, or revocations of proficiency certification.

**Notification Procedures**

Sec. 4.05. (a) Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of a reportable venereal disease shall notify the department of its findings. Notification shall be submitted weekly except that positive results of a darkfield microscopic examination for *Treponema pallidum* shall be reported within one working day. Notification shall be sent as follows:

(1) If the laboratory examination was requested by a physician, notice shall be sent to:

(A) the director of the local health department, if the physician's office is located in a city or county which has a local health department; or

(B) the director of the department's public health region where the physician's office is located where there is no local health department.

(2) If the laboratory examination was not requested by a physician, notice shall be sent to:

(A) the director of the local health department, if the laboratory is located in a city or county which has a local health department; or

(B) the director of the department's public health region where the laboratory is located if there is no local health department.

(3) If the commissioner deems that such a routing of the notification would cause the information to be

delayed unduly, he or she may authorize an alternate routing in particular cases.

(b) A director of a local health department or a public health region shall make cumulative reports weekly to the department of all notifications received, except that positive results of a darkfield microscopic examination for *Treponema pallidum* shall be reported within one working day.

(c) The board shall prescribe the form and method of notification under Subsections (a) and (b) of this section which may be in writing, by telephone, by electronic data transmission, or by other means. The board may require the notification to contain any information necessary to achieve the purposes of this Act including the date and result of the test performed, the name, age, race, sex, and address of the person from whom the specimen was obtained, and the name and address of the physician from whom such examination or test was performed.

(d) The board shall adopt rules establishing procedures to ensure that all notifications made pursuant to this section are kept confidential and protected from release to unauthorized persons.

(e) From information received from laboratory notifications, the department or a local health department may contact attending physicians. The department or a local health department may not contact a person from whom a specimen was obtained without the physician's consent if the notification indicates the person has an attending physician.

(f) If during any calendar quarter, reportable tests are performed and all test results are negative, the person in charge of the laboratory shall submit a statement to this effect in the same manner as the notification on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

(g) In the application of this section, the term "syphilis" shall include:

(1) all positive findings of *Treponema pallidum* on darkfield microscopy;

(2) all reactive and weakly reactive standard serologic tests; and

(3) all reactive and weakly reactive spinal fluid or other body fluid or tissue tests for syphilis.

(h) In the application of this section, the term "gonorrhea" shall include all positive findings of *Neisseria gonorrhoeae* on culture or of Gram-stain-negative diplococcal bacteria intracellularly that resemble *Neisseria gonorrhoeae* on microscopic examination.

(i) The department shall take such inspection measures as are necessary to ensure that the clinical laboratories of the state comply with this section.

## ARTICLE V. CONFIDENTIALITY

## Confidentiality of Records and Information

Sec. 5.01. (a) All information and records held by the department or a local health department relating to known or suspected cases of venereal disease shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) release is made of medical or epidemiological information for statistical purposes so that no person can be identified; or

(2) release is made of medical or epidemiological information with the consent of all persons identified in the information released; or

(3) release is made of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts to enforce the provisions of this Act and related rules and regulations concerning the control and treatment of venereal diseases; or

(4) release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; or

(5) in a case involving a minor not more than 12 years of age, only the name, age, address, and venereal disease treated shall be reported to appropriate agents as required by Chapter 34, Family Code. No other information shall be released. If the information to be disclosed is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

## Custodian of Records

Sec. 5.02. No state or local health department officer or employee shall be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a venereal disease by a state or local health department; or of the existence or contents of such reports received from a private physician or private health facility, without the consent of the person examined or treated for such diseases.

## ARTICLE VI. PENALTIES

## Exposure by Another

Sec. 6.01. (a) A person commits an offense if the person knowingly exposes another person to infection with a reportable venereal disease.

(b) An offense under this section is a Class B misdemeanor.

## Failure to Perform Duty

Sec. 6.02. (a) A person commits an offense if the person:

(1) is a physician or other person in attendance upon a pregnant woman either during pregnancy or at delivery; and

(2) fails to perform any duty required in Article III of this Act.

(b) An offense under this section is a Class B misdemeanor.

## Failure to Obey Order

Sec. 6.03. (a) A person commits an offense if the person:

(1) has received a written order from the department or a health authority under Section 2.04 of this Act to be examined for a venereal disease; and

(2) fails or refuses to comply with the order.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1983, 68th Leg., p. 2889, ch. 493, § 1, eff. Aug. 29, 1983.]

## Art. 4446. Legal Proceedings

In all matters wherein the State Board of Health shall invoke the aid of the courts, the action shall run in the name of the State of Texas. The Attorney General shall assign a special assistant to attend to all legal matters of the board. Upon demand of the board, the Attorney General shall furnish the necessary assistance to the board to attend to all its legal requirements. No bond for costs, or bond on appeal or writ of error, shall be required of the State Board of Health or State officials in any action brought or maintained under this chapter.

[Acts 1925, S.B. 84.]

## Art. 4447. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Agriculture Code.

## Art. 4447a. Repealed by Acts 1983, 68th Leg., p. 805, ch. 190, § 2(a)(3), eff. Sept. 1, 1983

See, now, art. 4436b.

## Art. 4447b. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing this article, enacts Titles 1 and 2 of the Education Code.

## Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services

## Texas Coordinating Commission For State Health and Welfare Services

Sec. 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Director of Health Resources, the chairman of the Texas Health Facilities Commission, the

Commissioner of Education, the Commissioner of Mental Health and Mental Retardation, the Chairman of the Texas Employment Commission, the Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, the Executive Director of the Texas Youth Commission, and the executive heads of other health-related state agencies designated by executive order of the Governor, each of whom, or his designee, is an *ex officio, non-voting member of the Commission*;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized interest in health or welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1976, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

#### Application of Sunset Act

Sec. 1a. The Texas Coordinating Commission for State Health and Welfare Services is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

<sup>1</sup> Article 5429k.

#### Organization; Chairman

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members. The Governor shall biennially designate one member as chairman and another as vice-chairman.

#### Staff and Services Assistance

Sec. 3. The Governor shall provide the staff and services necessary to assist the Commission in performing its duties. To the extent practicable, all health-related state agencies with *ex officio* representatives on the Commission shall provide staff and services assistance.

#### Meetings

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the appointed members shall constitute a quorum.

#### Compensation; Expenses

Sec. 5. Members of the Commission shall serve without compensation, but appointed members of the Commission shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from funds appropriated by the Legislature.

Sec. 6. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(4), eff. May 28, 1975.

#### Application for Federal Grant; Study and Analysis of Services and Programs

Sec. 6A. (a) Whenever any state agency or institution applies for a federal grant for health purposes, prior to or at the time the application is submitted to the federal government, the agency or institution shall provide the Commission with a copy of the application. The Commission may review and comment on the application. If the agency or institution receives funds pursuant to the application, it shall so report to the Commission and shall advise the Commission of the disposition of the funds.

(b) The Commission shall make a continuing study and analysis of the services and programs of all health-related state agencies and shall include its findings and recommendations in its annual report.

#### Cooperation of Departments, Agencies and Institutions

Sec. 7. All state departments, agencies, and institutions functioning in the fields of health and welfare in any way, shall cooperate with and assist the Texas Coordinating Commission for State Health and Welfare Services in the performance of its duties and shall make available all books, records, and information requested except that which is declared by law to be confidential in nature.

#### Reports

Sec. 8. The Commission shall compile annual reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year and shall include any recommendations which the Commission may have for legislative action.

[Acts 1959, 56th Leg., p. 773, ch. 352. Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.06, May 28, 1975; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.105, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 184, ch. 44, art. IV, § 2, eff. April 26, 1983.]

#### Art. 4447d. Providing State Department of Health With Data on Condition and Treatment of Persons

Sec. 1. Any person, hospital, sanatorium, nursing or rest home, medical society, cancer registry, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the State Department of Health, persons or organizations making inquiries pursuant to in-

munization surveys conducted under the auspices of the State Department of Health, medical organizations, hospitals and hospital committees, to be used in the course of any study for the purpose of reducing morbidity or mortality, or for the purpose of identifying persons who may be in need of immunization, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

Sec. 2. The State Department of Health, medical organizations, hospitals and hospital committees shall use or publish said material only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. The identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances except in the case of immunization surveys conducted under the auspices of the State Department of Health for the purpose of identifying persons who may be in need of immunization. With the exception of immunization information, all information, interviews, reports, statements, memoranda, or other data furnished by reason of this Act and any findings or conclusions resulting from such studies are declared to be privileged.

Sec. 3. The records and proceedings of any hospital committee, medical organization committee or extended care facility committee established under state or federal law or regulations or under the by-laws, rules or regulations of such organization or institution shall be confidential and shall be used by such committee and the members thereof only in the exercise of the proper functions of the committee and shall not be public records and shall not be available for court subpoena; provided, however, that nothing herein shall apply to records made or maintained in the regular course of business by a hospital or extended care facility. No physician, hospital, organization, or institution furnishing information, data, reports, or records to any such committee with respect to any patient examined or treated by such physician or confined in such hospital or institution shall, by reason of furnishing such information, be liable in damages to any person. No member of such a committee shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such committee if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

[Acts 1963, 58th Leg., p. 943, ch. 372. Amended by Acts 1969, 61st Leg., p. 1719, ch. 568, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1442, ch. 399, §§ 1, 2, eff. May 26, 1971.]

#### Art. 4447d-1. Inadmissibility as Evidence of Immunization Survey Data

Data obtained from a physician's medical records by any person conducting immunization surveys under the auspices of the State Department of Health shall not be admissible as evidence in a suit against the physician involving an injury relating to the immunization of an individual.

[Acts 1971, 62nd Leg., p. 1443, ch. 400, § 1, eff. May 26, 1971.]

#### Art. 4447d-2. Immunization Reminder Notices

In a program administered by the State Department of Health in which immunization reminder notices for children are sent to persons, the notices must be sent without discrimination on the basis of the legitimacy of the child and must be addressed to an adult or parent without including an indication of the marital status of the addressee and without use of the terms "Mr.," "Mrs.," "Miss," or "Ms."

[Acts 1975, 64th Leg., p. 1020, ch. 389, § 1, eff. June 19, 1975.]

#### Art. 4447e. Phenylketonuria and Other Heritable Diseases

Sec. 1. The Texas Department of Health shall establish, maintain, and carry out a program designed to combat mental retardation in children suffering from phenylketonuria and other heritable diseases. The Texas Board of Health is authorized to adopt regulations necessary to carry out the program. The Board may adopt a rule specifying the heritable diseases covered by this Act. The Department shall establish and maintain a diagnostic laboratory for conducting experiments, projects, and other undertakings necessary to develop tests for the early detection of phenylketonuria and other heritable diseases; for developing ways and means or discovering methods to be used for the prevention and treatment of phenylketonuria and other heritable diseases in children; and for such other purposes considered necessary by the Department to carry out the program.

Sec. 2. (a) The physician attending a newborn child, or the person attending the delivery of a newborn child that was not attended by a physician, shall cause the child to be subjected to tests for phenylketonuria and other heritable diseases that have been approved by the Department. The tests required by this Act must be performed by the Department's diagnostic laboratory or by a laboratory approved by the Department under Section 2A of this Act. Providing, however, that such tests shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. No physician, technician, or person giving such tests shall be liable or responsible because of the failure or refusal of the parent or guardian to give permission or consent to tests herein provided.

(b) If the Department reasonably suspects that a newborn child may have phenylketonuria or other heritable disease based upon its analysis of a dried blood specimen submitted to it under Subsection (a) of this section, the Department shall notify either (1) the physician attending the newborn child or his designee, or (2) the person attending the delivery of the newborn child that was not attended by a physician or the parents that the results of the analysis of the dried blood specimen from the newborn child are abnormal and further testing is necessary. In the case of high-risk test results, the Department shall recommend that the newborn child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant physician in the newborn child's geographic area. The city or county health officer may follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician.

(c) When a positive test is confirmed, the services and facilities of the Department, and those of other boards, departments, agencies, and political subdivisions of the State cooperating with the Department in carrying out the program, may be offered to the extent needed by the family and physician if funds, services, and facilities are available. If funds, services, and facilities are available, the Department and the other departments, boards, agencies, and political subdivisions of the State cooperating with it may, in cooperation with an attending physician, provide for the dietary and other related needs of such children where necessary or desirable.

Sec. 2A. (a) The Department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the Board may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The Department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The Department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The Department may extend or renew any approval in accordance with reasonable procedures prescribed by the Board.

(e) The Department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the Board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 3. The various boards, departments, agencies and political subdivisions of the State capable of assisting the Department in carrying out any program established under the authority of this Act may cooperate with the department and are encouraged to furnish their services and facilities in aid of any such program.

Sec. 4. The Department may invite the cooperation of all physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established by the Department under the authority of this Act.

[Acts 1965, 59th Leg., p. 506, ch. 262. Amended by Acts 1979, 66th Leg., p. 578, ch. 269, §§ 1 to 5, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5035, ch. 907, § 1, eff. Aug. 29, 1983.]

#### Art. 4447e-1. Hypothyroidism

##### Detection Program; Diagnostic Laboratory

Sec. 1. The Texas Department of Health<sup>1</sup> shall establish a program to detect hypothyroidism in newborn infants. The department shall establish a diagnostic laboratory for conducting screening and other undertakings necessary to develop and carry out tests for the early detection of hypothyroidism.

<sup>1</sup> Name changed to Department of Health; see art. 4418g.

##### Rules

Sec. 2. The department may adopt rules necessary to carry out the program established pursuant to this Act.

##### Test Requirement

Sec. 3. The physician attending a newborn infant or the person attending the delivery a newborn infant who is not attended by a physician shall cause the child to be subjected to a test or tests for hypothyroidism which have been approved by the department. The tests required by this Act must be performed at the department's diagnostic laboratory or at a laboratory that has been approved by the department under Section 4 of this Act.

##### Approval of Laboratories

Sec. 4. (a) The Texas Department of Health may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the board is authorized to adopt rules prescribing procedures and standards for the conduct of the laboratory approval program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing such application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the department.

(e) The department may for good cause after notice to the affected laboratory and an opportunity for hearing restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended, (Article 6252-13a, Vernon's Texas Civil Statutes).

**Provisions Mandatory; Exception for Religious Tenets; Liability for Failure to Give Permission for Tests**

Sec. 5. Test or tests shall not be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provided further, that no physician, technician, or person giving a test for hypothyroidism is liable or responsible because of the failure or refusal of a parent or guardian to give permission for tests provided in the screening program under this Act.

**Notice to Physician or Parents; Follow Up of Positive Tests**

Sec. 6. If the department reasonably suspects that a newborn infant may have hypothyroidism based upon its analysis of a dried blood specimen submitted to it under Section 3 of this Act, the department shall notify either (1) the physician attending the newborn infant or his designee, or (2) the person attending the delivery of the newborn infant that was not attended by a physician or the parents that the results of the analysis of the dried blood specimen from the newborn infant are abnormal and further testing is necessary. In the case of high-risk test results, the department shall recommend that the newborn infant be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant physician in the newborn infant's geographic area. The city or county health officer may follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn infant if such notification was made by a person other than a physician.

**Diagnosis and Treatment**

Sec. 7. When a positive test is confirmed, the services and facilities of the department and other boards, agencies, and political subdivisions in the state cooperating in the program may be offered as a service to the family and attending physician if funds, services, and facilities are available.

**Services and Facilities to Aid Program**

Sec. 8. The various boards, agencies, and political subdivisions of the state capable of assisting the department in carrying out a program established

under this Act are encouraged to furnish their services and facilities to aid the program.

**Cooperation of Physicians and Hospitals**

Sec. 9. The department may invite the cooperation of physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established under this Act.

**Gifts and Donations**

Sec. 10. The department may receive gifts and donations on behalf of the program established under this Act.

[Acts 1977, 65th Leg., p. 905, ch. 339, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1601, ch. 677, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5037, ch. 907, § 2, eff. Aug. 29, 1983.]

**Art. 4447e-2. Sudden Infant Death Syndrome**

Sec. 1. When a child under the age of two years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official under the law, wherein the body lies, whereupon the justice of the peace, coroner, or medical examiner shall inform the parents or legal guardian of the child that they may request an autopsy performed on the child, the reasonable cost of which shall be borne by the state. An autopsy requested by the parents or legal guardians shall be arranged for by the justice of the peace, coroner, or medical examiner and the parents or legal guardians shall be promptly notified of the results of that autopsy. The reasonable cost of the autopsy performed under this section shall be reported to the director of Health Resources who shall in turn instruct the comptroller to pay the account to the person entitled thereto out of funds appropriated for this purpose by the legislature. The reasonableness and propriety of all claims and accounts under this section shall be passed upon and determined by the director of Health Resources. Nothing in this section shall be construed as interfering with the duties and responsibilities of the justice of the peace, coroner, or medical examiner as defined in other sections of the law.

Sec. 2. Sudden Infant Death Syndrome (SIDS) is hereby recognized and may be used as a primary cause of death, when applicable, in such certification as is required by Rule 40a, Sanitary Code for Texas, as amended (Article 4477, Revised Civil Statutes of Texas, 1925).

Sec. 3. The Texas Department of Health Resources<sup>1</sup> shall develop and disseminate to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens a model program that can be used in follow-up consultation and information about Sudden Infant Death Syndrome (SIDS) and its characteristic grief-guilt reaction. It is the intent of this section to initiate a model program that can be used to humanize and

maximize the understanding and the handling of Sudden Infant Death Syndrome (SIDS) in this state. The Texas Department of Health Resources may appoint an advisory committee to assist it in the development of such program.

[Acts 1977, 65th Leg., p. 1196, ch. 462, eff. Aug. 29, 1977.]

<sup>1</sup> Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

#### Art. 4447e-3. Expired

The expired article, a pilot program to identify infants with high risk of impaired hearing, was derived from Acts 1979, 66th Leg., p. 2069, ch. 809. It expired on September 1, 1981, by force of its own terms.

#### Art. 4447f. Duty of State Department of Health to Recommend Policies Relating to Medical Aspects of Driver Licensing, Traffic Safety and Accident Investigation

Sec. 1. The State Department of Health shall continuously study and investigate the medical aspects of

- (1) driver licensing;
- (2) enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and
- (3) accident investigation, including examination for alcohol and drugs in the bodies of persons killed in traffic accidents.

Sec. 2. As a result of its studies and investigations, the Department of Health periodically shall recommend policies, standards, and procedures to the Department of Public Safety relating to the medical aspects of driver licensing, enforcement of traffic safety laws, and accident investigation.

[Acts 1967, 60th Leg., p. 789, ch. 330, eff. Aug. 28, 1967.]

#### Art. 4447g. Repealed by Acts 1983, 68th Leg., p. 3404, ch. 568, § 13, eff. Sept. 1, 1983

See, now, art. 4419g.

#### Art. 4447h. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Family Code.

See, now, Family Code, § 35.01 et seq.

#### Art. 4447i. Consent of Minors to Treatment for Drug Abuse

A person 13 years of age or older has the capacity to consent to examination and treatment by a licensed physician for any drug addiction, drug dependency, or any condition directly related to drug use. No physician legally qualified to practice medicine in this state shall be liable for the examination and treatment of any person under the provisions of this Act, except for his own acts of negligence.

[Acts 1971, 62nd Leg., p. 71, ch. 37, § 1, eff. March 24, 1971.]

#### Art. 4447j. Capacity of Minors to Donate Blood; Compensation

Any person 18 years or older has the capacity to donate his blood to the American Red Cross, a blood bank operating under the supervision of a licensed physician or a hospital licensed under the provisions of the Texas Hospital Licensing Law provided, however, that any such donee between the age of 18 and 21 shall receive no remuneration or compensation for blood so donated.

[Acts 1971, 62nd Leg., p. 1556, ch. 417, § 1, eff. May 26, 1971.]

#### Art. 4447k. Control and Eradication of Pediculosis in Minors

Sec. 1. The State Department of Health shall establish and develop a state program for the control and eradication of pediculosis of a minor. This program may include procedures for detection and instructions for treatment of same.

Sec. 2. A parent or guardian of a minor who has been found to have pediculosis shall follow the instructions of the State Department of Health or shall place the minor under the care of a licensed physician for the purpose of treating the infestation of pediculosis of a minor.

[Acts 1973, 63rd Leg., p. 59, ch. 40, eff. Aug. 27, 1973.]

#### Art. 4447l. Youth Camp Safety and Health Act

##### SUBCHAPTER A. GENERAL

##### Title

Sec. 1.01. This Act may be cited as the Texas Youth Camp Safety and Health Act.

##### Policy and Purpose

Sec. 1.02. It is hereby declared the policy of this state and the purpose of this Act to protect the safety and health of the children of this state who attend youth camps and to designate the Texas State Department of Health as the responsible state agency to supervise youth camps in Texas by providing and enforcing standards to safeguard safety and health.

##### Definitions

Sec. 1.03. In this Act, unless the context requires a different definition,

- (1) board means the State Board of Health,
- (2) camper means any minor child who is attending a youth camp either on a day care or boarding basis,
- (3) commissioner means the Commissioner of Health of the State of Texas,
- (4) department means the State Department of Health,
- (5) person means any individual, partnership, corporation, association, or organization,

(6) youth camp means any property or facilities having the general characteristics of a day camp, resident camp or travel camp, as these terms are generally understood, used primarily or in part for recreational, athletic, religious and/or educational activities and accommodating five (5) or more children under eighteen (18) years of age who attend or temporarily reside at the youth camps for a period of, or portions of, four (4) days or more,

(7) youth camp operator means any person who owns, operates, controls or supervises, whether or not for profit, a youth camp.

#### Duties of Operators

Sec. 1.04. Each youth camp operator shall provide each camper with safe and healthful conditions, facilities and equipment, free from recognized hazards which cause or may tend to cause death, serious illness or bodily harm.

### SUBCHAPTER B. ADMINISTRATIVE POWERS AND DUTIES

#### Principal Authority

Sec. 2.01. The State the Department of Health is the principal authority in the state on matters relating to the condition of safety and health at youth camps in Texas. The department has the powers and duties set out in this Act and all other powers necessary and convenient to carry out its responsibilities.

#### Rules and Regulations

Sec. 2.02. (a) The department shall have authority to make and promulgate rules and regulations consistent with the policy and purpose of this Act and to amend any rule or regulation it makes. In developing such rules and regulations, the department shall consult with appropriate public and private officials and organizations, and parents and camp operators. It shall be the duty of the department to advise all existing youth camps in this state of this Act and any rules and regulations promulgated under this Act.

(b) The department shall promulgate rules and regulations which establish standards for youth camp safety and health. Such safety and health standards may include consideration of adequate and proper supervision at all times wherever camp activities are conducted; sufficient and properly qualified directors, supervisors and staff; proper safeguards for sanitation and public health; adequate medical services for personal health and first aid; proper procedures for food preparation, handling and mass feeding; healthful and sufficient water supply; proper waste disposal; proper water safety procedures for swimming pools, lakes and waterways, and safe boating equipment; proper maintenance and safe use of motor vehicles; safe buildings and physical facilities; proper fire precautions; safe and proper recreational and other equip-

ment; and proper regard for density and use of premises.

(c) There is created in the department the Advisory Council on Youth Camp Safety to advise and consult on policy matters relating to youth camp safety, particularly on the matter of the promulgation of youth camp safety standards. The council consists of the commissioner, who shall be chairman, and eleven members appointed by the governor from the following groups: one member each from a private nonsectarian camp, a church-related camp, the Girl Scouts of America, the Boy Scouts of America, the Campfire Girls of America, the Young Men's Christian Association, the Young Women's Christian Association, camps for the handicapped, and civic organization camps; and two members who are specially qualified by experience and competence to render service in this capacity. A member is entitled to hold office for two years and until his successor is appointed and qualifies. The governor shall fill vacancies for unexpired terms. Council members serve without compensation but are entitled to be reimbursed for actual expenses incurred in the performance of their duties. The commissioner may appoint special advisory or technical experts and consultants as are necessary to assist the council in carrying out its functions.

(d) No rule or regulation may be promulgated or amended by the department under this Act until a public hearing is held thereon. Notice of a public hearing including the time, date, and location of the hearing and the substance of the proposed rule, regulation, or amendment shall be given by the department to each licensee of a youth camp not less than ten (10) days nor more than thirty (30) days before the hearing. Any interested person may appear at the hearing to present evidence or testimony concerning the proposed rule, regulation, or amendment.

(e) In the event such regulations include provisions requiring physical examinations or inoculations for children or staff, the operator of the youth camp shall be permitted to grant exemption from physical examination and inoculations when such exemptions are requested on the grounds of religious convictions.

#### Required Compliance

Sec. 2.03. No person may own, operate, control or supervise a youth camp in Texas for which a license is required under this Act, without first holding a valid license under this Act and without complying with the provisions of this Act and with any rule, regulation, or order of the department.

#### Licenses

Sec. 2.04. (a) Every person operating a youth camp in Texas on the effective date of this Act shall apply for and obtain a license for each youth camp. Such application shall be on a form provided by the department and shall be submitted in full not later



than May 1, 1974. After submission such persons may continue operating until and unless the application is rejected by the department.

(b) Any person who, after the effective date of this Act, desires to operate a youth camp required to be licensed under this Act shall apply for and obtain a license before commencing operations.

(c) Upon receiving applications, the department shall conduct an inspection of applicant's facilities, operations and premises and then shall issue serially numbered licenses to all applicants who operate a youth camp in accord with the provisions of this Act and any rules and regulations promulgated under this Act.

(d) The fee for licensing under this Act shall be thirty-five dollars (\$35) and shall be submitted with the application.

#### Renewal

Sec. 2.05. Licenses issued under this Act shall be renewed annually by submission not later than May 1 of each year of an application for renewal of license on a form provided by the department. The annual fee for such license renewal shall be five dollars (\$5) and shall be submitted with the application for renewal of license.

#### Special Fund and Appropriation

Sec. 2.06. (a) The fees for licenses and renewal of licenses collected under this Act shall be deposited in the State Treasury in the General Revenue Fund.

(b) All such fees deposited in the General Revenue Fund, as well as all civil penalties recovered under Subchapter C of this Act and deposited in that fund, are hereby reappropriated to the State Department of Health to be used for the administration of this Act.

#### Revocation

Sec. 2.07. (a) Whenever the department finds that any provision of this Act or of any rule or regulation promulgated thereunder has been violated, or that a violation has occurred or is occurring on any premises for which a license has been issued, the department shall give written notice to the holder of the license, setting forth the nature of the violation or violations and directing that such violation or violations cease. If the licensee refuses or fails to comply with the notice in the time and manner directed in the notice, the department may initiate steps to revoke the license.

(b) Before revoking a license, the department shall give written notice, by certified or registered mail, to the licensee that revocation is contemplated and the reasons therefor. The notice shall state the time and place for a hearing, at which the licensee may present evidence and testimony. After such hearing, the department may revoke a license.

#### Hearings

Sec. 2.08. The State Board of Health may call and hold hearings, administer oaths, receive evidence, issue subpoenas for witnesses, papers and documents related to the hearing and make findings of fact and decisions with respect to administering the provisions of this Act or rules and regulations promulgated under this Act. The authority to call and hold hearings may be delegated to employees of the department. Reasonable notice of a hearing shall be given to all parties involved.

#### Appeal to Board

Sec. 2.09. Any person affected by any ruling, order or decision of the department may appeal to the State Board of Health by giving written notice of intent to appeal to the Commissioner of Health. The commissioner shall give appellant at least ten (10) days written notice of the time and place for the board meeting at which the appeal will be heard.

#### Power to Enter Property

Sec. 2.10. Employees and agents of the department shall have the right to enter any property licensed or applying for a license to operate a youth camp or any property which is operating a youth camp, for the purpose of investigating and inspecting conditions relating to the safety and health of the campers at such youth camp. Any employee or agent acting under authority of this section who enters a youth camp shall notify the person then in charge of his presence and exhibit proper credentials. Should any employee or agent be refused the right to enter, the department may have the remedies authorized in Section 3.02 of this Act.

#### Power to Examine Records

Sec. 2.11. The department may prescribe reasonable requirements for licensed youth camps to keep records pertaining to matters involving the safety and health of campers. The employees and agents of the State Department of Health may examine during regular business hours any required or other records pertaining to the safety and health of campers.

#### Duties of Commissioner

Sec. 2.12. The Commissioner of Health shall exercise the powers and duties conferred upon the State Department of Health by this Act. The commissioner may delegate any of these powers and duties to an employee of the department who shall act as his representative.

### SUBCHAPTER C. ENFORCEMENT

#### Violations Prohibited

Sec. 3.01. (a) No person may operate a youth camp in Texas without complying with all provisions of this Act and any rules, regulations and orders of the department.

(b) Any person who violates any provision of this Act or any rule, regulation or order of the department is subject to a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

#### Enforcement by Department

Sec. 3.02. Whenever it appears that a person has violated, or is violating or is threatening to violate any provision of this Act or of any rule, regulation or order of the department, then the department may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation or order of the department, the district court shall grant the injunctive relief or civil penalties or both, as the facts may warrant.

#### Emergency Enforcement

Sec. 3.03. Whenever it appears that any person is violating, or threatening to violate, any provision of this Act or any rule, regulation or order of the department or any other action of any youth camp that creates an emergency condition that constitutes an imminent danger to the health, safety or welfare of campers at a youth camp, the department may institute in a district court an application for temporary restraining order to halt immediately any such violation or other action creating the emergency condition.

#### Venue and Procedure

Sec. 3.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in the county where the defendant resides or in the county where the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation or order of the department, the court may grant the department, without bond or other undertaking, any prohibitory or mandatory injunction as the facts may warrant, including temporary restraining orders, temporary injunctions and permanent injunctions.

(c) A suit brought under this Act shall be given precedence over other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

(e) All civil penalties recovered in suits instituted by the department under this Act shall be paid to the Youth Camp Health and Safety Fund of the State of Texas.

### SUBCHAPTER D. JUDICIAL REVIEW

#### Appeal of Department Action

Sec. 4.01. (a) A person affected by any ruling, order or other act of the department may appeal by filing a petition in a district court of Travis County.

(b) The petition must be filed within thirty days after the date of the department's action.

(c) Service of citation on the department must be accomplished within thirty days after the date the petition is filed. Citation may be served on the commissioner or any member of the board.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the department unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a department action, the issue is whether the action is invalid, arbitrary, or unreasonable.

[Acts 1973, 63rd Leg., p. 316, ch. 142, § 1, eff. May 21, 1973. Amended by Acts 1983, 68th Leg., p. 380, ch. 81, § 12(d), eff. Sept. 1, 1983.]

Section 2 of the 1973 Act provides:

"This Act is cumulative of all other laws and the requirements and responsibilities contained herein shall not affect requirements and responsibilities of other state agencies and political subdivisions in accord with existing statutes."

Section 12(m) of the 1983 amendatory act provides:

"Except for Subsections (e) and (k) of this section, this section applies only to an application for a license, registration, document, or service filed on or after the effective date of this section. An application filed before the effective date of this section is covered by applicable law in effect on the date the application was filed."

#### Art. 4447m. Costs of Medical Examinations of Sexual Assault Victims

Sec. 1. Any law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination.

Sec. 2. This Act does not require a law enforcement agency to pay any costs of treatment for injuries.

[Acts 1973, 63rd Leg., p. 704, ch. 299, eff. June 11, 1973. Amended by Acts 1983, 68th Leg., p. 5321, ch. 977, § 11, eff. Sept. 1, 1983.]

#### Art. 4447n. Filing and Copies of Autopsy Reports

Sec. 1. In any situation in which an autopsy is provided for under the laws of the State of Texas, the designated physician performing the autopsy

shall be required to file said autopsy report within thirty (30) days of its request with the designated office under the autopsy order unless certain tests are required to be made which cannot be completed within the required time limit and the designated physician so certifies when said report is filed.

Sec. 2. A copy of the autopsy report shall be furnished to any duly authorized person upon payment of a fee of Five Dollars (\$5).

[Acts 1973, 63rd Leg., p. 1688, ch. 613, eff. June 15, 1973.]

#### Art. 4447o. Emergency Medical Services Act

##### ARTICLE 1. GENERAL PROVISIONS

###### Short Title

Sec. 1.01. This Act may be cited as the Emergency Medical Services Act.

###### Purpose

Sec. 1.02. The purpose of this Act is to provide for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to such transportation in all areas of the state.

###### Definitions

Sec. 1.03. In this Act:

(1) "Advanced life support" means emergency prehospital care provided by a specially skilled emergency medical technician or a paramedic emergency medical technician using invasive medical acts. The provision of advanced life support shall be under the medical supervision and control of a licensed physician.

(2) "Basic life support" means emergency prehospital care provided by an emergency care attendant or basic emergency medical technician using noninvasive medical acts. The provision of basic life support may be under the medical supervision and control of a licensed physician.

(3) "Department" means the Texas Department of Health.

(4) "Board" means the Texas Board of Health.

(5) "Bureau" means the bureau of emergency management of the department.

(6) "Bureau chief" means the chief of the bureau of emergency management of the department.

(7) "Emergency medical services personnel" means:

- (A) emergency care attendant;
- (B) basic emergency medical technician;
- (C) specially skilled emergency medical technician; or
- (D) paramedic emergency medical technician.

(8) "Emergency care attendant" means an individual who has completed a minimum of 40 hours of training approved by the department and who is

certified by the department to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(9) "Basic emergency medical technician" means an individual who has received a minimum of 120 hours of training approved by the department and who is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

(10) "Specially skilled emergency medical technician" means an individual who has successfully completed the basic emergency medical technician requirements and an additional minimum of 160 hours of training approved by the department and who is certified by the department as minimally proficient in performing skills required to provide emergency prehospital care by initiating under medical supervision intravenous therapy and endotracheal or esophageal intubation or both.

(11) "Paramedic emergency medical technician" means an individual who has successfully completed the basic emergency medical technician requirements and an additional minimum of 400 hours of training approved by the department and who is certified by the department as minimally proficient to provide emergency prehospital care by providing advanced life support that includes initiation under medical supervision of intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

(12) "Emergency medical services vehicle" means:

- (A) basic life support emergency medical services vehicle;
- (B) advanced life support emergency medical services vehicle;
- (C) mobile intensive care unit; or
- (D) specialized emergency medical services vehicle.

(13) "Basic life support emergency medical services vehicle" means a vehicle that is designed for transporting the sick or injured and that has sufficient equipment and supplies for providing basic life support.

(14) "Advanced life support emergency medical services vehicle" means a vehicle that is designed for transporting the sick or injured and that meets the requirements of a basic vehicle and has sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation or both.

(15) "Mobile intensive care unit" means a vehicle that is designed for transporting the sick or injured and that meets the requirements of the advanced vehicle and has sufficient equipment and supplies to

provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication.

(16) "Specialized emergency medical services vehicle" means a vehicle that is designed for transporting the sick or injured by means of air, water, or ground transportation, that is not a basic or advanced emergency medical services vehicle or a mobile intensive care unit, and that has sufficient equipment and supplies to provide for the specialized needs of the patient transported. The term includes fixed wing aircraft, helicopters, boats, and ground transfer vehicles used for transporting the sick or injured.

(17) "Emergency medical services provider" means an organization that uses or maintains emergency medical services vehicles or emergency medical services personnel to provide emergency medical care of nonemergency transportation of the sick or injured.

(18) "Emergency medical services volunteer provider" means an emergency medical services provider that provides emergency prehospital care without remuneration, except for reimbursement for expenses.

(19) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under the terms of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and rules promulgated by the Texas State Board of Medical Examiners pursuant to the terms of the Medical Practice Act.

(20) "Person" means an individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(21) "Governmental entity" means a county, a city or town, a school district, or a special district or authority created in accordance with the Texas Constitution, including a rural fire prevention district, a water district, a municipal utility district, and a hospital district.

(22) "Emergency prehospital care" means care provided to the sick or injured during emergency transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(23) "Industrial ambulance" means any vehicle owned and operated by an industrial facility including both ground vehicles at industrial sites used for the initial transport or transfer of the unstable urgently sick or injured and ground vehicles at industrial sites used to transport persons at those sites who become sick, injured, wounded, or otherwise incapacitated in the course of their employment from job site to an appropriate medical facility; provided, however, that the vehicle is not available for hire or use by the general public except when assisting the local community in disaster situ-

ations or when existing ambulance service is not available.

## ARTICLE 2. STATE PLAN DEVELOPMENT AND COORDINATION OF EMERGENCY SERVICES

### Bureau Established

Sec. 2.01. There is hereby established within the Texas Department of Health the bureau of emergency management. The bureau shall be under the direction of a bureau chief with proven ability as an administrator and organizer and with direct experience in emergency medical services. In filling the position of bureau chief, a preference shall be given to any applicant for the position who is a physician.

### State Plan

Sec. 2.02. (a) The bureau shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick and injured persons.

(b) The actions of the bureau in carrying out its duties under this section shall be considered by the advisory council, and the recommendations of the council shall be reviewed by the board.

### Emergency Medical Service Delivery Areas

Sec. 2.03. The bureau shall divide the state into emergency medical service delivery areas. To the extent possible the delivery areas shall coincide with other regional planning areas.

### Cooperation of Agencies and Institutions

Sec. 2.04. The bureau shall identify all public and private agencies and institutions which are, or may be, utilized for emergency medical service in each area. The cooperation of all concerned agencies and institutions shall be enlisted in developing a well coordinated plan for delivering emergency medical services in each area.

### Interagency Communications Network

Sec. 2.05. Each area plan shall include an interagency communications network which will facilitate prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, medical facilities, and other concerned agencies and institutions.

### Use of Helicopters

Sec. 2.06. Each area plan may include the use of helicopters which may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces.

### Participation in Federal Programs

Sec. 2.07. The bureau shall serve as the single state agency to develop state plans required for participation in federal programs involving emergency medical services and may receive and dis-

burse available federal funds to implement the service programs.

#### Accessibility of Training

Sec. 2.08. (a) The bureau shall identify all public and private agencies, institutions, and individuals that are or may be engaged in emergency medical services training in each area. Each area plan must include provisions for encouraging emergency medical services training so as to reduce the cost of training to emergency medical services providers and to make training more accessible to remote or low population areas of the state.

(b) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the bureau to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel if the training is not available locally.

### ARTICLE 3. EMERGENCY MEDICAL SERVICES REGULATORY PROGRAM

#### Advisory Council

Sec. 3.01. (a) The Emergency Medical Services Advisory Council is created as an adjunct to the bureau of emergency management of the department. The council is composed of 18 members appointed by the board. The members shall be appointed from different geographical areas to ensure representation of urban and rural interests. Members must have the following qualifications:

(1) three must be licensed physicians appointed from nominations received from a statewide professional association of physicians, one of whom must be a board-certified emergency physician;

(2) two must be members of the governing bodies of municipal governments appointed from nominations received from a statewide association of municipal governments;

(3) two must be elected members of the commissioners courts of counties appointed from nominations received from a statewide association of county judges or commissioners courts;

(4) one must be a representative of hospitals appointed from a statewide association of hospitals;

(5) one must be a private provider of emergency medical services appointed from nominations received from a statewide association of private providers of emergency medical services;

(6) one must be an emergency medical services volunteer provider;

(7) one must be a local governmental provider of emergency medical services;

(8) one must be an emergency medical services educator;

(9) one must be a paramedic emergency medical technician appointed from nominations received

from a statewide association of emergency medical technicians;

(10) one must be an emergency medical technician appointed from nominations received from a statewide association of emergency medical technicians;

(11) one must be an emergency nurse appointed from nominations received from a statewide association of licensed professional nurses;

(12) one must be a representative of a fire department that provides emergency medical services appointed from nominations received from a statewide association of fire fighters; and

(13) two must be consumer members.

(b) A person is not eligible for appointment as a consumer member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has directly or indirectly more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) Members are appointed for staggered terms of six years, with six members' terms expiring January 1 of each even-numbered year. If a vacancy occurs on the council, the board shall appoint a person to serve the unexpired portion of the term.

(d) The council may adopt rules for the conduct of its activities and may elect a chairman from among its members. The council shall meet in the City of Austin at least once in each quarter of each year. The members serve without compensation, but a member of the council is entitled to receive \$50 for each council meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees.

(e) The council shall consider the needs for emergency medical services within the state and shall recommend for the board's consideration rules to implement standards adopted under this Act.

#### Minimum Standards

Sec. 3.02. (a) A person may not operate or cause to be operated an emergency medical services vehicle unless the vehicle is permitted and staffed by emergency medical services personnel in accordance with this Act. A person may not practice as emergency medical services personnel unless the person is certified in accordance with this Act and rules adopted under this Act. The board shall adopt rules establishing:

(1) minimum standards for personnel certification and performance including certification, decertification, recertification, suspension, emergency suspension, and probation of emergency medical services personnel;

(2) minimum standards for the approval of courses and training programs and the approval of program instructors, examiners, and course coordinators for the training of emergency medical services personnel and minimum standards for the revocation and probation of the accreditation or certification;

(3) minimum standards for medical supervision of advanced life support systems by a licensed physician under the terms of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and rules promulgated by the Texas State Board of Medical Examiners pursuant to the terms of the Medical Practice Act.

(4) minimum standards for granting, suspending, and revoking a biennial registration by permit of emergency medical services vehicles including the following categories of emergency medical services vehicles and equipment:

(A) basic life support emergency medical services vehicles;

(B) advanced life support emergency medical services vehicles;

(C) mobile intensive care units; and

(D) specialized emergency medical services vehicles.

(b) When adopting the minimum standards for personnel certification, the board shall consider the education, training, and experience of allied health professionals. The board may establish criteria for interstate reciprocity of emergency medical services personnel.

(c) Ground or air transfer vehicles and staff that are used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence and industrial ambulances are not subject to this Act.

(d) This Act applies to a physician, registered nurse, or other health care practitioner licensed by this state only if the health care practitioner staffs an emergency medical services vehicle on a regular basis.

#### Staffing Standards

Sec. 3.03. (a) Every basic life support emergency medical services vehicle when in service shall be staffed as follows:

(1) from January 1, 1984, through December 31, 1984, with at least two attendants, one of whom shall be trained to the emergency care attendant level; and

(2) on and after January 1, 1985, with at least two emergency care attendants.

(b) The staffing of a medical services vehicle with personnel who are certified at a higher level of training than required by Subsection (a) of this section is considered in compliance with that subsection.

(c) The board shall adopt rules for the minimum staffing of advanced life support emergency medical services vehicles, mobile intensive care units, and specialized emergency medical services vehicles to become effective no later than March 1, 1984.

(d) The board may not adopt a rule under this section that would require staffing beyond basic life support levels except in the operation of advanced life support emergency medical services vehicles, mobile intensive care units, and specialized emergency medical services vehicles that provide advanced life support.

#### Application Procedures; Rules; Fees

Sec. 3.04. (a) Applications for examination for personnel certification must be made to the department on a form and under rules prescribed by the board. A nonrefundable fee determined by the board shall accompany the application as follows:

(1) for examination for certification or recertification of a paramedic emergency medical technician or specially skilled emergency medical technician, a fee not to exceed an accumulated amount of \$7.50 a year; and

(2) for examination for certification or recertification of a basic emergency medical technician or emergency care attendant, a fee not to exceed an accumulated amount of \$5 a year.

(b) Emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 3.02 of this Act shall be issued a certificate by the department that is valid for a period of four years from the date of issuance.

(c) Emergency medical services providers must submit an application for vehicle registration in accordance with procedures prescribed by the board. An emergency medical services volunteer provider must submit with the application a letter of sponsorship from a governmental entity. A nonrefundable fee determined by the board shall accompany the application and may not exceed \$25 for each emergency medical services vehicle or a maximum of \$500 for a fleet of emergency services vehicles. On inspection by the department, emergency medical services vehicles that meet the minimum standards adopted under Section 3.02 of this Act shall be issued a registration by the department that is valid for two years.

(d) Inspections required under Subsection (c) of this section may be delegated by the department to the commissioners court of a county or the governing body of a municipality at their request and in accordance with criteria and procedures adopted by the board. The commissioners court or governing

body shall collect and retain the fee for vehicles it inspects.

(e) Applications for approval of courses and of training programs must be made to the department on a form and under rules prescribed by the board. Training programs and courses that meet the minimum standards adopted under Section 3.02 of this Act must be approved by the department.

(f) Application for certification of program instructors, examiners, and course coordinators must be made to the department on a form and under rules prescribed by the board. Program instructors, examiners, and course coordinators who meet the minimum standards adopted under Section 3.02 of this Act shall be issued a certificate that is valid for one year.

(g) The board shall exempt from the payment of fees under this section all individuals who actively participate in the operations of an emergency medical services volunteer provider.

#### Late Recertification

Sec. 3.05. A person making application for recertification whose application is received later than the 90th day after the expiration date of the person's certificate must meet the requirements of the initial certification, including training and fees in effect on the date of the application.

#### Disposition of Funds

Sec. 3.06. The department shall receive and account for all fees and other funds it receives under this Act. The fees and other funds received by the department under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the bureau of emergency management fund and are appropriated to the department to be used only to administer this Act.

#### Disciplinary Actions

Sec. 3.07. (a) The department is authorized to take the following disciplinary actions for the violation of this Act or a rule adopted under this Act:

- (1) decertification, suspension, emergency suspension, and probation of emergency medical services personnel;
- (2) revocation and probation of course and training program approval;
- (3) revocation and probation of certificates of program instructors, examiners, and course coordinators; and
- (4) revocation and suspension of emergency medical services vehicle permits.

(b) Except as provided by Section 3.08 of this Act for an emergency suspension, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by department rules for a contested case hearing and by the Administrative

Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Emergency Suspension

Sec. 3.08. (a) The bureau chief shall issue an emergency order to suspend any certificate or permit issued under this Act if the bureau chief has reasonable cause to believe that the conduct of any certificate holder or permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing upon notice to the certificate holder or permit holder. In the case of a volunteer provider, notice must also be given to the sponsoring governmental entity.

(c) On written request of the certificate holder or permit holder, the department shall conduct a hearing not earlier than the 10th day nor later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and an appeal from a disciplinary action related to the hearing are governed by department hearing rules and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Advanced Life Support not Required

Sec. 3.09. This Act does not require any system, service, or agency to provide advanced life support.

#### Municipal Regulation

Sec. 3.10. A city or town may establish standards for the staffing or equipment of emergency medical services vehicles. If standards are established under this section, they must be stricter than the minimum standards of this Act and department rules adopted under this Act.

#### Notice of Rule Changes

Sec. 3.11. The bureau shall publish any proposed rules or amendments of rules in its official publications at least 90 days before the date of adoption. Before the adoption or amendment of rules, the bureau shall make reasonable efforts to notify the following, which shall be designated as emergency medical services agencies:

- (1) organizations owning or operating an ambulance that is registered with the department;
- (2) emergency medical services coordinators of health systems agencies;
- (3) emergency medical services coordinators of councils of governments;
- (4) the Texas State Board of Medical Examiners;
- (5) course coordinators of established emergency medical services training programs; and
- (6) any other agency or organization designated by the bureau chief.

**Nontransferability of Certificate or Permit**

Sec. 3.12. A certificate or permit issued under this Act is not transferable.

**Variations**

Sec. 3.13 (a) An affected emergency medical services provider may request a variance from a standard or rule adopted under this Act based on a specific hardship by applying to the bureau chief.

(b) On receipt of the request for a variance, the department shall consider the following factors:

- (1) the nearest available service;
- (2) geography;
- (3) demography; and
- (4) any other relevant factors.

(c) Variations from the minimum standards for staffing and equipment shall be granted for the operation of basic life support emergency medical services vehicles to emergency medical services volunteer providers if the department determines that the volunteer provider is the sole provider in the service area. An emergency medical services volunteer provider requesting a variance as a sole provider must submit a letter to the department from the commissioners court of the county or the governing body of the municipality in which the volunteer provider intends to operate an emergency medical services vehicle. The letter must state that there are no other emergency medical services providers in the service area. If the department determines that the volunteer is not the sole provider in a service area, the department may deny the variance. The volunteer provider shall be given the opportunity for a hearing. Hearings shall be governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a variance is granted under this section, an emergency medical services vehicle permit shall be issued subject to annual review by the department. A provider is encouraged to upgrade staffing and equipment to meet the minimum standards set by the rules adopted under this Act.

(e) For the purposes of this section, a municipally operated emergency medical service that provides emergency prehospital care with the same personnel who provide fire or police services and that was in existence on January 1, 1983, is considered to be the equivalent of an emergency medical services volunteer provider.

**Enforcement**

Sec. 3.14. (a) The attorney general of this state or a district or county attorney may institute a civil action to compel compliance with this Act or to enforce a rule adopted under this Act. In addition to any injunctive relief or any other remedy provided by law, a person who violates this Act or a rule

adopted under this Act is liable for a civil penalty not to exceed \$250 a day for each violation.

(b) All civil penalties recovered in a suit instituted under this Act by the state at the request of the department shall be deposited in the State Treasury to the credit of the General Revenue Fund. All civil penalties recovered in a suit first instituted by a local government or governments under this Act shall be paid to the local government or governments first instituting the suit. Cities and counties are encouraged to use the recovered penalties above the cost of bringing suit to improve the delivery of emergency medical services in their jurisdictions.

**Criminal Penalty**

Sec. 3.15. (a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be a paramedic emergency medical technician or a specially skilled emergency medical technician unless the person holds a valid certificate issued by the department under this Act. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be a basic emergency medical technician or emergency care attendant without being currently certified by the department under this Act. An offense under this subsection is a Class A misdemeanor.

(c) Except as provided by Subsection (d) of this section, a person commits an offense if the person knowingly uses or permits to be used a vehicle owned, operated, or controlled by the person for the transportation of a sick or injured person unless the vehicle is currently registered by permit by the department. An offense under this subsection is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (c) of this section that the person:

(1) transports a sick or injured person to medical care as an individual citizen not ordinarily engaged in that activity;

(2) transports a sick or injured person in a casualty situation that exceeds the basic vehicular capacity or capability of an emergency medical services provider; or

(3) transports a sick or injured person as an emergency medical services provider in a vehicle that has been granted a vehicle variance under Section 3.13 of this Act.

(e) A person who is an emergency medical services provider commits an offense if the person knowingly advertises or causes to be advertised in any manner any false, misleading, or deceptive statement or representation with regard to emergency medical services staffing, equipment, and vehicles. An offense under this subsection is a Class A misdemeanor.



(f) Venue for prosecution of an offense under this section is in the county in which the offense is alleged to have occurred.

**Certification and Exemption From Payment of Fees of Persons Voluntarily Certified on Effective Date of Act**

Sec. 3.16. A person who is voluntarily certified by the department as a paramedic emergency medical technician, specially skilled emergency medical technician, basic emergency medical technician, or emergency care attendant on the effective date of this Act is considered to be certified under this Act. However, the person is not subject to the fees provided in this Act until the expiration or renewal date of his certification.

**Temporary Ceiling on Fees in Certain Counties**

*Text of section 3.161 effective until September 2, 1985*

Sec. 3.161. (a) Before the fiscal year beginning September 1, 1985, in a county with a population of 20,000 or less according to the most recent federal census the total of fees collected for certification of volunteer services may not exceed \$50.

(b) This section expires September 2, 1985.

**Consent for Emergency Care**

Sec. 3.17. Consent for emergency care of an individual is not required if:

(1) the individual is unconscious or unable to communicate because of an injury, accident, or illness and the individual is suffering from what reasonably appears to be a life-threatening injury or illness;

(2) a court of record orders the treatment of an individual who is in an imminent emergency to prevent serious bodily injury to the individual or loss of life; or

(3) the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.

**Applicable Standard of Care**

Sec. 3.18. Any individual, agency, organization, institution, corporation, or entity of state or local government that authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for any civil damages for any act or omission that occurs in connection with the training of emergency medical services personnel or with any part of the services or treatment rendered to a patient or potential patient by emergency medical services personnel, if the training, services, or

treatment are performed in accordance with the standard of ordinary care.

[Acts 1973, 63rd Leg., p. 1753, ch. 636, eff. June 16, 1973. Amended by Acts 1983, 68th Leg., p. 2987, ch. 516, § 1, eff. Jan. 1, 1984.]

Sections 3 and 4 of the 1983 amendatory act provide:

"Sec. 3. Terms of initial members. Six initial members appointed to the Emergency Medical Services Advisory Council serve for terms expiring January 1, 1986, six initial members serve for terms expiring January 1, 1988, and six initial members serve for terms expiring January 1, 1990. The 18 initial members shall draw lots to determine the lengths of their terms. The board shall make the initial appointments effective January 1, 1984.

"Sec. 4. Change of name. The name of the coordinated emergency medical services division of the Texas Department of Health is changed to the bureau of emergency management and the title of the director of the division is changed to bureau chief. A reference in a statute to the division means the bureau and a reference in a statute to the division director means the bureau chief."

**Art. 4447o-1. Mutual Assistance Among Cities and Counties in Provision of Emergency Medical Services**

Sec. 1. On request, a county shall provide emergency medical services for a city within that county or for a county bordering that county if:

(1) an agreement has been executed between the county and the requesting city or county;

(2) an emergency situation exists in the requesting city or county;

(3) the requesting city or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the county receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the county providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting city or county.

Sec. 2. On request, a city shall provide emergency medical services for the county in which that city is located or a city located within 30 miles of that city if:

(1) an agreement has been executed between the city and the requesting city or county;

(2) an emergency situation exists in the requesting city or county;

(3) the requesting city or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the city receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the city providing the services will be able to provide reasonable protection to persons within its

jurisdiction while providing services for the requesting city or county.

[Acts 1983, 68th Leg., p. 3866, ch. 612, §§ 1, 2, eff. Sept. 1, 1983.]

**Art. 4447p. Reporting Treatment of Gunshot Wound**

Sec. 1. Any physician attending or treating a bullet or gunshot wound, or whenever such case is treated in a hospital, sanitarium, or other institution, the administrator, superintendent, or other person in charge shall report such case at once to the police authorities of the city, town, or county where such physician is practicing and/or where such hospital, sanitarium, or other institution is located.

Sec. 2. Any such person wilfully failing to report such treatment or request therefor shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a period not to exceed six (6) months or by fine not to exceed One Hundred Dollars (\$100.00).

[Acts 1963, 58th Leg., p. 909, ch. 342.]

**Art. 4447q. Misrepresentation of Nonresident in Application for Medical Aid**

Sec. 1. It shall be unlawful for any person who is a resident of a foreign country or another state other than Texas to misrepresent his place of residence when furnishing information in applying for medical aid from any state or county hospital of this State.

Sec. 2. Any person who violates this Act shall upon conviction be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200) and confined to the county jail for a period of not more than six (6) months.

[Acts 1963, 58th Leg., p. 980, ch. 404.]

**Art. 4447r. Cooperative Associations by Eligible Institutions**

**Establishment; Names; Purposes**

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "system" or "systems" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish each association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

**Definitions**

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) The term "eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A & M University System, The University of Texas System, and Texas Woman's University, and nonprofit health-related institutions; and cooperative associations created to provide a system as defined in Subsection (2) of this Section 2, a unit of which is situated in any county of this state having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

(2) The term "system" shall include all properties and facilities necessary, incidental, and appropriate for the purposes of providing laundering services, central heating and cooling services (including steam and chilled water supply), cable television and other communication services, including transmission of x-rays, records, and other copy, parking facilities and traffic control facilities and devices on private streets, and food processing and dietary food preparation and supply services, together with the buildings and land (whether leasehold or other interests) necessary to provide the foregoing services, properties and facilities, all by and for the benefit of the members of the cooperative associations created under this Act.

**Powers, Rights and Functions**

Sec. 3. Each association established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a system or systems on a cooperative basis solely for the benefit of eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of the system or systems as defined in this Act;

(2) to acquire by purchase, lease, or otherwise, lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the system or systems as defined in this Act; to own, hold, improve, develop, and manage any real estate so acquired; to construct, or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate; and to encumber and dispose of any lands or estates in

lands and any such buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise, any personal property appropriate or reasonably incidental to the system or systems as defined in this Act; and

(4) to borrow or raise money; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights, and other choses in action; and to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchase, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association, all of the above being authorized to the extent necessary to accomplish the purposes set forth in this Act.

#### Public Funds

Sec. 4. No public funds appropriated to any department of the state government or to any state institution shall be used in establishing any association authorized by this Act.

#### Articles of Incorporation

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas, which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

#### Franchise Tax Exemption; Reports; Surplus Revenue

Sec. 6. The associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. Associations shall nevertheless file a written report to the secretary of state showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from each system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

#### Loaning Money to Members

Sec. 7. The associations established under this Act shall not have the power to loan money to their members.

#### Loans From Public or Private Sources; Services and Costs

Sec. 8. The associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of each system may be accomplished in whole or in part with the proceeds of loans obtained from any public or private source. Such associations are authorized to furnish services from each system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

#### Bonds, Notes or Other Obligations

Sec. 9. From time to time each association established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the system or systems. Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the system or systems or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of any association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, notes, or other evidences of obligations out of funds, other than those specifically pledged to the payment thereof.

#### Bonds as Legal and Authorized Investments

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, and trustees.

#### Election to Membership; Voting Rights; Suspension or Expulsion; Transfer of Membership Certificates

Sec. 11. (a) Membership in the associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization by the organizers thereof, or by the board of directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the management of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In case of expulsion, the association shall pay to the members such amount and at such time as may be fixed in its

bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by any association in its bylaws.

(d) All amounts paid or property conveyed or transferred to any association by expelled members not returned as hereinunder provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

#### Liability to Creditors; Financial Commitments

Sec. 12. Unless otherwise herein provided, the members of any association established hereunder shall not be responsible to such association or to its creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease. Nothing contained in this Act shall be interpreted to authorize any health-related state-supported institution to make a financial commitment extending beyond the then current budget period for such institution.

#### Cumulative Effect

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

#### Tax Exemption

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this state, and for the improvement of their properties and industries, the associations in carrying out the purposes of this Act will be performing essential public functions under the constitution, and the associations shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the associations.

#### Severability; Liberal Construction

Sec. 15. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally

construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

[Acts 1975, 64th Leg., p. 458, ch. 195, eff. May 13, 1975. Amended by Acts 1977, 65th Leg., p. 1230, ch. 476, §§ 1 to 3, eff. June 15, 1977; Acts 1981, 67th Leg., p. 1777, ch. 389, § 26, eff. Jan. 1, 1982.]

Section 7 of the 1977 amendatory act provided:

"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 this 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."

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

#### Art. 4447s. Disclosure of Agreements for Payment of Laboratory Tests

Sec. 1. No person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic shall agree with any clinical, bioanalytical, or hospital laboratory, wherever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bill or statement to the patient or third party payors the name and address of such laboratory and the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series or makes available on request to the patient or third party payors the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series. Such information made available shall be in writing and shall show the charge for such laboratory test or test series and may include explanation in net dollar amounts or percentages the charge from such laboratory, the charge for handling, and an interpretation charge.

Sec. 2. The board or agency responsible for licensing and regulation of persons practicing medicine, dentistry, podiatry, veterinary medicine, and chiropractic, in addition to other authority granted, may deny an application for license or other authority to practice for violation of Section 1 of this Act.

[Acts 1977, 65th Leg., p. 1528, ch. 621, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 65, ch. 40, § 1, eff. April 11, 1979.]

#### Art. 4447t. Determination of Death

Sec. 1. (a) A person will be considered legally dead if, based on ordinary standards of medical practice, there is the irreversible cessation of spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that spontaneous respiratory and circulatory functions have ceased, a person will be considered legally dead if in the announced opinion of a physician, based on ordinary standards of medical practice, there is the irreversible cessation of all spontaneous brain function. Death will have occurred at the time when the relevant functions ceased.

(c) Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

Sec. 2. A physician who determines death in accordance with the provisions of Section 1(b) of this Act is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her acts or the actions of others based on that determination.

Sec. 3. A person who acts in good faith in reliance on a determination of death by a physician is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

[Acts 1979, 66th Leg., p. 368, ch. 165, eff. May 15, 1979.]

#### Art. 4447u. Home Health Services

##### Definitions

Sec. 1. In this Act:

(1) "Home health agency" means a place of business, including a hospice, that provides a home health service for pay or other consideration in a patient's residence.

(2) "Home health service" means the provision of a health service for pay or other consideration in a patient's residence.

(3) "Health service" means:

(A) nursing;

(B) physical, occupational, speech, or respiratory therapy;

(C) a medical social service;

(D) the service of a home health aide;

(E) the furnishing of medical supplies (other than drugs and medicines) and medical equipment; or

(F) nutritional counseling.

(4) "Residence" means a place where a person resides, including a home, nursing home, or convalescent home for the disabled or aged.

(5) "Certified agency" means a person who provides a home health service and holds a current letter of approval signed by an official of the Department of Health, Education, and Welfare and indicating compliance with conditions of participation in Title XVIII of the federal Social Security Act.<sup>1</sup>

(6) "Department" means the Texas Department of Health.

(7) "Council" means the Home Health Services Advisory Council.

(8) "Person" means an individual, corporation, or association.

(9) "Place of business" means any office of a home health agency that maintains patient records or directs patient services. The term includes with-

out limitation a suboffice, a branch office, a workroom, or any other subsidiary location.

<sup>1</sup> 42 U.S.C.A. § 1395 et seq.

##### Home Health Services Advisory Council

Sec. 2. (a) The Home Health Services Advisory Council is created.

(b) The council is composed of nine members appointed by the governor as follows:

(1) one member to represent the department;

(2) two members to represent consumers of home health agency services;

(3) one member to represent the Texas Department of Human Resources;

(4) one member to represent the Texas Association of Home Health Agencies, Incorporated;

(5) one member to represent private nonprofit home health agencies;

(6) one member to represent voluntary nonprofit agencies;

(7) one member to represent proprietary agencies; and

(8) one member to represent an official department home health agency.

(c) Members of the council serve staggered terms of two years, the terms of five members expiring on January 31 of each even-numbered year and the terms of four members expiring on January 31 of each odd-numbered year.

(d) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(e) The council shall meet at least once a year and at other times at the call of the presiding officer, any three members of the council, or the commissioner of health.

(f) Members of the council serve without compensation.

##### Council Duties

Sec. 3. The council shall advise the department on standards for licensing and on the implementation of this Act.

##### Rules and Standards

Sec. 4. (a) The department shall prescribe forms necessary to perform its duties and shall adopt rules necessary to implement this Act.

(b) The department shall set minimum standards for home health services licensed under this Act that pertain to:

(1) qualifications for professional personnel;

(2) qualifications for nonprofessional personnel;

(3) treatment and services provided by a home health agency and the coordination of treatment and services;

(4) supervision of professional and nonprofessional personnel;

(5) organizational structure of the agency, lines of authority, and delegation of responsibility;

(6) clinical records kept by the agency;

(7) business records;

(8) financial ability to carry out the functions as proposed; and

(9) other aspects of home health services necessary to protect the public.

(c) The department shall require each person or home health agency providing home health services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

#### Licenses Required

Sec. 5. (a) No certified agency may engage in the business of providing home health services unless the person has acquired from the department a Class A home health service license for each place of business from which home health services are directed.

(b) No person, other than a certified agency, may engage in the business of providing home health services unless the person has acquired from the department a Class B home health service license for each place of business from which home health services are directed.

#### Persons Exempted from License Requirement

Sec. 6. The following persons are not required to be licensed under Section 5 of this Act:

(1) a physician, dentist, registered nurse, or physical therapist who is currently licensed under the laws of this state who provides home health services only to a patient as a part of his or her private office practice and the services are incidental to such office practice;

(2) the following health care professionals providing home health services as a sole practitioner: a registered nurse, a licensed vocational nurse, a physical therapist, an occupational therapist, a speech therapist, a medical social worker, or any other health care professional as determined by the department;

(3) a nonprofit registry operated by a national or state professional association or society of licensed health care practitioners, or a subdivision thereof, that operates solely as a clearinghouse to put consumers in contact with licensed health care practitioners who will give care in a patient's residence and that neither maintains the official patient records nor directs patient services.

(4) an individual whose permanent residence is in the patient's residence;

(5) an employee of a person holding a license under this Act who provides home health services only as an employee of the licensed person and who receives no benefit for providing home health services other than wages from the employer;

(6) a home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under Section 5 of this Act;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that furnishes no services to persons in their houses except supplies;

(10) a hospital or other licensed health care facility serving only in-patient residents; or

(11) a person providing home health services to an injured employee pursuant to Article 8306 et seq. of the Revised Civil Statutes of Texas, 1925, as amended;

(12) a visiting nurse service conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing the nursing services of a nurse who is exempt from licensing under Article 4528, Revised Statutes, as amended, because she furnishes nursing care only where treatment is by prayer or spiritual means alone.

#### License Application

Sec. 7. (a) An applicant for a license to provide a home health service must:

(1) file a written application on a form prescribed by the department;

(2) file with the application the name of the owner of the service or a list of names of persons who own an interest in the service and a list of any businesses with which the service business subcontracts and in which the owner or owners of the service business hold as much as five percent of the ownership;

(3) cooperate with any inspections the department may require for a license; and

(4) pay to the department a license fee as prescribed by Section 8 of this Act.

(b) In addition to the above requirements: (1) for a Class A license, if the applicant is at the time of filing an application a certified home health agency, it shall include a copy of its letter of approval from the Department of Health, Education, and Welfare showing its compliance with federal conditions of participation. If the applicant is not at the time of filing its application a certified home health agency, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling. It must also have been surveyed and be in the process

of receiving its certificate from the Department of Health, Education, and Welfare.

(2) For a Class B license, the applicant must show proof of the services provided and geographical territory in which such services have been provided as of the effective date of this Act and it must have requested a survey for the purposes of confirming the services provided and territory covered. If the applicant is not providing services as of the effective date of this Act, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling.

(c) The license fee shall be returned to the applicant if the license application is denied.

**License Fees**

Sec. 8. (a) Except as provided by Subsections (b) and (c) of this section, the Class A home health service license fee and the Class B home health service license fee for each place of business is \$100.

(b) The Class A home health service license fee for each place of business of a certified agency that has been operated during the year immediately preceding the date of the application is a figure in dollars that equals one percent of the total number of home visits made by the agency from the place of business during the year immediately preceding the date of the application, but not less than \$100 nor more than \$400.

(c) The Class B home health service license fee for each place of business of a person, other than a certified agency, providing home health services during the year immediately preceding the date of the application is the fee specified in the following schedule according to the number of home health service hours billed from the place of business during the year immediately preceding the date of the application:

Fee	No. Hrs. Billed
\$100	0-10,000
\$200	over 10,000 but not more than 100,000
\$400	over 100,000

**Issuance of License**

Sec. 9. (a) The department shall issue a Class A or Class B home health service license for each place of business to each applicant who:

- (1) qualifies for the type of license requested;
- (2) submits an application as required by this Act; and

(3) complies with all licensing standards required or adopted by the department under this Act.

(b) Without the approval of the department, a license issued under this Act may not be transferred from one location to another or assigned.

(c) A license issued under this Act expires one year from the date of issuance.

**Inspections**

Sec. 10. The department or its authorized representatives may enter the premises of a license applicant or license holder at reasonable times to make an inspection incidental to the issuance of a license.

**License Denial, Suspension, or Revocation**

Sec. 11. (a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this Act.

(b) The department may revoke or suspend a license to be effective immediately when the health and safety of persons are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing within seven days after the effective date of the suspension or revocation.

(c) The licensing agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act<sup>1</sup> requiring a certificate of need or an exemption certificate.

<sup>1</sup> Article 4418h.

**Injunctions**

Sec. 12. (a) When a person violates the licensing requirements of this Act, the department may petition a district court to restrain the person from continuing the violation. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is violating this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the department, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

**Disposition of Funds**

Sec. 13. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

**Application of Sunset Act**

Sec. 14. This Act and the council created thereby are subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence by that Act, the council is abolished, and this Act expires effective September 1, 1991.

<sup>1</sup> Article 5429k.

**Effective Date**

Sec. 15. This Act takes effect September 1, 1979, except that Section 5 takes effect January 1, 1980.

[Acts 1979, 66th Leg., p. 1466, ch. 642, §§ 1 to 4, 6 to 15, eff. Sept. 1, 1979; § 5, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 1809, ch. 398, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2984, ch. 515, §§ 1 to 4, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5164, ch. 936, § 4, eff. Sept. 1, 1983.]

**Art. 4447v. Circuses, Carnivals, and Zoos****Definitions**

Sec. 1. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the Commissioner of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Person" means an individual, partnership, corporation, trust, estate, joint-stock company, foundation, political subdivision, or association of individuals.
- (5) "Circus" or "carnival" means a commercial variety show featuring animal acts for public entertainment.
- (6) "Zoo" means any premises, whether mobile or stationary, where living animals that normally live in a wild state are kept primarily for display to the general public.

**Prohibited Act**

Sec. 2. A person may not operate a circus, carnival, or zoo unless the person is licensed for the particular circus, carnival, or zoo under this Act.

**Exemptions**

Sec. 3. This Act does not apply to:

- (1) a circus, carnival, or zoo licensed under the federal Animal Welfare Act, as amended (7 U.S.C. 2131 et seq.), which furnishes proof to the commissioner that it is inspected by the federal agency administering that Act at least once each calendar year;
- (2) a zoo operated by a political subdivision of the state, a childcare institution, or accredited by the American Association of Zoological Parks and Aquariums;
- (3) premises where nonindigenous ruminants are bred and raised; or
- (4) organizations sponsoring and all persons participating in exhibitions of domestic livestock shows and rodeos.

**License Application**

Sec. 4. To be licensed under this Act, a person must submit to the board a written application on a form prescribed by the board, furnish information requested by the board, and pay an application fee.

**Licensing Standards**

Sec. 5. (a) The board shall adopt standards for the operation of circuses, carnivals, and zoos that promote humane conditions for animals and protect the public health and safety.

(b) The standards shall include coverage of the following subjects: housing and sanitation; control, care, and transportation of animals; animal health and disease control.

(c) In promulgating and enforcing standards established pursuant to this section, the board is authorized to consult experts and persons concerned with the welfare of animals in circuses, carnivals, and zoos.

**Issuance of License**

Sec. 6. (a) The board shall issue a license to operate a particular circus, carnival, or zoo to an applicant who complies with Section 4 of this Act, meets the board's standards adopted under Section 5 of this Act, and pays a license fee.

(b) A license issued under this Act is valid for two years from the date of issue or such lesser period as the board shall deem appropriate for circuses or animal variety shows not resident in Texas which are not exempt under Subdivision (1) of Section 3 of this Act.

**License Renewal**

Sec. 7. (a) A licensee may renew his license by submitting to the board before the expiration date of the license a renewal application on a form prescribed by the board and a renewal fee.

(b) The board shall issue a renewal license to a licensee who complies with Subsection (a) of this section and meets the standards adopted under Section 5 of this Act.

**Inspection by the Board**

Sec. 8. (a) The board shall inspect circuses, carnivals, and zoos to determine compliance with the standards adopted under Section 5 of this Act.

(b) The board or its agents may enter the circuses, carnivals, or zoos inspected under this section at reasonable times.

(c) The board shall prescribe the qualifications for its agents employed to inspect circuses, carnivals, or zoos under this section.

**Denial, Suspension, or Revocation of License**

Sec. 9. (a) If the commissioner determines after the inspection required under Section 8 of this Act that an applicant for a license has failed to comply



with the standards adopted under Section 5 of this Act, the commissioner shall refuse to issue the license and shall give written notice of the decision and the reasons for it to the applicant. On the written request of the applicant submitted to the commissioner not later than the 31st day after the date the notice is received, the commissioner shall conduct a hearing on the denial of the license not later than the 31st day after the date the request is received. If after the hearing the commissioner determines that the applicant has failed to comply with the standards, the commissioner shall refuse to issue the license.

(b) If the commissioner determines after inspection that a licensee has failed to comply with the standards, the commissioner shall give written notice to the licensee of a revocation hearing to be held not later than the 31st day after the date notice is given. If after the hearing the commissioner determines that the licensee has failed to comply with the standards, the commissioner shall revoke the license.

(c) If the commissioner determines after inspection that a licensee has committed gross violations of the standards, the commissioner may, after giving written notice to the licensee, suspend the license for not more than 31 days pending a hearing. The commissioner shall give written notice to the licensee of a revocation hearing to be held not later than the 31st day after the date notice is given. If after the hearing the commissioner determines that the licensee has failed to comply with the standards, the commissioner shall revoke the license.

(d) If a license is suspended or revoked, the commissioner may seek a writ from a justice of the peace serving the justice precinct in which the circus, carnival, or zoo is located ordering the sheriff or other peace officer to seize any of the animals being kept on the premises of the circus, carnival, or zoo operated by the person whose license was suspended or revoked. The department may rent, lease, or acquire facilities for keeping impounded animals. The justice of the peace shall issue the writ if the justice finds probable cause to believe that any of the animals are in danger of being harmed by a gross violation of the licensing standards. The board's employees may accompany the peace officer executing the seizure. If the license is revoked and the commissioner's decision becomes final, the commissioner shall order a public sale by auction of the seized animals. Proceeds from the sale shall be applied first to the expenses incurred in conducting the sale. The commissioner shall return any excess proceeds to the person whose license is revoked. That person or the person's agent may not participate in the auction.

(e) This section does not preclude an informal disposition of the matter by an agreement between a licensee and the board.

#### Judicial Review

Sec. 10. A person whose application for a license is denied or whose license is revoked is entitled to judicial review in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Rules

Sec. 11. The board shall adopt rules necessary to administer this Act.

#### Contracts

Sec. 12. The board may enter into contracts or agreements necessary to administer this Act. Under a contract or agreement, the board may pay for materials, equipment, or services from any available funds.

#### Fees; Annual Report

Sec. 13. The board shall prescribe the amount of each type of fee required by this Act.

(b) Fees received by the board under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the circus, carnival, and zoo licensing fund and may be used only for administering the board's or commissioner's functions under this Act.

(c) A fee received by the board under this Act is not refundable.

(d) During the period beginning on August 31 and ending on September 10 of each year, the board shall file with the governor an annual financial report relating to the administration of this Act.

(e) If the funds in the circus, carnival, and zoo licensing fund at the beginning of the fiscal year plus the fees anticipated for that year exceed the probable costs of administering this Act during that year, the board shall reduce the fees required by this Act by the amount necessary to eliminate the projected surplus.

(f) The legislature may not appropriate funds from the General Revenue Fund to implement this Act.

#### Penalty

Sec. 14. (a) A person commits an offense if the person knowingly or intentionally violates Section 2 of this Act.

(b) An offense under this section is a Class C misdemeanor.

#### Temporary License

Sec. 15. (a) A person, who on the effective date of this Act operates a circus, carnival, or zoo, may obtain from the board a temporary license to operate the circus, carnival, or zoo until a regular license can be issued or the temporary license is revoked for cause.

(b) The board shall issue a temporary license if the person applies for the license on an application form prescribed by the board and pays a license fee. The temporary license is valid for two years from the date of application or until approval or denial of a regular license. The board shall inspect a circus, carnival, or zoo operated by a temporary license and shall grant or deny the regular license on or before September 1, 1983.

[Acts 1981, 67th Leg., p. 1804, ch. 396, §§ 1 to 15, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 3250, ch. 560, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3827, ch. 598, § 1, eff. Sept. 1, 1983.]

**Art. 4447w. Reports and Assistance to Veterans Exposed to Agent Orange, Chemical Defoliants or Herbicides or Other Causative Agents**

**Definitions**

Sec. 1. In this Act:

(1) "Veteran" means a person who was a resident of this state at the time of his induction into the armed forces of the United States of America, or was a resident of this state as of March 31, 1981, who served in Vietnam, Cambodia, or Laos during the Vietnam conflict.

(2) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

(3) "Department" means the Texas Department of Health.

**Reports to the Department**

Sec. 2. (a) A physician who has primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including Agent Orange, while serving in the armed forces of the United States, shall, at the request of the veteran, submit a report to the department on a form provided by the department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department. If there is no physician or hospital treating the veteran, the veteran may submit the report directly to the department. If the veteran is deceased, the veteran's next of kin may submit the report.

(b) The reporting form provided by the department to the physician shall request the following information:

- (1) symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange;
- (2) diagnosis of the veteran; and
- (3) methods of treatment prescribed.

(c) The reporting form provided by the department to a veteran or the veteran's next of kin shall request the following information:

(1) symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange; and

(2) such other information as determined by the commissioner.

(d) The department may require the veteran to provide such other information as determined by the commissioner.

**Reports by the Department**

Sec. 3. (a) The department shall compile and evaluate information submitted under this Act into a report to be distributed annually to members of the legislature and to the Veterans Administration, the Veterans Affairs Commission, and other veterans' groups. The report shall contain statistical information and current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The department shall conduct epidemiological studies on veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange, or who have children born with birth defects after the veterans' suspected exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. The department must obtain consent from each veteran to be studied under this subsection. The department shall compile and evaluate information obtained from these studies into a report to be distributed as provided by Subsection (a) of this section.

**Confidentiality**

Sec. 4. The identity of a veteran about whom a report has been made under Section 2 or 3 of this Act may not be disclosed unless the veteran consents to the disclosure. Statistical information collected under this Act is public information.

**Immunity From Liability**

Sec. 5. A physician or a hospital subject to this Act who complies with this Act may not be held civilly or criminally liable for providing the information required by this Act.

**Class Action Representation by Attorney General**

Sec. 6. The attorney general may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including Agent Orange, in a suit for release of information relating to exposure to such chemicals during military service and for release of individual medical records.

**Assistance Programs**

Sec. 7. (a) The department and the health science centers and other medical facilities of The University of Texas System shall institute a cooperative program to:

(1) refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange;

(2) provide veterans with cytogenetic, sperm, immunological, neurological, progeny birth defect, and other appropriate clinical or laboratory evaluations to determine if the veteran has suffered physical damage as a result of substantial exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange;

(3) provide veterans with genetic counseling; and

(4) refer a veteran's child for further evaluation and treatment if the child has a birth defect that is suspected of having been caused by the veteran's exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The commissioner of health shall adopt rules necessary to the administration of the programs authorized by this section.

**Application**

Sec. 8. Sections 2 and 3 of this Act apply to all cases of veterans treated on or after January 1, 1982, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. Sections 6 and 7 of this Act apply to all veterans.

**Termination of Programs and Duties**

Sec. 9. If the commissioner of health determines that an agency of the federal government is performing the referral and screening functions required by Section 7 of this Act, the commissioner may discontinue any program required by this Act or any duty required of a physician or hospital under this Act.

**Agent Orange Advisory Committee**

Sec. 10. (a) The Agent Orange Advisory Committee is established in the department to advise the Texas Board of Health on the administration and implementation of the program established by this Act.

(b) The committee is composed of 12 members. One member is the Attorney General of the State of Texas or his designee, one member is the chairman of the Veterans Affairs Commission or his designee, and one member is the chairman of The University of Texas Agent Orange project. The commissioner of health shall appoint 9 members as follows:

(1) five members must be researchers from The University of Texas System who are expert in the

fields of cytogenetic evaluations, birth defects, sperm analyses, immunological studies, neurological studies, or other specialty relevant to the purposes of this Act whose knowledge may contribute to the implementation of this Act;

(2) one member must represent the Veterans' Administration hospitals in this state; and

(3) three members must be veterans who served in Vietnam, Cambodia, or Laos during the Vietnam conflict.

(c) Members serve for staggered terms of six years, with the terms of three members expiring on January 1 of each even-numbered year. If a vacancy occurs on the committee, the commissioner shall appoint a person to serve for the remainder of the unexpired term.

(d) The chairman of The University of Texas Agent Orange project is the chairman of the committee. The committee shall meet at least four times each year at the call of the chairman. Members serve without compensation but are entitled to receive the travel allowance authorized by the General Appropriations Act for state employees.

(e) The committee may adopt rules to conduct its activities under this section.

[Acts 1981, 67th Leg., p. 3330, ch. 874, §§ 1 to 9, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2965, ch. 510, §§ 1 to 4, eff. Jan. 1, 1984.]

Section 5 of the 1983 amendatory act provides:

"In making the initial appointments, the commissioner of health shall designate one veteran and two researchers to serve for terms expiring January 1, 1990; one veteran, the representative of the Veterans' Administration hospitals, and one researcher to serve for terms expiring January 1, 1988; and one veteran and two researchers to serve for terms expiring January 1, 1986."

**CHAPTER TWO. SPECIAL QUARANTINE REGULATIONS**

Arts. 4448 to 4464. Repealed by Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983

See, now, art. 4419b-1, § 4.01 et seq.

**CHAPTER THREE. FOOD AND DRUGS**

Art.	
4465.	Repealed.
4465a.	Public Health Laws Continued in Force.
4466.	Duties.
4467.	Administration and Expenses.
4468.	Bulletins.
4469.	Registration.
4470 to 4473.	Repealed.
4474.	Milk.
4474a.	Repealed.
4475.	Baking Powder Compound.
4476.	Self-Rising Flour.
4476-1.	Flour and Bread, Manufacture, Baking and Sale; Enrichment; Penalties for Violating State or Federal Laws or Regulations.
4476-1a.	Bakeries and Bakers.
4476-2.	Repealed.
4476-2a.	Frozen Dessert Manufacturer Licensing Act.

**Art.**

- 4476-3. Repealed.
- 4476-3a. Sale of Horse Meat for Human Consumption.
- 4476-4. Corn Meal and Corn Grits; Enrichment.
- 4476-5. Texas Food, Drug and Cosmetic Act.
- 4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use.
- 4476-5b. Dimethyl Sulfoxide.
- 4476-5c. Good Faith Donor Act.
- 4476-5d. Display and Sale of Unpackaged Food.
- 4476-5e. Texas Food, Drug, Device and Cosmetic Salvage Act.
- 4476-6. Imported Fresh Meats.
- 4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions.
- 4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions.
- 4476-7. Texas Meat and Poultry Inspection Act.
- 4476-8. Crab Meat; Processing, Transportation and Sale; Regulation and Licensing.
- 4476-9. Sterilization of Dishes; Broken or Cracked Dishes and Unlaundered Napkins.
- 4476-10. Sanitary Employees Where Food or Drink is Handled.
- 4476-10a. Labeling, Advertising, or Sale of Kosher Food.
- 4476-11. Drug Treatment Programs; Use of Synthetic Narcotics; Advisory Committee; Rules and Regulations.
- 4476-12. Sale of Preparations Containing Thallium Sulphate.
- 4476-13. Hazardous Substances; Labeling; Sale.
- 4476-13a. Volatile Chemicals; Possession and Delivery.
- 4476-14. Dangerous Drugs.
- 4476-15. Controlled Substances Act.
- 4476-15a. R.B. McAllister Drug Treatment Program Act.
- 4476-15b. Simulated Controlled Substances.
- 4476-16. Sale of Tobacco to Minor.

**Art. 4465. Repealed by Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11**

See, now, art. 4465a.

**Art. 4465a. Public Health Laws Continued in Force**

Articles 4414, 4415, 4416, 4417, and 4418, Revised Civil Statutes of 1925, are hereby repealed, Article 4465, Revised Civil Statutes of 1925, is hereby repealed, and the powers and duties vested by Chapter 3 of Title 71, R.S. 1925, in the Director of the Food and Drug Division of the State Department of Health are hereby vested in the State Health Officer<sup>1</sup>, to be hereafter exercised by him or by a division director within his Department and subject to his control under the terms of this Act. All other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except insofar as the same may be in conflict with the provisions of this Act.

[Acts 1927, 40th Leg., 1st C.S., p. 131, ch. 42, § 11.]

<sup>1</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 536, ch. 195, § 1. See art. 4418b-1.

**Art. 4466. Duties**

The director<sup>1</sup> shall:

1. Keep his office and laboratory in Austin.
2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture.
3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.
4. Make complaint and institute proceedings against any manufacturer or person who violates any provision of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.
5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State.

[Acts 1925, S.B. 84.]

<sup>1</sup> Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 536, ch. 195, § 1. See art. 4418b-1.

**Art. 4467. Administration and Expenses**

The Director<sup>1</sup> may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer<sup>1</sup> he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the Director's bond. The Director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the Director and his assistants and depu-

ties shall be paid by the State, the amounts thereof to be audited by the Comptroller.

[Acts 1925, S.B. 84.]

<sup>1</sup>Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1.

#### Art. 4468. Bulletins

The Director <sup>1</sup> may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division.

[Acts 1925, S.B. 84.]

<sup>1</sup>Director's duties transferred to State Health Officer, see art. 4465a. Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1.

#### Art. 4469. Registration

All manufacturers of foods and drugs doing business in the State of Texas and all such persons, firms, corporations, who import or bring into the State of Texas, for sale or distribution, from any place not a part or possession of the United States any article of food, drug or chemical, shall annually register with the State Department of Health and pay a fee for such registration on or before the 1st day of September. The department shall set the fee in an amount, not to exceed \$10, adequate to pay the cost of administering this program. Where a person, firm or corporation operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

The term "manufacture" as used in this Article shall mean the process of combining or purifying articles of food or drugs and packaging same for sale to the consumer, either by wholesale or retail, provided, however, that a pharmacist, registered under the laws of this state, shall not be deemed a manufacturer, when he fills a regular licensed physician's prescription, or when such pharmacist compounds or mixes drugs or medicines in his professional capacity. Any person, firm or corporation who represent themselves as responsible for the purity and the proper branding of any article of food or drug, by placing or having placed their name or names and address upon the label of any food or drug, shall be deemed a manufacturer and included within the meaning of this Article. Any person, firm or corporation who imports into this state from any place not within the continental limits of the United States, any article of food or drug, shall be importers within the meaning of this Article.

All registration fees received by the State Health Department shall be deposited in the State Treasury to the credit of the General Revenue Fund and shall

be expended only upon appropriation by the Legislature.

[Acts 1925, S.B. 84. Amended by Acts 1931, 42nd Leg., p. 265, ch. 159, § 1; Acts 1961, 57th Leg., p. 839, ch. 375, § 1; Acts 1983, 68th Leg., p. 380, ch. 81, § 12(e), eff. Sept. 1, 1983.]

#### Repeal

*This article was repealed by Acts 1983, 68th Leg., p. 796, ch. 189, § 6, eff. September 1, 1983, without reference to the amendment of this article by Acts 1983, 68th Leg., p. 380, ch. 81, § 12(e).*

Section 12(l) of the 1983 amendatory act provides:

"Until the fees imposed under the laws amended by Subsections (e) and (k) of this section are established by the appropriate entity, the fees as they existed on August 31, 1983, remain in effect."

**Acts. 4470 to 4473. Repealed by Acts 1961, 57th Leg., p. 823, ch. 373, § 24**

See, now, art. 4476-5.

#### Art. 4474. 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 diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly printed in letters not less than one inch in length.

[Acts 1925, S.B. 84.]

**Art. 4474a. Repealed by Acts 1983, 68th Leg., p. 282, ch. 55, § 2, eff. Aug. 29, 1983**

#### Art. 4475. Baking Powder Compound

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 1925, S.B. 84.]

#### Art. 4476. 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 se-

curely 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 manufacturer 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 1925, S.B. 84.]

**Art. 4476-1. Flour and Bread, Manufacture, Baking and Sale; Enrichment; Penalties for Violating State or Federal Laws or Regulations**

**Definitions**

Sec. 1. (a) The term "flour" includes and shall be limited to flour of every kind and description made wholly or partly from wheat which conforms to the definition and standard of identity of flour, white flour, wheat flour and plain flour as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2574-82, May 27, 1941), but excludes whole wheat flour made only from the whole wheat berry with no part thereof removed, and also excludes special packaged flours not used for bread baking, such as cake, pancake, cracker, and pastry flours;

(b) The term "bread" includes and shall be limited to bread of every kind and description made wholly or partly from wheat flour which conforms to the definition and standard of identity of bread as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2771-72, June 7, 1941), but excludes bread containing no wheat flour or bread containing no wheat flour or breads made from whole wheat flour;

(c) The term "enrichment" as applied to flour or bread means the addition thereto of vitamins and other ingredients of the nature required by this Act; and the terms "enriched flour" (as defined in Federal Register, Vol. 6, pp. 2579-81, May 27, 1941), and "enriched bread" (as defined in Federal Register, Vol. 6, p. 2772, June 7, 1941), means flour or bread, as the case may be, which has been enriched to conform to the requirements of this Act.

(d) The term "person" means an individual, a corporation, a partnership, an association, a joint

stock company, a trust, or any unincorporated organization.

(e) The term "appropriate federal agency" means the Federal Security Agency, or any agency or department or administrative federal officer charged with the enforcement and administration of the Federal Food, Drug and Cosmetic Act.<sup>1</sup>

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

**Enrichment of Flour; Ingredients; Application**

Sec. 2. On and after the effective date of this Act it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, any flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such flour:

(a) Not less than 1.66 milligrams of Vitamin B1 (thiamin); not less than 6 milligrams of nicotinic acid (also recognized under the name of niacin) or nicotinic acid amide (also known under the name of niacin amide); and not less than 6 milligrams of iron (Fe). These ingredients and amounts are in accordance with the definition of enriched flour as promulgated by the Federal Security Agency (Federal Register, Vol. 6, pp. 2579-82, May 27, 1941; and Vol. 6, pp. 6175-76, December 3, 1941), postponing the effective date for the addition of riboflavin as a required ingredient to enriched flour.

(b) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, or by a combination of these methods, or by any method which is permitted by the Federal Security Agency with respect to flour introduced into interstate commerce.

(c) The State Health Officer<sup>1</sup> is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the State or Federal definition of enriched flour when promulgated or as may be from time to time amended.

(d) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

Provided, however, that the terms of this Act shall not apply to flour sold to bakers who elect to enrich their products by other means than by the use of enriched flour as provided in Section 4.

(e) The terms of this Act shall not apply to flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixture of various portions of the wheat berry such products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described herein.

(f) The terms of this Act shall not apply to flour ground for the wheat producer whereby the miller

is paid in wheat or feed for the grinding service rendered, except insofar as such a mill may manufacture toll wheat into flour and sell or offer for sale such flour, whereupon this Act shall be applicable; nor shall the provisions of this Act apply to farmers in exchanging their wheat for flour, or having the same ground into flour and disposing of the same for their own use or the use of farm labor on their farms.

<sup>1</sup> Office of State Health Officer abolished and office of Commissioner of Health created by Acts 1955, 54th Leg., p. 586, ch. 195, § 1.

#### Interstate Shipments

Sec. 3. On and after the effective date of this Act it shall be unlawful for any person to manufacture, bake, sell, or offer for sale, or to receive in interstate shipment for sale for human consumption in this state, any bread or flour (as above defined) unless the following vitamins and other ingredients are contained in each pound of such bread or flour:

(a) Not less than 1.0 milligram of Vitamin B1 (thiamin); not less than 4.0 milligrams of nicotinic acid (niacin) or nicotinic acid amide (niacin amide); and not less than 4.0 milligrams of iron (Fe);

(b) The State Health Officer is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the Federal definition of enriched bread when promulgated or as from time to time amended.

#### Enrichment of Bread; Ingredients

Sec. 4. (a) The enrichment of bread may be accomplished through the use of enriched flour, enriched yeast, other enriched ingredients, synthetic vitamins, harmless iron salts, or by any combination of harmless methods which will produce enriched bread which meets the requirements of Section 3.

(b) Iron shall be added only in forms that are assimilable and harmless and which do not impair the enriched bread.

#### Labeling

Sec. 5. It shall be unlawful to sell or offer for sale in this state any enriched flour or enriched bread which fails to conform to the labeling of the State Food and Drug and of the Federal Food, Drug and Cosmetic Act, and the regulations promulgated thereunder by the appropriate federal or state agency, with respect to flour or bread introduced into interstate commerce.

#### State Health Officer, Powers Under Act

Sec. 6. (a) The State Health Officer is authorized as the administrative agency and is hereby directed:

(1) To make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this Act, including, but without being limited to, such orders, rules, and regulations as he

is hereinafter specifically authorized and directed to make.

(2) From time to time to adopt such regulations changing or adding to the required ingredients for flour or bread specified in Sections 2 and 3 as shall be necessary to conform to the definitions and standards of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the Federal Food, Drug and Cosmetic Act.

(b) In the event of the finding by the State Health Officer that there is an existing shortage or imminent shortage of any ingredient required by Sections 2 and 3 of this Act, with the result that the sale and distribution of flour or bread may be substantially impeded by the enforcement of this Act, the State Health Officer shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredients from flour and bread. Whenever the State Health Officer finds that such shortage no longer exists, he shall issue an order, to be effective not less than ten days after publication thereof, revoking such order. Any such findings as to the existence or imminence of any such shortage, or the cessation thereof, may be made by the State Health Officer without any hearing, on the basis of an order of, or factual information supplied by the appropriate federal agency (as hereinbefore defined) or the War Production Board or any similar federal agency. In the absence of any such order or factual information the State Health Officer, upon receiving the sworn statement of any persons subject to this Act that such a shortage exists or is imminent or has ceased, shall, within ten days thereafter, hold a public hearing with respect thereto, at which time any interested person may present evidence in support of such sworn statement, and any such finding by the State Health Officer may be based upon the evidence so presented. The State Health Officer shall publish notice of any such hearing at least ten days prior thereto.

(c) All orders, rules, and regulations adopted by the State Health Officer pursuant to this Act shall be published in the manner hereinafter prescribed, and within the limits specified by this Act, shall become effective upon such date as the State Health Officer shall fix.

(d) Whenever under this Act publication of any notice, order, rule or regulation is required, such publication shall be made at least three times in ten days in newspapers of general circulation in three different sections of the state.

(e) The State Health Officer is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this Act, through any officers or employees under his supervision; and all such officers and employees shall have authority to enter to inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold,

or held, or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers and labeling.

#### Violations of Act or Rules and Regulations

Sec. 7. Any person who violates any of the provisions of this Act, or the orders, rules or regulations promulgated by the State Health Officer under authority thereof, shall, upon conviction thereof, be subject to fine for each and every offense, in a sum not exceeding One Hundred (\$100.00) Dollars or to imprisonment for not more than thirty days, or both such fine and imprisonment.

[Acts 1943, 48th Leg., p. 305, ch. 199.]

#### Art. 4476-1a. 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 employe 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 thor-

oughly, and for this purpose sufficient wash basins and soap and clean towels shall be provided. No employe 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 employe 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, namely: a loaf weighing one pound or 16 ounces, a loaf weighing 24 ounces or a pound and a half, 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. This rule shall not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less. Variations, or tolerance, shall not exceed one ounce per pound over or under the said standard within a period of 24 hours after baking.

Nothing contained in this rule shall in any way inhibit or restrict the authority of the Commissioner



of Agriculture under Chapter 444, Regular Session, Acts of the 60th Legislature, 1967, as amended (Article 1037, Vernon's Texas Penal Code).<sup>1</sup>

[1925 P.C. Amended by Acts 1973, 63rd Leg., p. 739, ch. 320, § 1, eff. Aug. 27, 1973.]

<sup>1</sup> Repealed; see, now, Agriculture Code, § 13.001 et seq.

**Art. 4476-2. Repealed by Acts 1979, 66th Leg., p. 887, ch. 407, § 1, eff. June 6, 1979**

**Art. 4476-2a. Frozen Dessert Manufacturer Licensing Act**

#### Short Title

Sec. 1. This Act may be cited as the Frozen Dessert Manufacturer Licensing Act.

#### Purpose

Sec. 2. The legislature finds that a statewide licensing act is needed to regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products; to provide for uniformity of inspections of the premises of frozen dessert manufacturers; to protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and to assist manufacturers in meeting state standards or related requirements.

#### Cumulative in Effect

Sec. 3. (a) This Act and the rules adopted by the Texas Board of Health under this Act are cumulative of and supplemental to any other state and federal laws that regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products.

(b) There is no intent, express or implied, that any provision of this Act, unless specifically stated in this Act, shall repeal or in any manner impair the force of any statutory provision, or administrative rule, that has been enacted or promulgated by the legislature or by a regulatory board, commission, or agency of this state.

#### Definitions

Sec. 4. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

(5) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. However, a retailer purchasing those products from a manufacturer displaying the retailer's brand name is not considered a manufacturer.

(6) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

(7) "Sale" means the manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale; the sale, dispensing, or giving of any frozen dessert product; or the supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(8) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(9) "Frozen desserts retail establishment" means premises, including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution. A frozen desserts retail establishment may also be known as a "counter freezer establishment."

(10) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains any unwholesome substance, or, if defined in this standard, that does not conform with its definition, or that does not comply with the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) or any other applicable regulations.

(11) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(12) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(13) "Health authority" means the city, county, or state health officer or his representative or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this Act.

(14) "State health officer" means the commissioner of health.

(15) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix, be it dairy, non-dairy, imitation, pasteurized or unpasteurized, frozen desserts, imitation frozen desserts, or nondairy

frozen desserts for distribution or sale at wholesale; provided, however, that this definition shall not include a frozen dessert retail establishment.

(16) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(17) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products, or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen, and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

#### Powers and Duties of Board

Sec. 5. To achieve the intent of this Act, the board, pursuant to the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including, but not limited to, the following subjects:

(A) the health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1) of this section, including, but not limited to, the following:

(A) the requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and reinstatement of licenses;

(C) administrative hearings before the board or its designee;

(D) institution of certain court proceedings by the board or its designee;

(E) inspection of establishments; securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) plan review for future construction.

#### Prohibited Acts

Sec. 6. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless he has a valid license issued under this Act.

(b) A political subdivision or agency of this state other than the Texas Department of Health may not impose a license fee on any manufacturer covered by this section.

#### Exemptions

Sec. 7. This Act does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store, unless the person is also a manufacturer as defined by this Act.

#### Licenses

Sec. 8. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products must obtain a license from the department. A license shall be granted pursuant to procedural rules adopted by the board and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 10 of this Act before issuing a license. A license may not be issued to a person who does not comply with the standards prescribed by the board under this Act.

(c) A \$100 fee for each establishment must accompany each application for a license. The fee may not be refunded by the department.

(d) A license issued under this Act shall be renewed on or before August 1 of each year in accordance with rules adopted by the board.

**Hearings**

Sec. 9. Hearings conducted by the board in the administration of this Act shall be governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Based on the record of a hearing, the department shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.

**Inspection by Department**

Sec. 10. (a) Pursuant to rules adopted by the board, the department's authorized representatives shall have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products, or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products, for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed by the board under this Act; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products, for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed by the board under this Act.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) of this section shall bear the cost of the samples and any analyses of the samples.

**Penalties**

Sec. 11. (a) A person commits an offense if he knowingly or intentionally violates Section 6 of this Act or the rules adopted by the board under this Act.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed by law.

**Establishments Outside the State**

Sec. 12. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this Act or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may ac-

cept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

**Disposition of Fees**

Sec. 13. Fees received by the department under this Act shall be deposited in the state treasury to the credit of the general revenue fund.

**Temporary Permit**

Sec. 14. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this Act.

[Acts 1981, 67th Leg., p. 459, ch. 194, §§ 1 to 14, eff. Sept. 1, 1981.]

Art. 4476-3. Repealed by Acts 1969, 61st Leg., p. 337, ch. 123, § 412, eff. Sept. 1, 1969

See, now, art. 4476-7.

Art. 4476-3a. Sale of Horse Meat for Human Consumption

**Horse Meat Defined**

Sec. 1. By the term "horse meat" as used in this Act is meant the meat or flesh of any animal of the equine genus.

**Sale or Possession for Sale Unlawful**

Sec. 2. It shall be unlawful for any person to sell, offer or exhibit for sale, or have in his possession with intent to sell as food for human consumption, any quantity of horse meat.

**Transfer to Person Intending to Sell**

Sec. 3. It shall be unlawful for any person to transfer the possession of any horse meat to any other person when the person so transferring knows, or in the exercise of a reasonable discretion should have known, that the person receiving the horse meat intends to sell it, offer it for sale, exhibit it for sale or keep it in his possession with intent to sell it as food for human consumption.

**Prima Facie Evidence of Violation**

Sec. 4. Any of the following facts shall be prima facie evidence that horse meat was intended to be sold in violation of this Act as food for human consumption:

1. The presence of horse meat in any quantity in any retail store where the meat of cattle, sheep, swine, or goat is being exhibited or kept for sale, unless such horse meat be in a package or container not exceeding five (5) pounds in weight and plainly marked "horse meat."

2. The presence of horse meat in any quantity within the establishment, warehouse, meat locker, meat cooler or other place of storage or handling of

any wholesaler of the meat of cattle, sheep, swine, or goat, unless such horse meat be in a container as described above.

3. The presence of horse meat mixed and commingled with the meat of cattle, sheep, swine, or goat in hamburger, sausage or other processed meat products.

4. The transportation of horse meat between the hours of 10:00 P.M. and 4:00 A.M. unless said horse meat is in individual packages or containers not to exceed five (5) pounds in weight each and plainly marked "horse meat" for animal consumption.

5. The presence of horse meat in, or the delivery or attempted delivery of horse meat to any restaurant or cafe.

6. The presence of horse meat in or the delivery or attempted delivery of horse meat to any establishment preparing, canning, or processing meat food products from the meat of cattle, sheep, swine, or goats, such as, but not limited to, chili con carne, beef hash, and beef stew.

#### Ordinances

Sec. 5. Nothing contained in this Act shall affect any provision of any city ordinance regulating the sale or possession of horse meat and the licensing of dealers thereunder and the only provisions of such ordinances that shall be affected and set aside by the passage of this Act, shall be such provisions as are directly in conflict herewith.

#### Penalty; Injunction

Sec. 6. Any person violating any of the provisions of this Act, shall be fined not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or both. For any second or succeeding violation of this Act, any person so violating the same shall be confined in the penitentiary not less than two (2) years, nor more than five (5) years.

Upon conviction of a violation of this Act, the Court in pronouncing sentence shall also enter a judgment enjoining the defendant from slaughtering animals, selling meat, transporting meat or in any manner engaging in the business of purveying meat to the public as food for human consumption. Each day any such judgment and injunction is violated shall constitute a separate contempt.

#### Repeal

Sec. 7. Section 18 of Acts of the Forty-ninth Legislature, 1945, Page 554, Chapter 339,<sup>1</sup> where in conflict herewith, is hereby expressly repealed to the extent of such conflict only.

<sup>1</sup> Article 4476-3, § 18 (repealed).

#### Partial Invalidity

Sec. 8. If any provision, section, subsection, sentence, clause or phrase of this Act, or the applica-

tion of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Act or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Legislature of the State of Texas in adopting this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Act are declared to be severable.

[Acts 1949, 51st Leg., p. 78, ch. 45. Amended by Acts 1949, 51st Leg., p. 1055, ch. 545, § 1.]

#### Art. 4476-4. Corn Meal and Corn Grits; Enrichment

##### Definitions

Sec. 1. In this Act, unless the context otherwise requires:

(a) "corn meal" means all types of corn meal intended for human consumption including corn meal mixes and self-rising corn meal;

(b) "corn grits" means all types of corn grits intended for human consumption;

(c) "person" means an individual, corporation, partnership, association, joint stock company, trust, or any other unincorporated organization;

(d) "appropriate Federal agency" means the Federal Security Agency, or any other Federal agency, charged with the enforcement and administration of the Federal Food, Drug, and Cosmetic Act;<sup>1</sup>

(e) "commissioner" means the Commissioner of Health of the State of Texas.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

##### Required Vitamin and Mineral Content

Sec. 2. On and after the effective date of this Act, it shall be unlawful for any person, except as hereinafter provided, to sell, or offer for sale, or exchange for any services or goods, in this state, any corn meal or corn grits unless each pound of corn meal and each pound of corn grits contains:

(a) not less than 2.0 milligrams and not more than 3.0 milligrams of Vitamin B-1 (thiamine);

(b) not less than 1.2 milligrams and not more than 1.8 milligrams of riboflavin;

(c) not less than 16 milligrams and not more than 24 milligrams of niacin or niacin amide;

(d) not less than 13 milligrams and not more than 26 milligrams of iron.

##### Optional Ingredients

Sec. 3. Each pound of corn meal and each pound of corn grits may contain both or either of the following optional ingredients:

(a) not less than 250 U.S.P. units and not more than 1,000 U.S.P. units of Vitamin D;

(b) not less than 500 milligrams and not more than 750 milligrams of calcium.

#### Sale of Unlabeled Corn Meal or Corn Grits

Sec. 4. On and after the effective date of this Act, it shall be unlawful for any person except as hereinafter provided, to sell, or offer for sale, or exchange for any services or goods, in this state, any corn meal or corn grits which is not labeled in accordance with such requirements as may be prescribed by the Commissioner as provided in Section 6 of this Act.

#### Enforcement of Act

Sec. 5. This Act shall be enforced by the Commissioner who is authorized to make rules and regulations for carrying out the provisions thereof. The authority vested in the Commissioner by this Act may be exercised by him through such officers or employees of the State Health Department as he may designate. The Commissioner or such employees or officers as he may designate are hereby authorized to enter upon any business premises or vehicles where corn meal or corn grits may be found, for the purpose of enforcing this Act, and to take samples of, and inspect and analyze, corn meal and corn grits, which are offered for sale, or which have been sold or exchanged for services or goods.

#### Uniformity of Requirements

Sec. 6. In order to avoid confusion and to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements relating to the manufacture and distribution of corn meal and corn grits, it is desirable that there should be uniformity between the requirements of this state and the Federal Government relating to such products:

(a) the vitamins and minerals and the amounts thereof required or permitted to be contained therein;

(b) the manner of enrichment with vitamins and minerals;

(c) methods of testing to determine conformance with the provisions of law;

(d) labeling requirements.

#### Application of Act

Sec. 7. (a) This Act shall not apply to the delivery of corn meal or corn grits by a miller to a corn producer who has had same ground by the miller from the producer's corn for use in the producer's own home when the miller is paid in corn or in money for such milling services; however, if said producer desires the health benefits for his family and requests enrichment, then the miller is required by this Act to enrich according to the hereinbefore mentioned standards.

(b) This Act shall not apply to the sale of corn meal or corn grits if the purchaser furnishes to the seller a certificate, in such form as the Commissioner, by regulation, shall prescribe, certifying that he will use said corn meal or corn grits solely in the production of corn meal or corn grits enriched as required by this Act, or other legitimate products not covered by this Act.

(c) This Act shall not apply to the sale of whole grain corn meal or whole grain corn grits.

(d) This Act shall not apply to the sale or use for human consumption of corn meal or corn flour commonly known as "masa" which is used in the preparation of Mexican food such as tortillas and tamales.

#### Penalties

Sec. 8. Any person found wilfully or culpably guilty of violating any provision of Section 2, 4, 6 or 9 of this Act, or any rule or regulation made by authority thereof shall be subject for each and every offense to imprisonment not exceeding thirty (30) days, or a fine of not more than One Hundred Dollars (\$100.00) or both such fine and imprisonment.

#### Seizure and Detention of Products; Disposal; Release

Sec. 9. Whenever the Commissioner has probable cause to believe that any corn meal or corn grits has been sold, or offered for sale, or exchange, in violation of any of the provisions of this Act, he may seize and affix to such product a notice to that effect, detaining the product and warning all persons not to dispose of it by sale or otherwise without his permission. It shall be a violation of this Act, subject to the penalties set forth in Section 8, for any person to dispose of such product by sale or otherwise without such permission. The Commissioner may, in his discretion, release the corn meal or corn grits for feed purposes, or for shipment out of the State of Texas, for human consumption if brought into compliance with this Act and upon payment of all costs or expenses incurred in any proceeding connected with such seizure and withdrawal.

#### Disposal of Nonconforming Corn Meal and Corn Grits

Sec. 10. All processors, distributors, millers, wholesalers, and retailers shall be allowed sixty (60) days after the effective date of this Act to dispose of any corn meal or corn grits on hand not conforming to the provisions of this Act.

[Acts 1959, 56th Leg., p. 775, ch. 353.]

#### Art. 4476-5. Food, Drug and Cosmetic Act

##### Citation of Act

Sec. 1. This Act may be cited as the Texas Food, Drug and Cosmetic Act.

## Definitions

Sec. 2. For the purpose of this Act:

(a) The term "Commissioner of Health" means the Commissioner of Health of the State of Texas.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles designed or intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure of any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(e) The term "devices," except when used in Paragraph (k) of this section and in Sections 3(g), 11(f), 15(c) and 18(c), means instruments, apparatus and contrivances, including their components, parts, accessories, designed or intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals."

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of such articles, except that such term shall not include soap.

(g) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an arti-

cle or any of its containers or wrappers, or (2) accompanying such article.

(k) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(o) The term "contaminated" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this Act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(r) The term "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter, containing not less than eighty per centum (80%) by weight of milk fat, all tolerances having been allowed for.

(s) The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale.

(t) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135K) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(u) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(v) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity; or

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or

(3) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Food, Drug and Cosmetic Act, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260) as amended and extended (21 U.S.C. 71 and the following).

#### Unlawful and Prohibited Acts

Sec. 3. The following acts and the causing thereof within the State of Texas are hereby declared unlawful and prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) The adulteration or misbranding of any food, drug, device, or cosmetic;

(c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Sections 12 or 16;

(e) The dissemination of any false advertisement. By false advertising is meant all misrepresentations disseminated in any manner or by any means other than the labeling for the purpose of inducing or which are likely to induce directly or indirectly the purchase of food, drugs, devices or cosmetics;

(f) The refusal to permit entry or inspection, or to permit the taking of samples, as authorized by Section 21;

(g) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic;

(h) The removal or disposal of a detained article in violation of Section 6;

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded;

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this Act;

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under Section 16, or that such drug complies with the provisions of such Section;

(l) The acceptance by any person of any unused prescription or drug, in whole or in part, after it has been originally dispensed or sold, for the purpose of resale to any person.

#### Injunction Against Violations

Sec. 4. In addition to the remedies hereinafter provided the Commissioner of Health is hereby authorized to apply to any district court where the offense occurred for, and such court shall have jurisdiction after due notice and show cause hearing to grant, a temporary or permanent injunction restraining any person from violating any provision of Section 3; irrespective of whether or not there exists an adequate remedy at law.

#### Violation a Misdemeanor; Penalties

Sec. 5. (a) Any person who violates any of the provisions of Section 3 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00); and for the second or subsequent offense shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or imprisonment in the county jail for a period of not more than one year, or both such fine and imprisonment.

(b) No person shall be subject to the penalties of Subsection (a) of this Section, for having violated Section 3(a) or (c) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this Section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner of Health to furnish the Commissioner of Health the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States who caused him to disseminate such advertisement.

#### Detention and Condemnation of Product

Sec. 6. (a) Whenever a duly authorized agent of the Commissioner of Health finds or has good reason to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous within the meaning of this Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained, and warning all persons not to remove from the premises or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove from the premises or dispose of such detained article by sale or otherwise without such permission. In the case

of perishable goods, such goods may be moved with the permission of the Commissioner of Health, or his agent, to a place suitable for proper storage.

(b) When an article detained under Subsection (a) has been found by such agent to be adulterated, or misbranded, the Commissioner of Public Health or his agent shall petition the judge of the county or district court in whose jurisdiction the article is detained for an order for condemnation of such article. When such agent has found that an article so detained is not adulterated or misbranded, he shall promptly remove the tag or other marking.

(c) If the court finds that a detained article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Commissioner of Health. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner of Health that the article is no longer in violation of this Act.

(d) Whenever the Commissioner of Health or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, or fruit which is unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner of Health, or his authorized agent, shall forthwith condemn, or in any manner render the same unsalable as human food.

#### Criminal Proceedings; Notice

Sec. 7. (a) It shall be the duty of each district attorney or county attorney, to whom the Commissioner of Health reports any violation of this Act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

(b) If it is found that the detained article is adulterated or misbranded and such article is voluntarily destroyed or decreed to be destroyed, no criminal proceeding shall follow against the owner or claimant thereof before such person shall be given appropriate notice and an opportunity to present his views before the Commissioner of Health and show cause either orally or in writing why such criminal action should not be instituted.



**Minor Violations; Notice or Warning**

Sec. 8. Nothing in this Act shall be construed as requiring the Commissioner of Health to report for the institution of proceedings under this Act, minor violations of this Act, whenever the Commissioner of Health believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**Regulations; Duty to Promulgate**

Sec. 9. Whenever in the judgment of the Commissioner of Health such action will promote honesty and fair dealing in the interest of consumers, the Commissioner of Health shall promulgate regulations of general application fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Commissioner of Health shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

**Adulterated Food**

Sec. 10. A food shall be deemed to be adulterated:

(a)(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2)(A) if it bears or contains any added poisonous or added deleterious substance (except a pesticide chemical in or on a raw agricultural commodity and except a food additive) which is unsafe within the meaning of Section 13; or (B) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 13, or (C) if it is, or it bears or contains, any food additive which is unsafe within the meaning of Section 13; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 13, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 13 and clause (C) of this Section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decom-

posed substance, or if it is otherwise unfit for foods; or (4) if it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or whereby it may have been rendered injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b)(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or (5) if it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or (6) if it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Bureau of Animal Industry or the Commissioner of Health.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum, harmless natural gum, and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one certified under authority of the Federal Act.

**Misbranded Food**

Sec. 11. A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If it is offered for sale under the name of another food;

(c)(1) If it is an imitation of another food unless its label bears the word imitation; (2) In type of uniform size and prominence and immediately thereafter the name of the food imitated; (3) Except in cases of mixtures and 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. No one administering this law may constitute oleomargarine as an imitation of butter;

(d) If its container is so made, formed, or filled as to be misleading;

(e) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the content in terms of weight, measure, or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Commissioner of Health;

(f) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Section 9, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(h) If it purports to be or is represented as:

(1) A food for which a standard of quality has been prescribed by regulations as provided by Section 9, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) A food for which a standard or standards of fill of container have been prescribed by regulations as provided by Section 9, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(i) If it is not subject to the provisions of paragraph (g) of this Section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredients; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided that, to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the

Commissioner of Health; provided further, that the requirements in paragraphs (c)(2), and (e)(1) shall not apply to any bottled carbonated drinks or still soft drinks and, provided further, that clause (2) of paragraph (i) shall not apply to any bottled carbonated drinks or still soft drinks or the dispensing of carbonated soft drinks or still soft drinks in single service cups. Nothing in this law shall be construed as requiring 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 of adulteration or misbranding;

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner of Health determines to be, and by regulations prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(k) If it bears or contains any artificial flavorings, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner of Health. The provisions of this paragraph and paragraph (g) and (i) with respect to artificial coloring is not to apply in the case of butter, cheese and ice cream.

#### Emergency Permit Control

Sec. 12. (a) Whenever the Commissioner of Health finds after investigation that the distribution in Texas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, or permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner of Health as provided by such regulations.

(b) The Commissioner of Health is authorized to suspend immediately upon notice any permit issued under authority of this Section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of

Health shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Health shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Health for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

**Poisonous or Deleterious Substance Added to Food;  
Regulation by Commissioner**

Sec. 13. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof, cannot be avoided by good manufacturing practice, or serves a useful purpose, shall be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a); but when such substance is so required, cannot be so avoided, or serves a useful purpose, the Commissioner of Health shall promulgate regulations limiting the quantity therein or thereon to such extent as the Commissioner of Health finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a). While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1), Section 10(a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the Commissioner of Health shall take into account the extent to which the use of such substance is required, cannot be avoided in the production of each such article, or serves a useful purpose, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**Adulterated Drug or Device**

Sec. 14. A drug or device shall be deemed to be adulterated

(a)(1) If it consists in whole or in part of any filthy, putrid, decomposed substance, or defective material; or (2)(A) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated, or whereby it may have been rendered injurious to health, or whereby it may have become or have been rendered incapable of, or unsuitable for, the purpose for which it was designed or intended; (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding

do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the Federal Act.<sup>1</sup>

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the Federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia;

(c) If it is not subject to the provision of paragraph (b) of this Section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor; provided, that this Subsection shall not apply to registered pharmacists compounding and dispensing physicians' prescriptions.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

**Misbranded Drug or Device**

Sec. 15. A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count;

provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner of Health;

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the Commissioner of Health after investigation, found to be, and by regulations under this Act, designated as habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning: May be habit forming";

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyosine, hyoscyamine, arsenic, digitalis glucosines, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemption shall be established by regulations promulgated by the Commissioner of Health;

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Commissioner of Health shall promulgate regulations exempting such drug or device from such requirements;

(g) If it purports to be a drug the name of which is recognized in the official compendium, unless it is packaged and labeled as prescribed therein; provid-

ed, that the method of packing may be modified with the consent of the Commissioner of Health. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;

(h) If it has been found by the Commissioner of Health to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Commissioner of Health shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

(i)(1) If it is a drug or device and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug or device; or (3) if it is offered for sale under the name of another drug or device;

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(k)(1) If it is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, pituitary, thyroid, or their derivatives; or (2) if it is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian licensed to practice in this state; unless it is sold on a prescription by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the authorization of the prescribing physician, dentist or veterinarian. This Subsection shall not apply to a drug containing one or more of the derivatives of barbituric acid and in addition a sufficient quantity or proportion of another drug or drugs to prevent the ingestion of a sufficient amount of barbituric derivative to cause an hypnotic or somnifacient effect.

#### Required Statement

Sec. 15A. A drug or device is misbranded if it is a drug or device which is required by Federal Law to bear the statement "Caution: Federal Law pro-

hibits dispensing without prescription," and it does not bear the statement.

**Sale or Gift of New Drug; Application; Test of Drug**

Sec. 16. (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has been approved and said approval has not been withdrawn under Section 505 of the Federal Act, or (2) when not subject to the Federal Act, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner of Health a complete application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drug and of the articles used as components thereof as the Commissioner of Health may require; and (f) specimens of the labeling proposed to be used for such drug. The Texas Board of Health shall adopt rules prescribing the requirements of a complete application and prescribing procedures for filing new drug applications.

(b) A complete application provided for in Subsection (a)(2) shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner of Health finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner of Health.

(d) This section shall not apply—

(1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the Commissioner of Health or pursuant to Section 505(i) or 507(d) of the Federal Act; or

(2) to a drug sold in this state at any time prior to the enactment of this Act or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or

(3) to any drug which is licensed under the virus, serum, and toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, Chapter 6A, Sec. 262.)

(e) The provisions of section 2(n) shall not apply to any drug which, on October 9, 1962, or on the date immediately preceding the enactment of this Subsection, (A) was commercially sold or used in this State or in the United States, (B) was not a new drug as defined by Section 2(n) as then in force, and (C) was not covered by an effective application under Section 16 of this Act or under Section 505 of the Federal Act, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug.

(f) This section does not apply to dimethyl sulfoxide (DMSO).

(g) A hospital or health care facility may not forbid or restrict the use of a drug prescribed or administered by a licensed physician having staff privileges at that hospital or facility if:

(1) an application for the drug has been approved under this section;

(2) the Commissioner of Health has not issued an order refusing to permit an application relating to the drug to become effective under this section; or

(3) a court of competent jurisdiction has declared that an application relating to the drug has become effective and has authorized the manufacture, sale, delivery, offer for sale, holding for sale, or gift of the drug under this section.

(h) The Texas Department of Health may enter into any necessary contracts with federal or state agencies or institutions of higher education for review of technical and clinical data submitted under this section.

**Adulterated Cosmetic**

Sec. 17. A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may

have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one certified under authority of the Federal Act.

#### Misbranded Cosmetic

Sec. 18. A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular;

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner of Health;

(c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) If its container is so made, formed, or filled as to be misleading.

#### False Advertisement

Sec. 19. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular;

(b) For the purpose of this Act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of Subsection (a) shall be deemed to be false under this Subsection if it is disseminated only to members of the medical, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or

devices; provided, that whenever the Commissioner of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Commissioner of Health shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Commissioner of Health may deem necessary in the interest of public health; provided, that this Subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

#### Regulations; Authority to Promulgate; Violation of Regulation; Hearings; Notice; Appeals; Action in District Court of Travis County

Sec. 20. (a) The authority to promulgate reasonable and necessary regulations, not inconsistent with any provision of this Act, for the efficient enforcement of this Act is hereby vested in the Commissioner of Health. The violation of a regulation promulgated under this Act shall be deemed to be a violation of this Act.

(b) Hearings authorized or required by this Act shall be conducted by the Commissioner of Health or such officer, agent, or employee as the Commissioner of Health may designate for the purpose.

(c) Before promulgating any regulations, the Commissioner of Health shall give thirty (30) days notice of the proposal and of the time and place for a hearing thereon by publishing such notice in a newspaper of general circulation within the state and the Commissioner of Health shall place any person, firm or corporation so desiring said notices on a state mailing list which said list shall entitle said holder to a copy of any notice of any regulation to be promulgated. To be entitled to receive such notices, said holder shall first pay in advance, an annual service charge to be determined by the Commissioner of Health, which same shall not be more than Five Dollars (\$5.00), except that the public hearing on regulations under Section 12 may be held at a time, to be fixed by the Commissioner of Health, after notice thereof. The regulation so promulgated shall become effective on a date fixed by the Commissioner of Health (which date shall not be prior to the ninetieth (90) day after its promulgation), except that if the Commissioner of Health finds that emergency conditions exist necessitating an earlier effective date, then the Commissioner of Health shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Commissioner of Health shall specify therein to meet the emergency. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the Commissioner of Health, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the forego-

ing provisions regarding notice, hearing, or effective date.

(c-1) In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstance shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, then in that event such appeals shall be as provided in Section 20(d) of this Act. It is specifically provided hereby that Section 20(d) of this Act shall not be operative unless and until the appeal as provided by Section 20(c-1) is held invalid, unconstitutional or inoperative.

(d) If any party at interest be dissatisfied with any act, order, ruling or decision of the Commissioner of Health in connection with the administration of this Act, such party may file an action, naming the Commissioner of Health as defendant, in any of the district courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the Commissioner of Health or on file in his office while the matter was pending before him for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the Commissioner of Health. All acts, orders, rulings and decisions of the Commissioner of Health shall be final unless an action to set aside as herein authorized is filed within thirty (30) days after the action, order, ruling or decision is taken or made by the Commissioner of Health.

**Inspection by Commissioner of Factory, Warehouse, Establishment or Vehicle; Samples, Commissioner's Right to Obtain**

Sec. 21. The Commissioner of Health or his duly authorized agent shall have free access at all rea-

sonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, stored or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose:

(1) of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this Act are being violated, and to determine whether the record keeping provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 726d, Vernon's Texas Penal Code),<sup>1</sup> of<sup>2</sup> the Texas Controlled Substances Act<sup>3</sup> or of the regulations of the director of the Department of Public Safety are being violated; and

(2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such samples. It shall be the duty of the Commissioner of Health to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this Act is being violated. Whenever samples are secured by the Commissioner of Health or his agent, an equal amount of the product sampled, may upon request, be given to the person who has custody of the product sampled; payments shall be made only for that portion of the sample actually taken by the said Commissioner or agent.

<sup>1</sup> Transferred; see, now, Civil Statutes, art. 4476-14.

<sup>2</sup> So in enrolled bill; probably should read "or".

<sup>3</sup> Article 4476-15.

**Publication of Reports Summarizing Judgments, Decrees and Court Orders; Dissemination of Information**

Sec. 22. (a) The Commissioner of Health may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Act, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Health may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the Commissioner of Health deems necessary in the interest of public health and the protection of the consumer against fraud.

**Federal Prosecutions as Bar to State Prosecutions; Abatement of Proceedings**

Sec. 22A. (a) Prosecution had or pending by the Federal Government, or any of its agents, involving the first processing of agricultural products, against any person subject to federal jurisdiction in such matters, for criminal or civil penalties, shall constitute complete defense against prosecution by the State of Texas, or any of its agencies, against such person for violation of any provision of this Act involving substantially the same facts and the

same subject matter as involved in such federal proceedings, regardless of similarity or dissimilarity as between the sanctions and penalties of the federal and state statutes or regulations, and regardless of the result of such federal prosecution or procedure.

(b) Proceedings pending or in active preparation through which the Federal Government seeks confiscation, destruction, decontamination, condemnation, or mutation of agricultural products subject to such federal controls or procedures and subject to controls established in this Act, upon appropriate pleading will serve as abatement of any proceedings or cause of action for the same purpose involving the same person, or persons, and the same subject matter that may be brought by the State of Texas, or any of its agencies, through court or administrative proceedings.

(c) Compliance in good faith by any person subject to federal jurisdiction in such matters, with orders, directives or judgments issued or secured by or at the instance of the Federal Drug Administration, or any other federal agency, in respect to the acquirement, use, or operation of any product, process, plant, device, or machinery, used or useful in the first processing of agricultural products, shall constitute a bar to any criminal, civil, or administrative procedure brought by or at the instance of the Commissioner of Health, or other state agency, under or by virtue of provisions of this Act, to the extent that such state procedure may duplicate, overlap, or conflict with such federal orders, directives, or judgment.

(d) The provisions of this Section shall apply only to the business activity of cotton seed crushing and processing and to only those persons who are engaged in interstate commerce and subject to both federal and state inspection. Provided further, that the provisions of this Section shall apply only to situations where there is a conflict in the federal and state laws.

**Registration Statement of Wholesale Distributors;  
Contents; Fees; Refusal, Revocation, or  
Suspension of Registration**

Sec. 23. 1. No person shall engage in the wholesale distribution of drugs in this State without first filing a registration statement with the Commissioner of Health.

The words "wholesale distribution" shall be defined as meaning distribution to other than the consumer or patient and shall include distribution by manufacturers, re-packers, own label distributors, jobbers, and wholesalers.

2. The registration statement, which shall be signed and verified, shall be made on such forms as shall be furnished by the Commissioner of Health and shall provide the following information:

(a) The name under which the business is conducted.

(b) The address of each place of business in the State being registered. A "place of business" means each location where drugs are located for wholesale distribution.

(c) If proprietorship, the name and resident address of the proprietor; if a partnership, the names and resident addresses of all partners; if a corporation, the date and place of incorporation; or if any other type of association, then the names and addresses of the principals of such association.

(d) The names and resident addresses of those individuals in actual administrative capacity which, in the case of proprietorship, shall be the managing proprietor; partnership, the managing partner; corporation, the officers and directors; or those in a managerial capacity in any other type of association.

(e) For each place of business in the State, the resident address of the individuals in charge thereof.

3. The registration statement shall be filed prior to commencing business as a wholesale drug distributor and annually thereafter on or before the first day of September in each calendar year.

4. The initial and annual fee for registration which shall accompany the registration statement shall be Twenty-five Dollars (\$25) for each place of business.

5. In the event the location of a registered place of business shall be changed, the registrant shall notify the Commissioner of Health, in writing, of the address of such new location and the name and resident address of the individual in charge thereof. The fee to accompany such notification shall be Five Dollars (\$5) unless it shall appear to the satisfaction of the Commissioner of Health that the change of location is of a temporary nature due to fire, flood, or other disaster.

6. The Commissioner of Health may, after notice and hearing, refuse to register or cancel, revoke, or suspend the registration of any wholesale drug distributor for any of the following reasons:

(a) If the registrant has been convicted of a felony or misdemeanor which involves moral turpitude, or if the registrant be an association, partnership, or corporation, that the managing officer has been convicted of a felony or misdemeanor which involves moral turpitude;

(b) That the registrant has been convicted in either a State or Federal court for the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the registrant be an association, partnership, or corporation, that the managing officer has been convicted in either State or Federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desox-



yephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(c) That based on evidence presented during a hearing it is determined that the applicant or registrant has sold counterfeit drugs and medicines, or has violated any of the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), of the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or of the regulations of the director of the Department of Public Safety including any significant discrepancy in the records required to be maintained by State law;

(d) Failure of the applicant or registrant to comply with this Act.

7. Any registrant whose registration has been cancelled, revoked, or suspended by the Commissioner of Health pursuant to the preceding Section shall have the right to appeal to a court of competent jurisdiction in his county of residence. Such appeal shall be do novo as appeals from justice courts to county courts, and the substantial evidence rule shall not apply.

8. (a) Any person who engages in the wholesale distribution of drugs who does not comply with the requirements of this Section by being registered with the Commissioner of Health commits an offense.

(b) An offense under this Section is a Class A misdemeanor.

9. The fees provided for in Subsections 4 and 5 shall be deposited in the State Treasury to the Food and Drug Registration Fee General Revenue account and shall be available for carrying out the provisions of this Act.

#### Manufacturers of Food; Registration

Sec. 23a. 1. All manufacturers of foods in the state shall annually register on or before September 1 with the Texas Department of Health and pay a fee set by the Texas Board of Health adequate to pay the cost of administering this program and not to exceed \$25. Where a manufacturer operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

2. The registration statement, which shall be signed and verified, shall be made on forms furnished by the Texas Department of Health and shall provide the following information:

(a) the name under which the business is conducted;

(b) the address of each place of business in the state being registered;

(c) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the

state; or if any other type of association, then the names of the principals of such association;

(d) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity.

3. The term "manufacture" as used in this article shall mean the process of combining or purifying articles of food and packaging same for sale to the consumer, either by wholesale or retail. Any person, firm, or corporation who represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address upon the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section.

4. All registration fees received by the Texas Department of Health shall be deposited in the State Treasury to the credit of the General Revenue Fund and are appropriated to the department for the administration of this Act.

5. The Commissioner of Health may, after notice and hearing, refuse to register or may cancel, revoke, or suspend the registration of any food manufacturer. The Texas Board of Health shall adopt rules establishing minimum standards for registering, cancelling, revoking, and suspending registrations under this section.

6. Procedures for notice and hearing shall be governed by Texas Department of Health rules for a contested case hearing and by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

7. (a) Any person who manufactures food in this state who does not comply with the registration requirements of this section commits an offense.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1961, 57th Leg., p. 823, ch. 373. Amended by Acts 1963, 58th Leg., p. 1176, ch. 461, § 1; Acts 1963, 58th Leg., p. 1260, ch. 484; Acts 1969, 61st Leg., pp. 2550 to 2553, ch. 852, §§ 1 to 7, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., pp. 1802, 1803, ch. 534, §§ 1 to 5, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 1172, ch. 429, §§ 6.03(j), 6.03(k), 6.03(l), eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 2379, ch. 590, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2786, ch. 753, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 789, ch. 189, §§ 1 to 4, eff. Sept. 1, 1983.]

Sections 1 to 3 of Acts 1979, 66th Leg., p. 2159, ch. 826, amended art. 4476-15. Section 4 of that act provided:

"Any person, firm, or corporation which has filed a new drug application under the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes), on or after December 5, 1977, with respect to which the commissioner of health did not enter a formal order of denial within 180 days from the date of application as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes), shall be deemed approved and granted and the commissioner of health shall enter an order to such effect. This section shall take effect upon passage of this Act [August 27, 1979]."

Acts 1981, 67th Leg., p. 2787, ch. 753, § 2, provides:

"(a) The registration of a person registered on the effective date of this Act under the law amended by this Act continues in effect for the regular term of the registration.

"(b) A person who, on the effective date of this Act, is subject to the registration requirements of Section 23, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), as amended by this Act, and who was not subject to the registration requirements of Section 23 as it existed immediately before the effective date of this Act is not required to be registered under that Act until November 1, 1981."

Section 5 of the 1983 amendatory act provides:

"A person who committed an offense under Section 23(8), Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), before the effective date of this Act is subject to prosecution under the law as it existed on the date the offense was committed, and that law is continued in effect for that purpose."

**Art. 4476-5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use**

Sec. 1. (a) It is lawful to manufacture amygdalin (laetrile) in this state in accordance with the provisions of the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) and to sell the substance in the state for distribution by licensed physicians.

(b) A licensed physician may prescribe or administer amygdalin (laetrile) in the treatment of cancer.

(c) No hospital or health care facility may forbid or restrict the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient, unless the substance, as prescribed or administered by the physician, is found to be harmful by the Texas Board of Health Resources after a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) No physician may be subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under the physician's care and who has requested the substance, unless the Texas State Board of Medical Examiners has made a formal finding, in a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), that the substance is harmful.

Sec. 2. Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

(1) fails to keep complete and accurate records of purchases and disposal of amygdalin (laetrile). A physician shall keep records of his purchases and disposals of amygdalin (laetrile) to include, but not be limited to, date of purchase, sale or disposal of amygdalin (laetrile) by the doctor, the name and address of the person receiving amygdalin (laetrile), and the reason for disposing of or dispensing amygdalin (laetrile) to such person;

(2) writes prescriptions for or dispenses to a person known to be an habitual user of narcotic drugs or dangerous drugs, or to a person who the doctor should have known was an habitual user of narcotic

or dangerous drugs. This provision shall not apply to those persons being treated by the physician for their narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of such person being so treated;

(3) uses any advertising statement of a character tending to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

[Acts 1977, 65th Leg., p. 571, ch. 204, eff. Aug. 29, 1977.]

**Art. 4476-5b. Dimethyl Sulfoxide**

**Definition**

Sec. 1. In this Act, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide.

**Lawful Manufacture and Sale**

Sec. 2. It is lawful to manufacture DMSO in this state and to sell the substance in the state for human use when prescribed or administered by licensed physicians or dispensed by licensed pharmacists as prescribed by a licensed physician.

**Prescription or Administration**

Sec. 3. (a) Subject to the requirements of Subsection (b) of this section, a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

(1) provides a written statement to the patient informing the patient that DMSO, in the formulation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and

(2) informs the patient of the alternative methods of treatment for the patient's disorder and their potential for cure.

**Cancellation, Revocation, or Suspension of Physician's License**

Sec. 4. (a) Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

(1) fails to keep complete and accurate records of purchases and disposal of DMSO in a formulation not approved for human use. A physician shall keep records of his purchases and disposals of DMSO to include, but not be limited to, date of purchase, sale, or disposal of DMSO by the doctor, the name and address of the person receiving

DMSO, and the reason for disposing of or dispensing DMSO to such person; or

(2) prescribes or administers DMSO in a manner that has been proven in a formal hearing held by the board to be harmful to the patient.

(b) The Texas State Board of Medical Examiners may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public if the board conducts a hearing on the temporary suspension as soon as practicable after the suspension.

#### Restrictions on Use by Hospital or Health Care Facility

Sec. 5. (a) No hospital or health care facility may forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or health care facility, unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) If a hospital or health care facility forbids or restricts the use of DMSO under Subsection (a)(2) of this section, the hospital or facility shall conduct a hearing on the restriction or prohibition as soon as practicable after its determination.

#### Dispensing by Pharmacist

Sec. 6. A licensed pharmacist may dispense DMSO upon the written prescription of a licensed physician.

#### Offenses

Sec. 7. (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally represents the substance as a cure for any human disease, ailment, or disorder.

(b) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide formulation that is not sterile and pyrogen-free unless the substance is packaged in a container whose label includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement:

"Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics, and other materials."

(c) An offense under this section is a Class B misdemeanor.

[Acts 1981, 67th Leg., p. 2377, ch. 590, § 1, eff. Aug. 31, 1981.]

#### Art. 4476-5c. Good Faith Donor Act

Sec. 1. This Act may be cited as the Good Faith Donor Act.

Sec. 2. In this Act:

(1) "Apparently wholesome food" means food that meets all quality standards of local, county, state, and federal agricultural and health laws and rules, even though the food is not readily marketable due to appearance, age, freshness, grade, size, surplus, or other condition, but does not include canned goods that are leaking, swollen, dented on a seam, or no longer airtight.

(2) "Nonprofit organization" means an incorporated or unincorporated organization that has been established and is operating for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(3) "Intentional misconduct" means conduct that the person acting knows is harmful to the health or well-being of another person.

(4) "Donate" means to give without requiring anything of monetary value from the donee.

(5) "Person" means an individual, corporation, partnership, organization, or association.

Sec. 3. (a) A person who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the person that constitutes gross negligence, recklessness, or intentional misconduct.

(b) A nonprofit organization that distributes apparently wholesome food to the needy at no charge and that substantially complies with applicable local, county, state, and federal laws and rules regarding the storage and handling of food for distribution to the public is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

(c) This Act does not create any liability.

Sec. 4. This Act applies to liability for food donated on or after the effective date of this Act.

[Acts 1981, 67th Leg., p. 1003, ch. 381, eff. June 10, 1981.]

#### Art. 4476-5d. Display and Sale of Unpackaged Food

##### Definitions

Sec. 1. In this Act:

(1) "Unpackaged food" means a food that is not in any individual packaging or wrapping and is offered for sale by a retail food store and that is sold in bulk from a container that permits a customer to dispense the food directly into a receptacle.

(2) "Scoop utensil type container" means a self-service container in which food is dispensed through the use of a utensil provided with the container.

(3) "Gravity feed type container" means a self-service container in which food is dispensed through the operation of a mechanism that permits the food to drop into a receptacle.

#### Exemptions

Sec. 2. This Act does not apply to:

- (1) a beverage;
- (2) fresh fruit or vegetables;
- (3) food that is intended to be shelled or cooked prior to consumption; or
- (4) food, such as milk products, eggs, meat, poultry, fish, or shellfish, that is capable of supporting rapid and progressive growth of infectious or toxic microorganisms.

#### Sale From Self-Service Containers

Sec. 3. (a) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

- (1) the self-service container has a tight-fitting lid that is securely attached to the container;
- (2) the lid of a scoop utensil type container is kept in a closed position at all times except during customer service;
- (3) the lid of a gravity feed type container is kept in a closed position at all times except during servicing or refilling;
- (4) a scoop utensil type container is provided with a utensil, equipped with a handle, to be used in dispensing the food; and
- (5) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(b) The seller shall:

- (1) maintain the container, lid, and any utensil in a sanitary condition to prevent spoilage and insect infestation; and
- (2) post a conspicuous sign within the immediate display area that instructs the customer regarding the proper procedure for dispensing the food.

#### Stricter Regulation

Sec. 4. (a) If the Texas Department of Health finds that the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged food that is authorized by this Act, the department by rule may establish a stricter regulation.

(b) The stricter regulation must be based on laboratory evidence supporting the specific relationship between the disease infestation or contamination and the method of dispensing the unpackaged food and must be applied uniformly to all nonexempted food sources and dispensing methods.

#### Penalty

Sec. 5. (a) A person commits an offense if the person knowingly or intentionally sells unpackaged food in a manner that does not comply with Section 3 or 4 of this Act.

(b) An offense under this section is a Class C misdemeanor.

#### Effect on Other Laws

Sec. 6. This Act supersedes an ordinance, rule, or other regulation established by a political subdivision to regulate the method of dispensing unpackaged food. This Act does not affect an ordinance, rule, or other regulation established and enforced by a political subdivision to require the maintenance of sanitary conditions in the sale of unpackaged food dispensed in a manner authorized by this Act.

[Acts 1983, 68th Leg., p. 956, ch. 225, §§ 1 to 6, eff. Sept. 1, 1983].

#### Art. 4476-5e. Texas Food, Drug, Device and Cosmetic Salvage Act

##### Short Title

Sec. 1. This Act may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act.

##### Purpose

Sec. 2. The purpose of this Act is to protect the health of the people of this state by preventing the sale or distribution of food, drugs, devices, or cosmetics that are adulterated or misbranded.

##### Cumulative in Effect

Sec. 3. This Act and the rules issued by the Texas Board of Health under this Act are cumulative of and supplemental to any federal or state law that governs the manufacture, distribution, or sale of food, drugs, devices, or cosmetics.

##### Definitions

Sec. 4. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Food" means:
  - (A) an article of food or drink for man;
  - (B) chewing gum; or
  - (C) an article used for components of any such article.

(5) "Drug" means:

(A) an article or substance recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement of them;

(B) an article or substance designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(C) an article or substance, other than food, intended to affect the structure or any function of the body of man or other animals; or

(D) an article or substance intended for use as a component of any article or substance specified in Subdivision (A), (B), or (C) of this subsection. The term does not include devices or their components, parts, or accessories.

(6) "Device" means an instrument, apparatus, or contrivance, including any components, parts, and accessories, designed or intended:

(A) for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(B) to affect the structure or any function of the body of man or other animals.

(7) "Cosmetic" means:

(A) an article or substance intended to be rubbed, poured, sprinkled, or sprayed on or introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearances; or

(B) an article or substance for use as a component of such an article, except that the term does not include soap.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of articles of food, drugs, devices, or cosmetics for sale either by wholesale or retail. However, a pharmacist registered under the law of this state is not considered a manufacturer when he fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in his professional capacity. A person who represents himself as responsible for the purity and the proper labeling of any article of food, drug, device, or cosmetic is considered a manufacturer and included in the coverage of this Act.

(10) "Sale or distribution" means the act of selling or distributing, whether for compensation or not, and includes delivery, holding or offering for sale, transfer, auction, storage, or other means of handling or trafficking.

(11) "Distressed merchandise" means any food, drug, device, or cosmetic that has been subjected to

prolonged or improper storage, loss of label or identity, or abnormal environmental conditions such as extremes in temperature, humidity, smoke, water, fumes, pressure, or radiation that are due to natural disasters or otherwise or that may have been rendered unsafe or unsuitable for human consumption or use for any other reason.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with the standards of the department for consumption or use by the public.

(13) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in any distressed or salvaged merchandise who does not operate a salvage establishment.

(14) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

(15) "Salvage establishment" means any place of business engaged in reconditioning or by other means salvaging distressed merchandise or that sells, buys, or distributes for human use any salvaged merchandise.

(16) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment for the purpose of holding distressed or salvaged merchandise. A salvage warehouse may not be used for the purpose of reconditioning or selling to consumers.

(17) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(18) "Nonprofit organization" means an organization which has received an exemption from federal taxation under 26 U.S.C. Sec. 501(c)(3).

#### Powers and Duties of Board and Department

Sec. 5. (a) The board shall adopt rules prescribing minimum standards or related requirements for the operation of salvage establishments and salvage warehouses and for qualifications for licenses issued under this Act.

(b) The department may:

(1) enter into any contracts or agreements necessary to implement this Act;

(2) conduct inspections and secure samples or specimens;

(3) establish and maintain educational programs for salvage operators and salvage brokers; or

(4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state.

#### License Required

Sec. 6. (a) A person may not operate a salvage establishment or act as a salvage broker in this state unless he has obtained a license as a salvage

operator or salvage broker issued by the department.

(b) A license may not be transferred from one person to another or from one location to another.

(c) A separate license is required for each salvage establishment.

(d) The license shall be displayed by each salvage operator and salvage broker in accordance with rules prescribed by the board.

#### Exemptions

Sec. 7. This Act does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who in the normal course of business of manufacturing, distributing, or processing food, drugs, devices, or cosmetics engages in the activities of reconditioning the items manufactured, distributed, or processed by or for him and not purchased by him solely for the purpose of reconditioning and sale;

(2) a common carrier or his agent who disposes of or otherwise transfers undamaged food, drugs, devices, or cosmetics or distressed food, drugs, devices, or cosmetics to a person exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under the provisions of the Good Faith Donor Act (Article 4476-5c, Vernon's Texas Civil Statutes) but does not recondition such food.

#### Issuance of License

Sec. 8. (a) An applicant for license as a salvage broker or salvage operator must:

(1) file an application on a form prescribed by the department;

(2) pay a nonrefundable license fee of \$100 to the department; and

(3) cooperate with the department in any required preclicensing inspections.

(b) The department shall issue a license to operate a salvage establishment to a salvage operator who has complied with Subsection (a) of this section and who meets the minimum qualifications established by the board.

(c) The department shall issue a license to a salvage broker who has complied with Subsection (a) of this section and who meets the minimum qualifications established by the board.

(d) A license issued under this Act expires one year from the date of issuance.

#### Renewal of License

Sec. 9. (a) A person who holds a license issued under this Act may renew the license by filing an application for renewal on a form prescribed by the department accompanied by a nonrefundable renewal fee of \$100. A licensee must file for renewal before the expiration date of the current license.

(b) A person who files a renewal application after the expiration date must pay an additional \$25 as a delinquency fee.

(c) The department shall renew the license of a licensee who submits a renewal application and pays the renewal fee after an inspection to determine the licensee's compliance with the rules adopted by the board.

#### Denial, Suspension, and Revocation of License

Sec. 10. (a) The department may deny, suspend, or revoke the license of an applicant or a licensee who fails to comply with this Act or the rules adopted under this Act.

(b) The department may suspend a license without notice when there is an imminent threat to the health or safety of the public in accordance with the rules adopted by the board for emergency suspension of a license.

(c) Hearings before the department for the denial, suspension, emergency suspension, or revocation of a license and appeals from those hearings are governed by the department's hearing rules and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Reinstatement of License

Sec. 11. (a) A person whose application for a license has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating a license not later than the 30th day after the denial or emergency suspension.

(b) Not later than the 10th day after the receipt of a written request from the applicant or licensee, the department shall make a reinspection.

#### Salvage Establishments and Brokers Outside Jurisdiction of Department

Sec. 12. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or otherwise traffic in distressed or salvaged merchandise within this state if the person holds a license from the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this Act.

#### Municipal Regulation

Sec. 13. An incorporated city or town may regulate by ordinance salvage operators, brokers, and

establishments. An ordinance may be stricter than the minimum standards of this Act or department rules adopted under this Act, but it may not be less strict.

#### Penalty

Sec. 14. (a) A person commits an offense if the person operates a salvage establishment or acts as a salvage broker without a license issued under this Act.

(b) An offense under this section is a Class A misdemeanor.

#### Deposit of Funds

Sec. 15. All fees collected by the department under this Act shall be deposited in the state treasury to the credit of a special fund known as the food, drug, device, and cosmetic salvage fund and may be used only to implement this Act.

#### Effective Date for License Requirement

Sec. 16. A person is not required to be licensed under this Act until January 1, 1984.

#### Exemption

Sec. 17. A nonprofit organization is exempt from payment of fees required by this Act.

[Acts 1983, 68th Leg., p. 5088, ch. 923, §§ 1 to 17, eff. Sept. 1, 1983].

Section 18(b) of the 1983 Act provides:

"A person who applies for a license to operate a salvage establishment or act as a salvage broker before October 1, 1984, shall be granted a temporary permit to continue operation until the department performs any inspections required by the rules adopted under this Act as a condition precedent to processing the license application. The department shall perform any required inspections within a reasonable time after receipt of the application but in no event later than January 1, 1985."

### Art. 4476-6. Imported Fresh Meats

#### Wholesale or Retail Sales

Sec. 1. No person shall knowingly sell at wholesale or retail any fresh meat imported from any foreign nation without complying with all of the rules prescribed by this Act.

#### Definitions

Sec. 2. As used in this Act—

(a) "Fresh meat" means any quarter, half, or whole carcass of beef, pork, or mutton, or any cut or portion thereof which has not been canned, cooked, or otherwise processed.

(b) "Person" means any individual, firm, partnership, association, or corporation.

(c) "Retail store" means any retail grocery store, butcher shop, delicatessen, or other place where fresh meat is sold at retail for consumption off-premises.

(d) "Ground meat" includes any meat subsequently ground or commingled and any portion of which is imported from a foreign nation.

#### Labels, Brands or Signs; Contents

Sec. 3. (a) On each quarter, half, or whole carcass of imported fresh meat offered for sale at wholesale or retail, and also on any individually wrapped or packaged cut or portion thereof, there shall be placed a label or brand bearing the words "Product of \_\_\_\_\_" (naming the country), or other words clearly indicating the country of origin of the meat. Where unwrapped or unpackaged cuts or slices are displayed in a tray or case for selection by the patron, each tray or case shall have a conspicuous, legible, and clearly visible sign or label bearing such an inscription. Every tray or other container of hamburger, ground meat, sausage, or other fresh meat displayed in the bulk shall have a sign or label conforming to the same requirements.

#### Violations; Penalties

Sec. 4. (a) Any person who knowingly violates any provision of this Act shall, for the first offense, be fined not less than \$25 nor more than \$200.

(b) For a second or subsequent violation of this Act, a person shall be fined not less than \$100 nor more than \$500, or confined in the county jail for not less than 30 days nor more than 90 days, or both.

(c) The State Department of Public Health shall enforce the provisions of this Act and shall file a sworn complaint against any person who violates the provisions of this Act.

[Acts 1965, 59th Leg., p. 88, ch. 32.]

### Art. 4476-6a. Purchase of Imported Beef by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board, or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior-college, water, hospital, reclamation, or other special-purpose district.

Sec. 2. No state agency or subdivision may purchase beef, or any product consisting substantially of beef, which has been imported from outside the United States of America.

Sec. 3. The State Department of Health has responsibility for enforcing the provisions of this Act and is the agency for receipt of notifications of violations of this Act.

Sec. 4. The State Department of Health shall promulgate rules and regulations for the reporting of purchases covered by this Act by state agencies

and subdivisions and for the reporting of violations of this Act.

[Acts 1975, 64th Leg., p. 368, ch. 159, eff. May 8, 1975.]

**Art. 4476-6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions**

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior college, water, hospital, reclamation, or other special purpose district.

(3) "Dairy product" means milk, cream, butter, cheese, or any product consisting largely of one or more of them.

Sec. 2. No state agency or subdivision may purchase a dairy product that has been imported from outside the United States of America. This Act does not apply to the purchase of milk powder when, in the normal course of business, domestic milk powder is not readily available.

[Acts 1975, 64th Leg., p. 1346, ch. 505, eff. Sept. 1, 1975.]

**Art. 4476-7. Texas Meat and Poultry Inspection Act**

**TITLE I—INSPECTION REQUIREMENTS:  
ADULTERATION AND MISBRANDING**

**Definitions**

Sec. 1. As used in this Act, except as otherwise specified, the following terms shall have the meanings stated below:

(a) The term "commissioner" means the State Commissioner of Health.

(b) The term "firm" means any partnership, association, or unincorporated business organization.

(c) The term "meat broker" means any person, firm, or corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(d) The term "renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, except rendering conducted under inspection under Title I of this Act.

(e) The term "animal food manufacturer" means any person, firm, or corporation engaged in the

business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds.

(f) The term "intrastate commerce" means commerce within this state.

(g) The term "meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds.

(h) The term "capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of a carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the commissioner to deter its use as human food, or it is naturally inedible by humans.

(i) The term "prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or otherwise manufactured or processed.

(j) The term "adulterated" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(A) if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the commissioner make such article unfit for human food;

(B) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act;<sup>1</sup>



(C) if it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;<sup>2</sup>

(D) if it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act;<sup>3</sup> provided, That an article which is not adulterated under clause (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the commissioner in establishments at which inspection is maintained under Title I of this Act;

(3) if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(8) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

(9) if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(k) The term "misbranded" shall apply to any livestock product or poultry product under one or more of the following circumstances:

(1) if its labeling is false or misleading in any particular;

(2) if it is offered for sale under the name of another food;

(3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) if its container is so made, formed, or filled as to be misleading;

(5) unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this subparagraph (5), exemptions as to livestock products not in containers may be established by regulations prescribed by the commissioner; and provided further, that under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the commissioner;

(6) if any word, statement, or other information required by or under authority of this Act to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the commissioner under Section 7 of this Act unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the commissioner under Section 7 of this Act, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the commissioner, be designated as spices, flavorings, and colorings without naming each: provided, that, to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the commissioner;

(10) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner, after consultation with the Secretary of Agriculture of the United States, determines to be, and by regula-

tions prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(11) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: provided, that, to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the commissioner; or

(12) if it fails to bear, directly thereon and on its container, as the commissioner may by regulations prescribe, the inspection legend and establishment number of the establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the commissioner may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(l) The term "label" means a display of written, printed, or graphic matter upon the immediate container or product (not including package liners) of any article.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such articles.

(n) The term "Federal Meat Inspection Act" means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).<sup>4</sup>

(o) The term "Federal Food, Drug, and Cosmetic Act" means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.<sup>5</sup>

(p) The term "pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Act as under the Federal Food, Drug, and Cosmetic Act.

(q) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the commissioner to identify the status of any article or animal under this Act.

(r) The term "official inspection legend" means any symbol prescribed by regulations of the commissioner showing that an article was inspected and passed in accordance with this Act.

(s) The term "official certificate" means any certificate prescribed by regulations of the commissioner for issuance by an inspector or other person performing official functions under this Act.

(t) The term "official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(u) The term "inspector" means an employee of the State Department of Health who shall be under the supervision of the chief officer in charge of

inspection. The chief officer in charge of inspection shall be a veterinarian designated by the commissioner as responsible for animal health as animal health is related to public health, and shall be directly responsible to the commissioner. He shall be licensed to practice veterinary medicine in this state or eligible to be licensed to practice in this state and, if the latter should be the case, he must secure a Texas license within two years from the time of his employment in this position.

(v) The term "poultry" means any domesticated bird, whether live or dead.

(w) The term "poultry product" means any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the commissioner from definition as a poultry product under such conditions as it may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(x) The term "official establishment" means any establishment as determined by the commissioner at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this Act.

(y) The term "inedible animal product" means any product which is made wholly or in part from carcasses, or parts of products of the carcasses, of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, or domesticated game birds, but which is not a "meat food product" as defined in Section 1(g) of this Act.

<sup>1</sup> 21 U.S.C.A. § 346a.

<sup>2</sup> 21 U.S.C.A. § 348.

<sup>3</sup> 21 U.S.C.A. § 376.

<sup>4</sup> 21 U.S.C.A. § 601 et seq.

<sup>5</sup> 21 U.S.C.A. § 301 et seq.

#### Purpose

Sec. 2. Meat and meat food products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated

ed, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the State Commissioner of Health and cooperation by this state and the United States as contemplated by this Act are appropriate to protect the health and welfare of consumers and otherwise effectuate the purposes of this Act.

#### Examination for Live Animals and Birds

Sec. 3. For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this state in which slaughtering and preparation of meat and meat food products of such animals are conducted solely for intrastate commerce; and all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the commissioner as herein provided for.

#### Post-Mortem Examinations; Destruction of Condemned Carcasses

Sec. 4. For the purposes hereinbefore set forth the commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this state in which such articles are prepared solely for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned" all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the commissioner may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after

said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the commissioner may remove inspectors from any establishment which fails to do so destroy any such condemned carcass or part thereof.

#### Investigations; Quarantine

Sec. 4a. (1) Whenever, in his judgment, the commissioner determines that it is in the best interest of public health that investigations be made of disease findings by inspectors operating under the provisions of Sections 3 and 4 of this Act, the commissioner shall have the authority to cause such investigations to be made.

(2) Whenever any disease condition is found in the course of inspection provided for in this Act, which is inimical to public health, the commissioner shall have the authority to quarantine any premise or premises determined to be harboring any animal afflicted with any stage of the disease which may be transmitted to man or animals. Quarantined animals may be removed from quarantined areas only upon permission and supervision by the commissioner.

#### Application of Law; Limiting Entry of Meat

Sec. 5. The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this title is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The commissioner may limit the entry of carcasses, parts of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this title is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this Act.

**Access to Establishments; Labeling of Products;  
Destruction of Condemned Products**

Sec. 6. For the purposes hereinbefore set forth the commissioner shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared solely for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times, by day or night, whether the establishment be operated or not, to every part of said establishment; and said inspectors shall cause to be marked, stamped, tagged, or labeled as "Texas inspected and passed" all such products found to be not adulterated; and said inspectors shall cause to be labeled, marked, stamped, or tagged as "Texas inspected and condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the commissioner may remove inspectors from any establishment which fails to so destroy such condemned meat food products.

**Products Packed in Containers**

Sec. 7. (a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "Texas inspected and passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Act is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "Texas inspected and passed" under the provisions of this Act, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Act is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat, and meat food products inspected at any establishment under the authority of this Act and found to be not adulterated, shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the commissioner may require, the information required under paragraph (k) of Section 1 of this Act.

(c) The commissioner, whenever he determines such action is necessary for the protection of the public, may prescribe: (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to

this title or Title II of this act; (2) definitions and standards of identity or composition for articles subject to this title and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, or under the Federal Poultry Products Inspection Act,<sup>1</sup> and there shall be consultation between the commissioner and the Secretary of Agriculture of the United States prior to the issuance of such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the commissioner are permitted.

(e) If the commissioner has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as it may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling, or container does not accept the determination of the commissioner, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the commissioner so directs, be withheld pending hearing and final determination by the commissioner. Any such determination by the commissioner shall be conclusive unless, within 30 days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to the district court.

<sup>1</sup> 21 U.S.C.A. § 451 et seq.

**Sanitary Conditions of Establishments**

Sec. 8. The commissioner shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds are slaughtered and the meat and meat food products thereof are prepared solely for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and to prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, he shall refuse to allow said meat or meat food products to be labeled, marked,

stamped, or tagged as "Texas inspected and passed."

#### Nighttime Inspections

Sec. 9. The commissioner shall cause an examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, and the food products thereof, slaughtered and prepared in the establishments hereinbefore described for the purposes of intrastate commerce to be made during the nighttime as well as during the daytime when the slaughtering of said cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or the preparation of said food products is conducted during the nighttime. Provided that the commissioner, when he determines that operating hours of any person, firm, or corporation, are set in a capricious or at unnecessarily difficult times, shall have the authority to set the time and duration of operations of the said person, firm, or corporation.

#### Prohibited Acts

Sec. 10. No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any carcasses, parts of carcasses, meat, or meat food products of any such animals:

(a) slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this Act;

(b) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, (1) any such articles which (A) are capable of use as human food, and (B) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or (2) any articles required to be inspected under this title unless they have been so inspected and passed;

(c) do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded;

(d) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the commissioner, except as may be authorized by regulations of the commissioner.

#### Official Marks and Certificates

Sec. 11. (a) No brand manufacturer, printer, or other person, firm, or corporation shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the commissioner.

(b) No person, firm, or corporation shall:

(1) forge any official device, mark, or certificate;

(2) without authorization from the commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(3) contrary to the regulations prescribed by the commissioner, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(4) knowingly possess, without promptly notifying the commissioner or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(5) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the commissioner; or

(6) knowingly represent that any article has been inspected and passed, or exempted, under this Act when, in fact, it has, respectively, not been so inspected and passed, or exempted.

#### Horse Meat

Sec. 12. No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the commissioner to show the kinds of animals from which they were derived. When required by the commissioner with respect to establishments at which inspection is maintained under this title, such animals and their carcasses, parts thereof, meat, and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, goats, poultry, domestic rabbits, and domesticated game birds are slaughtered or their carcasses, parts thereof, meat, or meat food products are prepared.

#### Inspectors; Rules and Regulations

Sec. 13. The commissioner shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, the inspection of which is

hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to cause to be stamped, marked, tagged or labeled any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this Act and by the rules and regulations to be prescribed by said commissioner; and said commissioner shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this Act, and all inspections and examinations made under this Act shall be such and made in such manner as described in the rules and regulations prescribed by said commissioner not inconsistent with the provisions of this Act. The commissioner shall adopt and use federal rules and regulations, as amended, and federal procedures, as amended, for meat inspection and/or poultry inspection wherever these said rules, regulations, and procedures are applicable.

#### Bribery; Penalties

Sec. 14. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, deputy inspector, chief inspector; or any other officer or employee authorized to perform any of the duties prescribed by this Act or by the rules and regulations of the commissioner of health, any money or other thing of value, with intent to influence said inspector, deputy inspector, chief inspector, or other officer or employee in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than \$500 nor more than \$10,000 and/or by imprisonment not less than one year nor more than three years; and any inspector, deputy inspector, chief inspector, or other officer or employee authorized to perform any of the duties prescribed by this Act who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than \$100 nor more than \$10,000 and/or by imprisonment not less than one year nor more than three years.

#### Personal Use

Sec. 15. The provisions of this title requiring inspection of the slaughter of animals and the prepa-

ration of the carcasses, parts thereof, meat, and meat food products at establishments conducting such operations shall not apply to the slaughtering on his own premises, by any person, of animals, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees. The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section.

#### Storage

Sec. 16. The commissioner may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such regulation is prohibited.

### TITLE II—MEAT PROCESSORS AND RELATED INDUSTRIES

#### Products Not Intended for Human Consumption

Sec. 201. Inspection shall not be provided under Title I of this Act at any establishment for the slaughter of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or the preparation of any carcasses or parts or products of such animals, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the commissioner to deter their use for human food. No person, firm, or corporation shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, meat, or meat food products of any such animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the commissioner or are naturally inedible by humans.

#### Records

Sec. 202. (a) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the commissioner afford

such representative and any duly authorized representative of the Secretary of Agriculture of the United States accompanied by such representative of the commissioner access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any persons, firms, or corporations that engage, for intrastate commerce, in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, poultry, domestic rabbits, and domesticated game birds, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals, for use as human food or animal food;

(2) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for such commerce, any carcasses, or parts or products of carcasses, of any such animals;

(3) Any persons, firms, or corporations that engage in business, in or for intrastate commerce, as renderers, or engage in the business of buying, selling, or transporting, in such commerce, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, poultry, domestic rabbits, and domesticated game birds, or parts of the carcasses of any such animals that died otherwise than by slaughter.

(b) Any record required to be maintained by this section shall be maintained for such period of time as the commissioner may by regulations prescribe.

#### Registration

Sec. 203. No person, firm, or corporation shall engage in business, in or for intrastate commerce, as a meat broker or renderer, or animal food manufacturer, or engage in business in such commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for such commerce, or engage in the business of buying, selling, or transporting in such commerce, any dead, dying, disabled, or diseased animals of the specified kinds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless, when required by regulations of the commissioner he has registered with the commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

#### Dead, Dying, Disabled, or Diseased Animals and Birds

Sec. 204. No person, firm, or corporation engaged in the business of buying, selling, or trans-

porting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or received for transportation, in such commerce, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or parts of the carcasses of any such animals that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the commissioner may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

#### Inedible Animal Products

Sec. 205. No person, firm, or corporation that engages in business in or for intrastate commerce or engages in the business of buying, selling, or transporting in such commerce shall offer for sale, except for further sterilization processing, any inedible animal products unless such products have been processed in such manner to prevent the survival of disease-producing organisms or deleterious substances in the material processed.

### TITLE III—FEDERAL AND STATE COOPERATION

Sec. 301. (a) The Texas State Department of Health is hereby designated as the state agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of Section 301 of the Federal Meat Inspection Act<sup>1</sup> and Section 5 of the Federal Poultry Products Inspection Act,<sup>2</sup> and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat and poultry inspection program of this state under this Act to assure that not later than the respective dates prescribed by federal law, the requirements will be at least equal to those imposed under Titles I and IV of the Federal Meat Inspection Act<sup>3</sup> and under Sections 1-4, 6-10, and 12-22 of the Federal Poultry Products Inspection Act, and in developing and administering the program of this state under Title II of this Act in such a manner as will effectuate the purposes of this Act and said Federal Acts.

(b) In such cooperative efforts, the commissioner is authorized to accept from said secretary advisory assistance in planning and otherwise developing the state program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program. The commissioner is further authorized to spend public funds of this state appropriated for administration of this Act to pay 50 per centum of the estimated total cost of the cooperative program.

(c) The commissioner is further authorized to recommend to the said secretary of agriculture such officials or employees of this state as the commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act and Section 5 of the Federal Poultry Products Inspection Act, and the commissioner shall serve as the representative of the governor for consultation with said secretary under said Acts unless the governor shall select another representative.

1 21 U.S.C.A. § 661.

2 21 U.S.C.A. § 454.

3 21 U.S.C.A. §§ 601 et seq., 671 et seq.

#### TITLE IV—AUXILIARY PROVISIONS

##### Refusal or Withdrawal of Inspection Service

Sec. 401. (a) The commissioner may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this Act) refuse to provide, or withdraw, inspection service under Title I of this Act with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under Title I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any federal or state court, of (1) any felony, or (2) more than one violation of any law, other than a felony, based upon the acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food or upon fraud in connection with transactions in food. This section shall not affect in any way other provisions of this Act for withdrawal of inspection services under Title I from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts, meat, or meat food products.

(b) For the purpose of this section a person shall be deemed to be responsibly connected with the business if he was a partner, officer, director, holder, or owner of 10 per centum or more of its voting stock or employee in a managerial or executive capacity. The determination and order of the commissioner with respect thereto under this section shall be final and conclusive unless the affected applicant for, or recipient of, inspection service files application for judicial review within 30 days after the effective date of such order in the appropriate court as provided in Section 404. Judicial review of any such order shall be upon the record upon which the determination and order are based.

##### Detention of Products

Sec. 402. Whenever any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, equine, poultry,

domestic rabbits, and domesticated game birds is found by any authorized representative of the commissioner upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Title I of this Act or the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act, or the Federal Poultry Products Inspection Act, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under Section 403 of this Act or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the commissioner that the article or animal is eligible to retain such marks.

##### Condemnation and Disposal of Animals

Sec. 403. (a) Any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, goats, horses, mules, equines, poultry, domestic rabbits, and domesticated game birds, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, equine, poultry, domestic rabbits, or domesticated game birds, that is being transported in intrastate commerce, or is held for sale in this state after such transportation, and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this Act, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this Act, shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any proper court as provided in Section 404 of this Act within the jurisdiction of which the article or animal is found. If the article or animal is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the treasury of this state, but the article or animals shall not be sold contrary to the provisions of this Act, or the Federal Meat Inspection Act, or the Federal Poultry Products Inspection Act, or the Federal Food, Drug, and Cosmetic Act; provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this Act, or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the commissioner of health as is necessary to insure



compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal. The proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of this state.

(b) The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this Act, or other laws.

#### Jurisdiction

Sec. 404. The district court is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this Act, and shall have jurisdiction in all other kinds of cases arising under this Act (except as provided in Section 7(e) of this Act).

#### Interfering With Officials; Penalties

Sec. 405. Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Act shall be fined not less than \$25 nor more than \$1,000 or confined in the county jail for not less than 30 days nor more than two years, or both. Whoever, in the commission of any such acts, uses a weapon prohibited by Article 483, Penal Code of Texas, 1925, as amended,<sup>1</sup> shall be fined not less than \$200 nor more than \$5,000 or confined in the county jail for not less than 90 days nor more than two years, or both; or shall be imprisoned in the penitentiary for not more than five years. Whoever kills any person while engaged in or on account of the performance of his official duties under this Act shall be punished as provided under the Texas Penal Code.

<sup>1</sup> Repealed; see, now, Penal Code § 46.02.

#### Penalties

Sec. 406. (a) Any person, firm, or corporation who violates any provision of this Act for which no other criminal penalty is provided by this Act shall upon conviction be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both such imprisonment and fine; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in Section 1(j)(8) of this Act), such person, firm, or corporation shall be subject to imprisonment for not more than three years or a fine of not more than \$10,000 or both; provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this Act if such receipt was made in

good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the commission the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him.

(b) Nothing in this Act shall be construed as requiring the commissioner to report for prosecution or for the institution of libel or injunction proceedings, minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

#### Additional Powers of Commissioner

Sec. 407. (a) The commissioner shall also have power:

(1) To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person, firm, or corporation engaged in intrastate commerce, and the relation thereof to other persons, firms, and corporations;

(2) To require, by general or special orders, persons, firms, and corporations engaged in intrastate commerce, or any class of them, or any of them to file with the commissioner, in such form as the commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, firms, and corporations, of the person, firm, or corporation filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commissioner may prescribe, and shall be filed with the commissioner within such reasonable period as the commissioner may prescribe, unless additional time be granted in any case by the commissioner.

(b)(1) For the purposes of this Act the commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, firm, or corporation being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person, firm, or corporation relating to any matter under investigation. The commissioner may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

(2) Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing in any county in which the witness resides, is employed, or has a place of business. In case of disobedience to a subpoena the commissioner may invoke the aid of the district court in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(3) The district court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, firm, or corporation, issue an order requiring such person, firm, or corporation to appear before the commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Upon the application of the attorney general of this state at the request of the commissioner, the district court shall have jurisdiction to issue writs of mandamus commanding any person, firm, or corporation to comply with the provisions of this Act or any order of the commissioner made in pursuance thereof.

(5) The commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commissioner and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commissioner as hereinbefore provided.

(6) Witnesses summoned before the commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in such courts.

(7) No person, firm, or corporation shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the commissioner or in obedience to the subpoena of the commissioner whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this Act, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; 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 is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(c)(1) Any person, firm, or corporation that shall neglect or refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena or lawful requirement of the commissioner shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) Any person, firm, or corporation that shall wilfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or that shall wilfully make, or cause to be made, any false entry in any account, record, or memorandum kept by a person, firm, or corporation subject to this Act or that shall wilfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person, firm, or corporation, or that shall wilfully remove out of the jurisdiction of this state, or wilfully mutilate, alter, or by any other means falsify any documentary evidence of any such person, firm, or corporation or that shall wilfully refuse to submit to the commissioner or to any of his authorized agents, for the purpose of inspection and taking copies, any documentary evidence of any such person, firm, or corporation in his possession or within his control, shall be deemed guilty of an offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

(3) If any person, firm, or corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commissioner for filing the same, and such failure shall continue for 30 days after notice of such default, such person, firm, or corporation shall forfeit to this state the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the treasury of this state, and shall be recoverable in a civil suit in the name of the state brought in the district court of the county where the person, firm, or corporation has his or its principal office or where he or it shall do business. It shall be the duty of the various district attorneys, under the direction of the attorney general of this state, to prosecute for the recovery of such forfeitures.

(4) Any officer or employee of this state who shall make public any information obtained by the commissioner, except with the approval of the commissioner, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment, not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

**Designation of Inspectors**

Sec. 408. The commissioner shall designate at least one state inspector for each state representative district.

**Application of Law to Federally Regulated Establishments, Animals, etc.**

Sec. 409. The requirements of this Act shall apply to persons, firms, corporation establishments, animals, and articles regulated under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act only to the extent provided for in said Federal Acts and any future amendments thereto.

**Administration and Enforcement; Funds**

Sec. 410. This Act shall be administered and enforced with funds provided by the General Appropriations Act and the Department of Health is authorized to collect fees for overtime and special services rendered to establishments, and to expend same as provided by the General Appropriations Act.

**Short Title**

Sec. 411. This Act shall be designated as the Texas Meat and Poultry Inspection Act.

**Repealer**

Sec. 412. Chapter 339, Acts of the 49th Legislature, 1945, as amended by Chapter 32, Acts of the 55th Legislature, Regular Session, 1957 (Article 4476-3, Vernon's Texas Civil Statutes), is repealed.

**Conflicting Laws**

Sec. 413. This Act prevails over the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) and any other Act to the extent of any conflict.

**Severability**

Sec. 414. If any provision of this Act or the application thereof to any person, firm, or corporation or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons, firms, and corporations and circumstances shall not be affected thereby.

[Acts 1969, 61st Leg., p. 337, ch. 123, eff. Sept. 1, 1969.]

**Art. 4476-8. Crab Meat; Processing, Transportation and Sale; Regulation and Licensing****Definitions**

Sec. 1. In this Act, unless the context requires a different definition,

(1) "crab meat" means the edible meat of steamed or cooked crabs, without other processing than picking, packing, and chilling;

(2) "picking plant" means any place where crabs are steamed or cooked and edible meat is picked therefrom;

(3) "pasteurization plant" means a plant where crab meat is heat-treated, without complete sterilization, to improve the keeping qualities of the meat;

(4) "person" means any individual, partnership, corporation or association;

(5) "label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article;

(6) "labeling" means all labels and other written, printed, or graphic matter (a) upon any article or any of its containers or wrappers, or (b) accompanying such article; and

(7) "department" means the State Department of Health.

**Rules and Regulations**

Sec. 2. The department shall make and promulgate rules and regulations for the picking, pasteurizing, storing, transporting, and selling of crab meat. The department may revoke or amend the rules and regulations when in its judgment alteration is necessary to insure a wholesome product.

**Required Compliance with Act**

Sec. 3. No person may engage in any business for which a license is required under this Act, without first complying with the provisions of this Act.

**Licenses**

Sec. 4. Every person operating a crab-meat picking or pasteurization plant in this state must obtain a license for each plant. All licenses must be obtained at the time and in the manner set forth in Section 5. The department shall issue serially numbered licenses to persons who operate plants which conform to the requirements of this Act and the rules and regulations of the department.

**Application for Licenses; Fees**

Sec. 5. (a) All persons operating on the effective date of this Act a business required to be licensed under the provisions of this Act shall apply for a license immediately after the effective date of this Act, and they may continue in business unless and until the application is rejected by the department.

(b) All persons who, after the effective date of this Act, desire to operate a business required to be licensed under the provisions of this Act, shall apply for and obtain a license before commencing operations.

**Inspection**

Sec. 6. When an application has been properly filed with the department, the department shall inspect all properties identified in the application, all

buildings and equipment thereon, and the operating procedures under which the product is processed. If the property, building, equipment, and operating procedures are found to conform to the regulations of the department, a separate license for each property so approved shall be issued to the applicant. The license is nontransferable and expires on the last day of August of each year. A new license must be applied for each year.

#### Revocation of License

Sec. 7. Whenever the department finds that any provision of this Act has been violated by the holder of a license issued by the department, or that a violation has occurred or is occurring on any premises for which a license has been issued, the department shall give notice to the licensee in writing, setting forth the nature of the violation, and directing that the violation cease. If the licensee refuses or fails to comply with the notice in the time and manner set forth in the notice, the department may revoke the license. Before revoking a license the department shall give written notice to the licensee stating that it contemplates the revocation of the license and giving its reasons for that action. The notice shall set a time for a hearing, and shall be mailed by registered or certified mail to the licensee. On the day of hearing, the licensee may present such evidence to the department as he deems fit, and after hearing all the testimony, the department shall decide the question in such a manner as to it appears just and right.

#### Appeals from Board Order

Sec. 8. Any applicant for a license, or any licensee who feels aggrieved by the action of the department in failing to issue or in revoking a license, may appeal that action to a district court in the county in which the property identified by the application or license is located, or to a district court of Travis County, Texas.

#### Adulterated Crab Meat

Sec. 9. Crab meat is adulterated if

- (1) any substance has been substituted wholly or in part for the crab meat;
- (2) the crab meat consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is for any other reason unsound, unwholesome, unhealthful or otherwise unfit for human consumption;
- (3) the crab meat has been prepared, packed, or held under insanitary conditions which, in the judgment of the department may have contaminated the crab meat with filth, or may have rendered it injurious to health; or
- (4) the crab meat container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

#### Possession of Adulterated Crab Meat

Sec. 10. (a) No person may process, transport, store for sale, have in possession with intent to sell, offer or expose for sale, or sell any crab meat for human consumption which is adulterated, or which was packed or pasteurized in violation of any of the provisions of this Act or the rules and regulations of the department issued under this Act.

(b) The possession of adulterated crab meat by any person holding a license under this Act is presumptive evidence of intent to sell the crab meat for human consumption.

#### Labeling and Marking Packages

Sec. 11. (a) All packages of crab meat shall be conspicuously labeled or marked in a manner approved by the department. Stamping with ink may not be permitted.

(b) The label or marking shall contain:

(1) the proper designation of the content of the package;

(2) the name and address of the picking plant in which the product was produced or the name and address of the distributor; (where the name and address of the distributor is used, it shall be preceded by the words "packed for" or "distributed by" followed by the word "distributor,");

(3) the presence of any chemical if any is allowed;

(4) the license number of the picking plant preceded by the state abbreviation on the body of the can plainly and conspicuously marked;

(5) the net weight of the contents; and

(6) such other matter pertinent to the public health as may be required by the department.

(c) No label may bear any false or misleading statement.

#### Compliance with Standards Required; Seizure of Nonconforming Crab Meat

Sec. 12. Any crab meat, whether it comes from the State of Texas or from plants outside of this state, shall comply with the standards of the department as provided by this Act. Crab meat which does not comply with these standards may be seized and condemned by the department.

#### Penalty

Sec. 13. (a) A person who violates any provisions of this Act, or any rule or regulation issued pursuant to this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 and not more than \$200 for each offense; each violation constitutes a separate offense.

(b) A repetition of or continuance of an offense may be enjoined by appropriate proceedings in the district courts of this state. The district attorney or county attorney, upon application by the health authority, shall prosecute in the court having jurisdic-

tion of the offense a person charged with the violation of any of the provisions of this Act or the rules and regulations issued by the department, and where appropriate, shall institute proceedings in the district court to enjoin further such violations.

#### Duties of Commissioner of Health

Sec. 14. The commissioner of health shall exercise the powers and duties conferred on the State Department of Health by this Act. The commissioner may delegate any of these powers and duties to an employee of the department who shall act as his representative.

[Acts 1969, 61st Leg., p. 693, ch. 237, eff. May 21, 1969.]

#### Art. 4476-9. Sterilization of Dishes; Broken or Cracked Dishes and Unlaundered Napkins

##### Definitions

Sec. 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 shall be (a) 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) 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; provided, however, 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; or (c) sterilized by any other chemical method approved by the State Health Officer.

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.

##### Broken or Cracked Dishes, Receptacles, and Utensils

Sec. 3. 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).

#### Repealer

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.

#### Severability

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. Amended by Acts 1947, 50th Leg., p. 564, ch. 328, § 1; Acts 1951, 52nd Leg., p. 647, ch. 378, § 1.]

### Art. 4476-10. Sanitary Employees Where Food or Drink is Handled

#### Employment of Infected Persons

Sec. 1. No person, firm, corporation, or organization operating or managing any public eating place or any place where food or drink is manufactured, processed, prepared, dispensed, or otherwise handled in such manner or under such circumstances as would permit probable transmission of disease from any handler thereof to the consumer, shall employ or work any person to handle such products, or utensils, dishes, or serving implements used in connection therewith, who is infected with any transmissible condition of any disease known to be normally communicable through the handling of food or drink.

#### Employment Of or Handling Of Food or Drink, Dishes, Serving Implements, Etc., by Infected Persons

Sec. 2. No person infected with a disease, the condition of which is transmissible to another through the handling of food or drink or who resides in a household with a transmissible case of a communicable disease which may be food-borne, or who is known to be a carrier of the organisms causing such disease, and no person having a local infection transmissible through food or drink shall be employed at any place or vehicle in which food or drink is manufactured, processed, prepared, or dispensed; nor shall any such person at any time handle any food or drink or utensils, dishes, or serving implements used in connection therewith, which may be, directly or indirectly, for public sale or offered for the use or consumption of another.

#### Physical Examination; Certificate of Physician

Sec. 3. All such persons and employees employed or seeking employment in any of the capacities herein above set forth shall, upon the request of any employer, or any legally appointed State or local Health Officer or of their duly authorized representative, secure an adequate examination of themselves by a licensed physician and secure in evidence thereof a certificate signed by such physician stating that such examination had been made and that to the best of his or her knowledge, the person examined was found, on that date, to be free of any transmissible condition of any disease or local infection commonly transmitted through the handling of food or drink. Such examinations shall be actual and thorough and conducted within the framework of practical scientific procedures for the determination of the existence of communicable disease which may be transmissible through the handling of foods.

#### Personal Cleanliness Required of Food or Drink Handlers; Clothing; Towels

Sec. 4. Every person engaged in the handling of food, drink, or unsealed containers therefor, shall maintain personal cleanliness, shall wear clean outer garments, shall keep his hands clean at all times, and shall thoroughly wash the hands with soap and water after each visit to the toilet. The use (in, on, or about any place where food or drink for public consumption is handled or sold) by two (2) or more persons, of any towel before it is thoroughly laundered is hereby declared to be an unsanitary practice and shall constitute a violation of this Act.

#### Food Defined

Sec. 5. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery, and condiment, whether simple, mixed, or compounded.

**Ordinances**

Sec. 6. The provisions of this Act shall in no way affect the authority of any incorporated city (including home rule cities) to enact ordinances pertaining to the matters herein referred to, and shall in no way affect the authority to enact ordinances as granted to them under Article XI, Section V of the State Constitution, or Articles 1015, 1175 or 1176 of the Revised Civil Statutes of Texas of 1925.

**Penalty**

Sec. 7. Any person, firm, corporation, or organization who shall violate any of the provisions of this Act shall be fined not less than Ten Dollars (\$10) and not more than Two Hundred Dollars (\$200) and each day of such violation shall constitute a separate offense.

**Severability**

Sec. 8. 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.

**Repeal of Conflicting Laws**

Sec. 9. Chapter 356, Acts of the Forty-sixth Legislature, Regular Session, 1939<sup>1</sup> (codified as Article 705c in Vernon's Texas Penal Code) and all amendments thereto are hereby repealed; and all other laws or parts of laws in conflict herewith are hereby repealed. But nothing in this Act shall be construed to preclude the prosecution of any person, firm, corporation, common carrier or association for acts or omissions in violation of any of the provisions repealed by this section where such acts or omissions take place prior to the time of repeal of such provision by this section.

<sup>1</sup> So in enrolled bill; should read "Forty-fifth Legislature, Regular Session, 1937".

[Acts 1955, 54th Leg., p. 598, ch. 204.]

**Art. 4476-10a. Labeling, Advertising, or Sale of Kosher Food****Definitions**

Sec. 1. In this Act:

(1) "Kosher food" means food prepared and served in conformity with orthodox Jewish religious requirements.

(2) "Label" means a display of written, printed, or graphic matter on the immediate article or container of any food product.

(3) "Person" includes an individual, corporation, or association.

(4) "Restaurant" means a place where food is sold for on-premises consumption.

(5) "Retail store" means any retail grocery store, delicatessen, butcher shop, or other place where food is sold for off-premises consumption.

(6) "Sell" means to offer for sale, expose for sale, have in possession for sale, convey, exchange, barter, or trade.

**Meat Labeling**

Sec. 2. (a) If a person sells both kosher meat and nonkosher meat in the same retail store, the person shall clearly label each portion of kosher meat with the word "kosher." If unwrapped or unpackaged meat products are displayed for sale, the display case or container in which the meat is displayed must be clearly labeled with the words "kosher" or "nonkosher," as applicable.

(b) A person commits an offense if the person is required to label meat in accordance with this section and the person knowingly sells meat that is not labeled as provided in this section.

**Sale of Nonkosher Food**

Sec. 3. A person commits an offense if the person knowingly or intentionally sells at a restaurant or a retail store a food product that is represented as kosher food and is not kosher food and the person either knows the food is not kosher food or was reckless about determining whether or not the food is kosher food.

**Exception**

Sec. 4. It is an exception to the application of Section 2(b) or 3 of this Act that a person describes or labels food as "kosher-style," and, if the description is written, the words "kosher" and "style" are of the same size type or script.

**Civil Remedy**

Sec. 5. A consumer aggrieved by a violation of this Act may maintain a cause of action for damages in accordance with Section 17.50, Business & Commerce Code.

**Penalty**

Sec. 6. An offense under this Act is punishable by the fine imposed for an offense under Section 17.12(d), Business & Commerce Code.

[Acts 1983, 68th Leg., p. 4847, ch. 855, §§ 1 to 6, eff. Sept. 1, 1983].

**Art. 4476-11. Drug Treatment Programs; Use of Synthetic Narcotics; Advisory Committee; Rules and Regulations****Permit for Use of Synthetic Narcotic Drugs**

Sec. 1. One hundred twenty days after the effective date of this Act it shall be unlawful to prescribe or administer synthetic narcotic drugs to any person for the purpose of treating drug dependency without a permit issued by the Texas State Department of Health.

**Rules and Regulations; Advisory Committee;  
Members, Terms; Meetings; Compensation**

Sec. 2. (a) The Texas State Department of Health, hereinafter designated as "the department," shall establish, administer, and enforce such rules, regulations, and standards as it deems necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons. To advise the department in the establishment, administration, and enforcement of such rules, regulations, and standards, an advisory committee shall be appointed as follows:

(1) One physician licensed to practice medicine in the State of Texas particularly informed about the problems arising from drug addiction shall be appointed by the Texas State Board of Medical Examiners.

(2) One pharmacist licensed to practice pharmacy in the State of Texas shall be appointed by the Texas State Board of Pharmacy.

(3) One attorney licensed to practice law in the State of Texas shall be appointed by the President of the State Bar of Texas.

(4) One law-enforcement officer shall be appointed by the Director of the Department of Public Safety of the State of Texas.

(5) One stabilized addict shall be appointed by the Commissioner of Mental Health and Mental Retardation.

(6) One social worker with particular experience in the treatment of narcotics addiction shall be appointed by the Commissioner of Mental Health and Mental Retardation.

(7) The Commissioner of Health shall appoint one officer or employee of his department.

(8) The Director of the Texas Department of Corrections shall appoint one officer or employee of his department.

(9) The Commissioner of the Texas Rehabilitation Commission shall appoint one officer or employee of the commission.

(10) The Commissioner of Mental Health and Mental Retardation shall serve as a permanent member of this advisory committee in the capacity of chairman.

(b) The initial appointments to this advisory committee pursuant to subparagraphs (1), (2), and (3) of Subsection (a) of this section shall serve for a period of two years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (4), (5), and (6) of Subsection (a) of this section shall serve for a period of four years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (7), (8), and (9) of Subsection (a) of this section shall serve for a period of six years and until their successors are appointed. Each subsequent appointee to this advisory

committee shall serve for a term of six years and until his successor is appointed.

(c) This advisory committee shall meet at least twice a year or at the call of its chairman. The advisory committee shall give written notice of the date, place, and subject of each of its meetings to the secretary of state, who shall then post the notice on a bulletin board to be located at a place convenient to the public in the State Capitol. Persons interested in the establishment of rules, regulations, and standards pursuant to this Act shall be given an opportunity to be heard by this committee.

(d) The rules, regulations, and standards adopted by the department under this Act shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

(e) Members of the advisory committee who are not officers or employees of the State of Texas shall be entitled to \$25 each day while engaged in authorized business of the committee and in addition thereto shall be entitled to travel and other necessary expenses incurred in performing their duties on the committee. Such compensation and reimbursement will be made from monies appropriated to the department. Other members of the committee shall have their expenses paid by their respective agencies to the same extent as authorized for travel performed for such agencies.

Sec. 3. [Blank]

**Licensed Physicians; Permits**

Sec. 4. Any physician licensed by the Texas State Board of Medical Examiners or any institution, public or private, organized and operated under the laws of this state for the purpose of providing health services may apply to the department on forms approved by the department for a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons. The department shall issue a permit to applicants qualified according to its rules, regulations, and standards. A permit issued pursuant to this Act shall remain in effect until suspended or revoked by the department or surrendered by the holder thereof.

**Programs for Drug-Dependent Persons**

Sec. 5. The Texas Department of Mental Health and Mental Retardation shall have the responsibility to promote and develop comprehensive programs for drug-dependent persons which include maintenance treatment programs involving the supplying of synthetic narcotics to those persons. Such programs shall be implemented through the state hospitals and through grants-in-aid to local Mental Health and Mental Retardation boards of trustees.

**Notice for Noncompliance; Permit Denial, Suspension or Revocation; Hearing; Procedure**

Sec. 6. (a) The State Department of Health shall give an applicant or permit holder notice of failure to comply with the rules, regulations, and



standards established pursuant to this Act, shall afford the applicant or permit holder a reasonable opportunity to achieve or to demonstrate compliance, and shall give the applicant or permit holder an opportunity for hearing before denying, suspending or revoking a permit. Such proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

(b) The procedure for such hearings shall be prescribed by the rules, regulations, and standards established pursuant to this Act. The department shall notify an applicant whose application is denied and a permit holder whose permit is suspended or revoked.

**Appeal; Notice; Transcript; Disposition by Travis County District Court**

Sec. 7. (a) Any applicant or permit holder may appeal the denial, suspension, or revocation of a permit by filing notice of appeal in the district court of Travis County and with the department within 30 days after receiving notice of the decision of the department. Upon receiving notice of appeal, the department shall file with the court a transcript of the hearing at which the application or permit was denied, suspended, or revoked. The attorney general shall represent the department in the district court of Travis County in any case involving a decision of the department.

(b) The court shall hear the case upon the record and may consider such other evidence as in its discretion may be necessary to properly determine the issues involved.

(c) The court may affirm or set aside the decision of the department or may remand the case for further proceedings before the department.

(d) If the court affirms the decision of the department, the applicant or permit holder shall pay the cost of the appeal; otherwise the department shall pay the cost of the appeal.

**Reports and Records**

Sec. 8. The Department may require every applicant or permit holder to make annual, periodical, and special reports, and to keep such records as it considers necessary to insure compliance with the provisions of this Act and the rules, regulations and standards of the department.

**Investigations to Obtain Compliance**

Sec. 9. The department may make such investigations as it deems necessary and proper to obtain compliance with the provisions of this Act and such rules, regulations, and standards as the department prescribes.

**Restraint of Violations; Injunction**

Sec. 10. (a) For cause shown, the district court of Travis County shall have jurisdiction to restrain violation of this Act and of the rules, regulations and standards established pursuant to this Act.

(b) The department may maintain an action in the name of the State of Texas for injunction or other process against any person, or against any public or private institution, to restrain the violation of this Act and the rules, regulations and standards established pursuant to this Act.

**Penalties**

Sec. 11. A person who violates any provision of this Act or any rule or regulation promulgated under this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$3,000 or by confinement in the county jail for not more than six months, or both.

**Severability**

Sec. 12. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the Legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 2000, ch. 618, eff. June 4, 1971.]

**Art. 4476-12. Sale of Preparations Containing Thallium Sulphate**

Sec. 1. (a) It shall be unlawful to sell, or offer for sale, any rat poison, insect poison, or any other preparation which contains thallium sulphate, or any other thallium compound, in sufficient quantity to be dangerous to the health or life of a human being.

(b) A sufficient quantity of thallium sulphate or any other thallium compound to be dangerous to the life of a human being is herein defined as one containing more than one per cent (1%) of thallium, expressed as metallic.

Sec. 2. Any person who violates any provision of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Fifty Dollars (\$50), nor more than Two Hundred Dollars (\$200).

[Acts 1957, 55th Leg., p. 1346, ch. 457.]

**Art. 4476-13. Hazardous Substances; Labeling; Sale**

**Definitions**

Sec. 1. When used in this Act, unless the context requires a different definition:

(1) "Department" means the Texas Department of Health.

(2) "Person" includes any individual, partnership, corporation or association, or legal representative or agent.

(3) "Commerce" means any and all commerce within the State of Texas and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

(4) "Hazardous substance" means any substance or mixture of substances which is toxic, corrosive,

flammable, an irritant, a strong sensitizer, or generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any toy or other article other than clothing intended for use by children which presents an electrical, mechanical, or thermal hazard; and any radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department finds by regulation that the substance is sufficiently hazardous to require labeling in accordance with the provisions of this Act in order to protect the public health. The term "hazardous substance" does not apply to economic pesticides subject to the State or Federal Insecticide, Fungicide, and Rodenticide<sup>1</sup> Act nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act<sup>2</sup> or to beverages complying with or subject to the Federal Alcohol Administration Act,<sup>3</sup> or to the Texas Food, Drug, and Cosmetic Act,<sup>4</sup> nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a private residence, nor does it apply to or include any source material, special nuclear material, or by-product material as defined in the federal Atomic Energy Act of 1954, as amended,<sup>5</sup> and regulations issued pursuant thereto by the Atomic Energy Commission.

(5) "Toxic" means any substance other than a radioactive substance which has the capacity to produce personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface.

(6) "Highly toxic" means any substance which produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered, or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, if the inhaled concentration is likely to be encountered by any person when the substance is used in any reasonably foreseeable manner; or which produces death within 14 days in half or more than half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. However, if the department finds that available data based on human experience indicate results different from those obtained on animals, the human data shall take precedence.

(7) "Corrosive" means any substance which in contact with living tissue will cause destruction of that tissue by chemical action. It does not refer to chemical action on inanimate surfaces.

(8) "Irritant" means any noncorrosive substance which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means any substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(10) "Flammable" applies to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester. Any substance which has a flash point at or below 20 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester shall be designated "extremely flammable." However, the flammability of solids, fabrics, children's clothing, household furnishings, and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to these materials or containers, and shall be established by regulations issued by the department.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged, in an immediate container intended or suitable for delivery to the ultimate consumer, a display of this matter directly on the article involved or on a tag or other suitable material affixed thereto.

(13) "Immediate container" does not include package liners.

(14) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner which is susceptible of access by a child to whom the toy or other article is entrusted, intended or packaged in a form suitable for use in the household or by children) which fails to bear a proper label as required by this Act.

(15) "Electrical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture may cause personal injury or illness by electrical shock.

(16) "Mechanical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness;

(A) from fracture, fragmentation, or disassembly of the article;

(B) from propulsion of the article or any part or accessory thereof;

(C) from points or other protrusions, surfaces, edges, openings, or closures;

(D) from moving parts;

(E) from lack or insufficiency of controls to reduce or stop motion;

(F) as a result of self-adhering characteristics of the article;

(G) because the article or any part or accessory thereof may be aspirated or ingested;

(H) because of instability; or

(I) because of any other aspect of the article's design or manufacture.

(17) "Thermal hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

<sup>1</sup> Article 135b-5; 7 U.S.C.A. § 135 et seq.

<sup>2</sup> 21 U.S.C.A. § 301 et seq.

<sup>3</sup> 27 U.S.C.A. § 201 et seq.

<sup>4</sup> Article 4476-5.

<sup>5</sup> 42 U.S.C.A. § 2011 et seq.

#### Labeling

Sec. 2. (a) It shall be the responsibility of the department to see that hazardous substances are labeled sufficiently to inform users of dangers involved in the use, storage, or handling of such substances, together with instructions for actions to be followed or avoided and instructions where necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) Any statement required by the provisions of Subsection (a) of this section shall be located prominently and shall be written in the English language in conspicuous and legible type which contrasts in typography, layout, or color with other printed matter on the label. The department may also require any such statement to be written in the Spanish language in addition to the English language.

(c) Any statement required by the provisions of Subsection (a) of this section shall also appear on the outside container or wrapper of any substance, and on any container sold separately and intended for the storage of a hazardous substance, unless the statement is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

#### Banned Hazardous Substances

Sec. 3. (a) Any article of clothing (other than diapers) intended for the use of children which is

not in compliance with flammability standards for such clothing established by the department shall be declared to be a banned hazardous substance by the department. The determination by the department that articles of clothing of a specified range of sizes are intended for the use of a child 14 years or younger shall be conclusive.

(b) Any toy or other article other than clothing intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner susceptible of access by a child to whom the toy or other article is entrusted, shall be declared to be a banned hazardous substance by the department.

(c) Any hazardous substance intended, or packaged in a form suitable for, use in a household, which, notwithstanding cautionary labeling required by this Act, is potentially so dangerous or hazardous when present or used in a household, that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, shall be declared to be a banned hazardous substance by the department.

(d) Any article subject to the provisions of this Act which cannot be labeled adequately to protect the public health and safety, or which presents an imminent danger to the public health and safety, shall be declared a banned hazardous substance by the department.

(e) The provisions of this section do not apply to any toy or article such as chemical sets which by reason of functional purpose requires the inclusion of a hazardous substance, or necessarily presents an electrical, mechanical, or thermal hazard, and which bears labeling which in the judgment of the department gives adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings; nor do the provisions of this section apply to the manufacture, sale, distribution, or use of fireworks of any class.

#### Examinations and Investigations

Sec. 4. (a) In order to enforce the provisions of this Act, any officer, employee, or agent of the department may, upon the presentation of appropriate credentials to the owner, operator, or agent, enter at reasonable times any factory, warehouse, or establishment in which any hazardous substance is manufactured, processed, packaged, or held for introduction into commerce or is held after introduction into commerce, or any vehicle used to transport or hold any hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein.

(b) The officer, employee, or agent may obtain samples of any materials, packaging, and labeling; however, he shall pay or offer to pay the owner, operator, or agent in charge for any sample and shall give a receipt describing the samples obtained.

#### Rules and Regulations; Hearings; Appeals

Sec. 5. (a) The department may, after public hearing following due notice, issue reasonable rules and regulations necessary for the efficient enforcement of this Act. The rules and regulations shall conform with regulations established pursuant to the federal Hazardous Substances Act,<sup>1</sup> where applicable.

(b) If any person affected by any rule or regulation adopted and established by the department should take exception to the adoption and issuance of any rule or regulation, such person may request a hearing before the department, in which event the department shall not enforce such rule or regulation except as hereafter provided. Within thirty days after receipt of such request, the hearing must be held. The complaining person shall be given at least ten days notice of the place, date and time of such hearing. After fair hearing the department shall issue a written order or decision, upholding, amending, extending or reversing the previous action, and stating reasons therefor. If within thirty days of the date of such order or decision, there is no appeal as provided for in Subsection (c) hereof, such rule or regulation shall become effective.

(c) If any person be dissatisfied with an order or decision following a hearing pursuant to Subsection (b) of this section, such person may bring suit against the department to repeal, amend, vacate or set aside such order, decision, rule or regulation, in a District Court of Travis County, Texas. When such suit is filed, the plaintiff may apply for an injunction restraining the department from enforcing its order or decision pending the outcome of the trial on the merits, and the court in its discretion may grant such application for injunction or the court may continue the department's order or decision in effect where the court finds it necessary to protect the public health. Upon a trial on the merits, the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative action, order or decision. All such appeals shall be de novo as that term is used and understood in appeals from Justice of the Peace Courts to County Courts.

<sup>1</sup> 15 U.S.C.A. § 1261 et seq.

#### Prohibited Acts

Sec. 6. The following acts are prohibited:

(1) the holding or offering for sale, the sale, the introduction or delivery for introduction into com-

merce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label, or the doing of any other act with respect to, a hazardous substance if such act is done while the substance is in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance, and the delivery or proffered delivery thereof for pay or otherwise;

(4) the failure to permit entry or inspection, or to provide records as authorized by the provisions of this Act;

(5) the use by any person to his own advantage, or revealing other than to the department or to a court when relevant in any judicial proceeding under this Act, of any information acquired in an inspection authorized by the provisions of this Act concerning any method or process which as a trade secret is entitled to protection;

(6) the removal or disposal of a detained article or substance in violation of Section 11.

#### Penalty

Sec. 7. (a) A person commits an offense if he intentionally, knowingly, or recklessly violates any provision of this Act or any rule issued pursuant to the authorization of this Act.

(b) An offense under this section is a Class B misdemeanor unless the person's intent is to defraud another, in which event the offense is a Class A misdemeanor.

#### Exclusion

Sec. 7a. The provisions of this Act shall not apply to the manufacture, distribution, sale or use of diapers.

#### Exemptions

Sec. 8. The penalties described in Section 7 of this Act do not apply to any person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith, and if the person subsequently furnishes on request the name and address of the person from whom he purchased or received the banned or misbranded hazardous substance, and copies of all documents, if any, pertaining to the original delivery of the hazardous substance to him.

#### Necessity of Department Action

Sec. 9. No article or substance is a banned hazardous substance, unless a regulation to that effect has been issued and adopted by the department.

## Records

Sec. 10. For the purposes of enforcing the provisions of this Act, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding any hazardous substances so received, shall, upon the request of the department, permit a representative thereof at reasonable times to have access to, and to copy, all records showing the movement in commerce, or the holding after such movement, of any hazardous substance, and the quantity, consignee, and shipper thereof. However, evidence obtained in this manner may not be used in a criminal prosecution of the person from whom it is obtained, and carriers shall not be subject to the other provisions of this Act by reason of their receipt, carriage, holding, or delivery of hazardous substances in their usual course of business.

## Seizure

Sec. 11. (a) Whenever a duly authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, he shall affix to the article a tag or other appropriate marking, giving notice that such article is, or is suspected of being a banned or misbranded hazardous substance and has been detained, and warning all persons not to remove from the premises or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

(b) The department shall petition to the judge of the district court of the county in which the article or articles are located asking that the court authorize the destruction of the article or articles. If the court determines that the article or articles are banned or misbranded hazardous substances, the department shall destroy the article or articles, and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of the article or articles. However, if the court finds that misbranding occurred in good faith and could be corrected by proper labeling, the court may direct that the article or articles be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article or articles are not banned or misbranded hazardous substances, it shall order the department to remove the tags.

## Effective Date

Sec. 12. The effective date of this Act is January 1, 1972.

[Acts 1971, 62nd Leg., p. 3372, ch. 1033, eff. Jan. 1, 1972. Amended by Acts 1979, 66th Leg., p. 712, ch. 311, §§ 1 to 3, eff. Aug. 27, 1979.]

## Art. 4476-13a. Volatile Chemicals; Possession and Delivery

## Definitions

Sec. 1. In this Act:

- (1) "Deliver" means to actually transfer from one person to another.
- (2) "Person" means an individual, corporation, or association.
- (3) "Sell" means to offer for sale, convey, exchange, barter, or trade to a consumer or user.

## Volatile Chemicals

Sec. 2. Any of the following chemicals is a volatile chemical for purposes of this Act:

- (1) toluene;
- (2) hexane;
- (3) trichloroethylene;
- (4) acetone;
- (5) ethyl acetate;
- (6) methyl ethyl ketone;
- (7) trichloroethane;
- (8) carbon tetrachloride;
- (9) methanol;
- (10) methyl isobutyl ketone;
- (11) methyl cellosolve acetate;
- (12) cyclohexanone;
- (13) amyl nitrite;
- (14) butyl nitrite;
- (15) chloroform;
- (16) diethyl ether;
- (17) petroleum distillate;
- (18) aliphatic hydrocarbons;
- (19) chlorinated hydrocarbons;
- (20) ketone solvent;
- (21) glycol ether solvent;
- (22) glycol ether inter solvent; and
- (23) xylol or xylene.

## Possession and Use

Sec. 3. (a) A person commits an offense if the person:

(1) inhales, ingests, applies, or uses a substance containing a volatile chemical or possesses a substance containing a volatile chemical with the intent to inhale, ingest, apply, or use the substance in a manner contrary to directions for use, cautions, or warnings appearing on a label of a container of the substance; and

(2) acts in the manner described in Subdivision (1) of this subsection with intent to affect the actor's

central nervous system, to create or induce a condition of intoxication, euphoria, hallucination, or elation, or to change, distort, or disturb the actor's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class C misdemeanor.

#### Delivery to a Minor

Sec. 4. (a) Except as provided by Subsection (d) of this section, a person commits an offense if the person intentionally or knowingly sells or delivers a substance containing a volatile chemical to a person under 17 years of age and the volatile chemical is subject to special labeling requirements concerning precautions against inhalation established pursuant to the Federal Hazardous Substances Act, 15 U.S.C. 1261, et seq., as that law existed on January 1, 1983, and to the federal regulations promulgated pursuant to that Act (16 CFR 1500.14) and in effect on that date.

(b) It is an affirmative defense to prosecution under this section that the person to whom the substance was delivered or sold exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that the person was an individual 17 years of age or older.

(c) It is a defense to prosecution under this section that the person delivering the substance containing the volatile chemical was:

(1) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, administer, or conduct research with respect to a volatile chemical in the course of professional practice or research and the sale or delivery was within the limits of that person's official authority; or

(2) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, administer, or conduct research with respect to a volatile chemical in the course of professional practice or research and the sale or delivery was within the limits of that institution's official authority.

(d) It is an exception to the application of Subsection (a) of this section that the substance sold or delivered was gasoline, aerosol paint, glue, or adhesive cement.

(e) An offense under this section is a Class C misdemeanor.

#### Proof of Offer to Sell or Deliver Required

Sec. 5. Proof of an offer to sell or deliver under this Act must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

[Acts 1983, 68th Leg., p. 1703, ch. 323, §§ 1 to 5, eff. Sept. 1, 1983.]

#### Art. 4476-14. Dangerous Drugs

##### Intent of Legislature

Sec. 1. The Legislature of the State of Texas hereby finds that it is essential to the public health and safety to regulate and control the handling, sale and distribution of "dangerous drugs," as defined in this Act.

It is, therefore, hereby declared to be the policy and intent of the Legislature of the State of Texas and the purpose of this Act to regulate and control such handling, sale, and distribution, and, in particular, but without limitation of such purpose, to insure that the public shall receive the therapeutic benefits of "dangerous drugs" under medical supervision to the full extent required to assure safety and efficiency in their use; to complement and supplement the Laws and Regulations of the Congress of the United States and the appropriate agencies of the Federal Government affecting such handling, sale, and distribution; to prevent such handling, sale or distribution for harmful or illegitimate purposes; and to place upon manufacturers, wholesalers, licensed compounders of prescriptions, and persons prescribing such drugs, a basic responsibility for preventing the improper distribution of such drugs to the extent that such drugs are produced, handled, sold, or prescribed by them.

##### Definitions

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug or device that is not included in Penalty Groups I through IV of the Texas Controlled Substances Act<sup>1</sup> and that is unsafe for self-medication, and includes the following:

(1) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2½%) strength.

(2) Any drug or device which bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) The term "delivery" means sale, dispensing, giving away, or supplying in any other manner.

(c) The term "patient" means, as the case may be:

(1) The individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(2) The owner or the agent of the owner of the animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(d) The term "person" includes individual, corporation, partnership, and association.

(e) The term "practitioner" means a person licensed by the State Board of Medical Examiners, State Board of Dental Examiners, State Board of

Chiropody Examiners, and State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs.

(f) The term "pharmacist" shall mean a person licensed by the State Board of Pharmacy to practice the profession of pharmacy and to prepare, compound, and dispense practitioners' prescriptions, drugs, medicines, and poisons.

(g) The term "prescription" means a written order, and in cases of emergency, a telephonic order, by a practitioner (or his agent as designated in writing to the pharmacist) to a pharmacist for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such dangerous drug is prescribed for an animal, the species of such animal), the name and quantity of the dangerous drug prescribed, and the directions for use of such drug.

(h) The term "manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(i) The term "wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in Subdivisions (1) to (6) inclusive of Section 4.

(j) The term "warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(k) The term "Board" means Texas State Board of Pharmacy.

<sup>1</sup> Article 4476-15.

#### Unlawful Acts and Omissions

Sec. 3. The following acts, the failure to act as hereinafter set forth, and the causing of any such act or failure are hereby declared unlawful, except as provided in Section 4:

(a) The delivery or offer of delivery of any dangerous drug unless:

(1) Such dangerous drug is delivered or offered to be delivered by a pharmacist, upon an original prescription, and there is affixed to the immediate container in which such drug is delivered or offered to be delivered a label bearing the name and address of the owner of the establishment from which such drug was delivered or offered to be delivered; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and the directions for use of the drug as contained in the prescription; or

(2) Such dangerous drug is delivered or offered to be delivered by a practitioner in the course of his practice and the immediate container in which such drug is delivered or offered to be delivered bears a label on which appears the directions for use of such drug, the name and address of such practitioner, the name of the patient, and, if such drug is prescribed for an animal, a statement showing the species of the animal.

(b) The refilling of any prescription for a dangerous drug, unless and as designated on the prescription by the practitioner, or through authorization by the practitioner at the time of refilling.

(c) The delivery of a dangerous drug upon prescription unless the pharmacist who filled such prescription files and retains it as required in Section 6.

(d) The possession of a dangerous drug by any person unless such person obtained the drug under the specific provision of Section 3(a)(1) and (2) of this Act.

(e) The refusal to make available and to accord full opportunity to check any record or file as required by Section 5 and Section 6.

(f) The failure to keep records as required by Section 5 and Section 6.

(g) The using of any person to his own advantage, or revealing, other than to an officer or employee of the State Board of Pharmacy, or to a court when relevant in a judicial proceeding under this Act, any information required under the authority of Section 6, concerning any method or process which as a trade secret is entitled to protection.

(h) Except as otherwise provided in this Act, the possession for sale of any dangerous drug defined in this Act.

#### Applicability of Paragraphs (a) and (d) of Section 3

Sec. 4. The provisions of paragraphs (a) and (d) of Section 3 shall not be applicable:

(a) As to the delivery of dangerous drugs to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(b) To the possession of dangerous drugs by such persons or their agents or employees for such use:

(1) Pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory, duly registered with the State Board of Pharmacy;

(2) Practitioners;

(3) Persons who procure dangerous drugs for the purpose of lawful research, teaching, or testing, and not for resale;

(4) Hospitals which procure dangerous drugs for lawful administration by practitioners;

(5) Officers or employees of Federal, State, or local government;

(6) Manufacturers and Wholesalers registered with the Commissioner of Health as required by Chapter 373, Acts of the 57th Legislature, 1961, as amended (Article 4476-5, Vernon's Texas Civil Statutes).

(7) Carriers and Warehousemen.

#### Duties of Exempt Persons

Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

(a)(1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1) hereof.

(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1) hereof.

#### Files or Records; Inspection; Inventory of Drugs

Sec. 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a)(1) hereof, by Section 5 shall

(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2(a)(1) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

Sec. 7. Repealed by Acts 1973, 63rd Leg., p. 1168, ch. 429, § 6.03(d), eff. Aug. 27, 1973.

#### Unlawful Manufacture, Sale or Possession; Seizure and Confiscation; Statement of Destruction

Sec. 8. All dangerous 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 Board or by any peace officer who is authorized to and charged with the duty of enforcing the provisions of this Act.

All dangerous drugs seized and confiscated under the provisions of this Act by any officer or employee of the Board, or by any peace officer, may, at the discretion of the Board be destroyed in such manner as the Board deems appropriate. Prior to any such destruction, an inventory shall be made of the dangerous drug or drugs to be destroyed and such inventory shall be accompanied by a statement, sworn and subscribed to, that such dangerous drugs are being destroyed at the direction of the Board by an officer or employee of the Board and in the presence of another officer or employee of the Board. The persons in attendance at the time of such destruction shall be specified and in what capacity they are acting and shall sign such statement and attest to the correctness of same. Such signed statement shall be filed with the State Board of Pharmacy.

#### Injunction

Sec. 9. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceedings, or remedy authorized by law.

#### Proceedings Instituted by Board; Employment of Private Counsel

Sec. 10. Any legal proceedings instituted under the provisions of this Act by the Board shall be by any county attorney, district attorney, or the Attorney General. The Board is hereby specifically prohibited from employing private counsel in any legal proceedings instituted by or against said Board under the provisions of this Act.

#### Conviction Upon Uncorroborated Testimony of Accomplice

Sec. 11. 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.

#### Denial of Exceptions, Excuses, Provisos or Exemptions in Complaint, Information or Indictment; Burden of Proof

Sec. 12. 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.

#### Using Minor as Agent

Sec. 13. Any person who violates any provision of this Act by use of a minor as an agent, or who



unlawfully furnishes any dangerous drug, as that term is defined herein, shall be deemed in violation of this Act, and subject to the penalties prescribed for the violation of provisions of this Act.

#### Forging or Altering Prescriptions

Sec. 14. Every person who forges or increases the quantity of dangerous drugs in any prescription, or who issues a prescription bearing a forged or fictitious signature for any dangerous drug, or who obtains or attempts to obtain any dangerous drug by any forged, fictitious, or altered prescription, or who obtains or attempts to obtain any dangerous drug by means of fictitious or fraudulent telephone calls, or who has in his possession any dangerous drug secured by such forged, fictitious, or altered prescription or through the means of a fictitious or fraudulent telephone call, shall be deemed in violation of this Act and subject to the penalties prescribed for the violation of provisions of this Act.

#### Penalties

Sec. 15. (a) Any person possessing in violation of Section 3 of this Act any dangerous drug defined in Section 2(a) of this Act shall be fined an amount not to exceed One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation, any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than one (1) year, or by both.

(b) Any person who sells or delivers or offers to sell or deliver in violation of this Act any dangerous drug defined in this Act, shall be guilty of a felony and upon conviction is punishable by confinement in the penitentiary for not less than two (2) nor more than ten (10) years and, in addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000). Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(c) Any person violating any other provision of this Act not set out in Subsection (a) or (b) of this section shall be fined an amount not exceeding One Thousand Dollars (\$1,000) or confined in jail for a period of not to exceed six (6) months, or by both such fine and imprisonment. For any second or subsequent violation any person shall be guilty of a misdemeanor punishable by a fine not to exceed Two Thousand Dollars (\$2,000), by confinement in jail for not more than (1) year, or by both.

(d) Any person not authorized by this Act or Federal law who manufactures any dangerous drug is guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for not less than two (2) years or more than ten (10) years. In addition, he may be punished by a fine not to exceed Five Thousand Dollars (\$5,000).

#### Search Warrant

Sec. 15A. Any peace officer may apply for a search warrant in accordance with the provisions of the Code of Criminal Procedure, 1965, as amended, to search for any drugs unlawfully possessed under this Act. The application for the issuance of and execution of any such warrant issued hereunder shall comply with the terms and provisions of the Code of Criminal Procedure, 1965, as amended.

[Acts 1959, 56th Leg., p. 923, ch. 425. Amended by Acts 1965, 59th Leg., p. 971, ch. 466, § 1, eff. Aug. 30, 1965; Acts 1967, 60th Leg., pp. 1847, 1848, ch. 720, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1474, ch. 437, §§ 1 to 6, eff. June 4, 1969; Acts 1971, 62nd Leg., p. 1804, ch. 534, §§ 6, 7, eff. June 1, 1971; Acts 1971, 62nd Leg., pp. 2391, 2392, ch. 746, §§ 1, 2, eff. June 8, 1971; Acts 1971, 62nd Leg., pp. 2785 to 2789, ch. 901, §§ 1 to 4, eff. June 14, 1971; Acts 1973, 63rd Leg., p. 1165, ch. 429, § 6.03(a) to (d), eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 163, ch. 90, §§ 8, 9, eff. May 2, 1979.]

Section 10 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

#### Art. 4476-15. Controlled Substances Act

##### SUBCHAPTER 1. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act may be cited as the "Texas Controlled Substances Act."

##### Definitions

Sec. 1.02. For the purposes of this Act:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of his employment.

(3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs of the United States Department of Justice or its successor agency.

(4) "Commissioner" means the Commissioner of Health of the State Department of Health or his designee.

(5) "Controlled substance" means a drug, substance, or immediate precursor listed in Schedules I

through V and Penalty Groups 1 through 4 of this Act.

(6) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513)<sup>1</sup> or its successor.

(7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, abusable glue or aerosol paint, or drug paraphernalia, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance, abusable glue or aerosol paint, or drug paraphernalia. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(9) "Director" means the Director of the Texas Department of Public Safety or an employee of the department designated by him.

(10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner (in the course of professional practice or research), including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(11) "Dispenser" means a person who dispenses.

(12) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(13) "Distributor" means a person who distributes.

(14) "Drug" means:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) any substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(D) any substance intended for use as a component of any substance specified in Subdivision (A), (B), or (C) of this subsection. It does not include devices or their components, parts, or accessories.

(15) "Immediate precursor" means a substance which the commissioner has found to be and by rule

designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture of such controlled substance.

(16) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(B) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(17) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or its seeds. However, it does not include the resin extracted from any part of such plant or any compound, manufacture, salt, derivative, mixture, or preparation of the resin; nor does it include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and any salt, compound, derivative, or preparation of opium or opiates;

(B) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subdivision (A) of this subsection, but not including the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocain-

ized coca leaves or extractions or coca leaves which do not contain cocaine or ecgonine.

(19) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 2.09 of this Act, the dextrorotatory isomer of 3-methoxymethylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(21) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(23) "Possession" means actual care, custody, control or management.

(24) "Practitioner" means:

(A) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; or

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(25) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(26) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(27) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.

(28) "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.

(29) "Drug paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in planting, propagating, cultivat-

ing, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this Act or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act. It includes, but is not limited to:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

- (ix) a chillum;
- (x) a bong; or
- (xi) an ice pipe or chiller.

(30) "Believes" means, with respect to circumstances surrounding the conduct of an actor, that the actor has formed in his mind a conviction or assurance of the existence of such circumstances, even though such circumstances may not actually exist. Proof that an actor "believes" in the existence of certain circumstances must include evidence that the actor has received information giving him reasonable cause to believe such circumstances exist, and evidence that the actor then takes action or makes statements indicating his reliance upon such information. Proof that an actor "believes" in the existence of circumstances surrounding his conduct must be corroborated by a person other than the person informing the actor of such circumstances, or by evidence other than a statement of the person providing such information. An actor's belief in the existence of surrounding circumstances can be used to show his culpable mental state where expressly permitted in this Act.

121 U.S.C.A. § 801 et seq.

## SUBCHAPTER 2. STANDARD AND SCHEDULES

### Controlled Substances

Sec. 2.01. The legislature determines that the substances listed in Schedules I, II, III, IV, and V and in Penalty Groups 1, 2, 3, and 4 shall be controlled substances.

### Nomenclature

Sec. 2.02. The controlled substances listed or to be listed in the schedules in Schedules I, II, III, IV, and V and Penalty Groups 1, 2, 3, and 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

### Schedule I

Sec. 2.03. (a) Schedule I shall consist of the controlled substances listed in this section.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Allylprodine;
- (2) Benzethidine;
- (3) Betaprodine;
- (4) Clonitazene;
- (5) Diampromide;
- (6) Diethylthiambutene;
- (7) Difenoxin;
- (8) Dimenoxadol;
- (9) Dimethylthiambutene;
- (10) Dioxaphetyl butyrate;

- (11) Dipipanone;
- (12) Ethylmethylthiambutene;
- (13) Etonitazene;
- (14) Etoxadine;
- (15) Furethidine;
- (16) Hydroxypethidine;
- (17) Ketobemidone;
- (18) Levophenacymorphan;
- (19) Meprodine;
- (20) Methadol;
- (21) Moramide;
- (22) Morpheridine;
- (23) Noracymethadol;
- (24) Norlevorphanol;
- (25) Normethadone;
- (26) Norpipanone;
- (27) Phenadoxone;
- (28) Phenampromide;
- (29) Phenomorphan;
- (30) Phenoperidine;
- (31) Piritramide;
- (32) Proheptazine;
- (33) Properidine;
- (34) Propiram;
- (35) Trimeperidine;
- (36) Phencyclidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphinol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Monoacetylmorphine;
- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine;
- (24) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

(2) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

(3) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(4) 5-methoxy-3, 4-methylenedioxy amphetamine;

(5) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(6) 3, 4-methylenedioxy amphetamine;

(7) 3, 4, 5-trimethoxy amphetamine;

(8) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(9) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(10) Dimethyltryptamine (Some trade and other names: DMT);

(11) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga);

(12) Lysergic acid diethylamide;

(13) Marihuana;

(14) Mescaline;

(15) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant presently classified botanically as *Lophophora*, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;

(16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocin;

(20) Tetrahydrocannabinols.

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and their optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(21) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(1) Fenethylamine;

(2) Mecloqualone; and

(3) Nitrazepam.

*Acts 1983, 68th Leg., p. 632, ch. 141, § 1, eff. Sept. 1, 1983, provides:*

*"The following substance is added to Schedule I of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) with the same effect as if the commissioner of health had added the substance under the authority provided by Section 2.09 of that Act: Alpha-methylfentanyl or any other derivative of Fentanyl."*

*Acts 1983, 68th Leg., p. 1642, ch. 309, §§ 1 and 2, eff. Sept. 1, 1983, provide:*

*"Sec. 1. The following substance is transferred to Schedule I from Schedule II of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) with the same effect as if the commissioner of health had transferred the substance under the authority provided by Section 2.09 of the Act: Methaqualone."*

*"Sec. 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."*

*"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was com-*

*mitted, and the former law is continued in effect for this purpose."*

**Schedule II**

Sec. 2.04. (a) Schedule II shall consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltraxone and its salts, but including the following:

- (A) Raw opium;
- (B) Opium extracts;
- (C) Opium fluid extracts;
- (D) Powdered opium;
- (E) Granulated opium;
- (F) Tincture of opium;
- (G) Codeine;
- (H) Ethylmorphine;
- (I) Etorphine hydrochloride;
- (J) Hydrocodone;
- (K) Hydromorphone;
- (L) Metopon;
- (M) Morphine;
- (N) Oxycodone;
- (O) Oxymorphone;
- (P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subsection, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of such isomers; coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy);

(6) 1-Phenylcyclohexylamine; and

(7) 1-Piperidinocyclohexane-Carbonitrile.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;

- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethyl-amino-4, 4-diphenyl butane;
- (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan.

(d) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine.

(e) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) methamphetamine, including its salts, isomers, and salts of isomers;
- (3) methylphenidate and its salts; and
- (4) phenmetrazine and its salts.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Methaqualone;
- (2) Amobarbital;
- (3) Secobarbital;
- (4) Pentobarbital.

*For transfer of Methaqualone from Schedule II to Schedule I, see the italicized note following § 2.03 of this article.*

## Schedule III

Sec. 2.05. (a) Schedule III shall consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule;

(2) any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- (4) Chlorhexadol;
- (5) Glutethimide;
- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methyprylon;
- (9) Sulfondiethylmethane;
- (10) Sulfonethylmethane;
- (11) Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more

active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (e) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine;
- (4) Mazindol;
- (5) Phendimetrazine.

## Schedule IV

Sec. 2.06. (a) Schedule IV shall consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbital;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Chlordiazepoxide;
- (5) Clonazepam;
- (6) Clorazepate;

- (7) Diazepam;
- (8) Ethchlorvynol;
- (9) Ethinamate;
- (10) Flurazepam;
- (11) Lorazepam;
- (12) Mebutamate;
- (13) Meprobamate;
- (14) Methohexital;
- (15) Methyphenobarbital;
- (16) Oxazepam;
- (17) Paraldehyde;
- (18) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
- (19) Petrichloral;
- (20) Phenobarbital;
- (21) Prazepam.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific designation:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Fenfluramine;
- (4) Pemoline (including organometallic complexes and chelates thereof).

(e) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

#### Schedule V

Sec. 2.07. (a) Schedule V shall consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.
- (6) not more than 0.5 milligram of difenoxin and not less than 25 milligrams of atropine sulfate per dosage unit.

(c) Loperamide.

#### Exclusion from Schedule

Sec. 2.08. A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act<sup>1</sup> and the commissioner shall have no power to include a nonnarcotic substance in Schedules I through V if the substance may lawfully be sold over-the-counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

#### Authority to Control

Sec. 2.09. (a) The legislature, under the directions hereinafter expressed, delegates to the commissioner with approval of the State Board of Health the power to add substances to, or delete or reschedule any substance enumerated in, the schedules enumerated in Sections 2.03 through 2.07 of this Act. The commissioner may not add any substance to the schedules if the substance has been deleted from the schedules by the legislature, or sought to be added to the schedules by the legislature but failed to pass when considered by a quorum of either house. The commissioner shall have no authority to extend scheduling to distilled spirits, wine, malt beverages, or tobacco.

(b) In making a determination regarding a substance, the commissioner shall consider the following:

- (1) the actual or relative potential for abuse;



(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this Act.

(c) After considering the factors enumerated in Subsection (b) of this section, the commissioner shall make findings with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse.

(d) If the commissioner designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(e) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the commissioner, the commissioner shall similarly control the substance under this Act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance unless within that 30-day period the commissioner objects to inclusion. In that case, the commissioner shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish his decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deleting, control as to that particular substance under this Act is stayed until the commissioner publishes his decision.

(f) The commissioner, in making his decision as to which schedule a controlled substance shall be assigned, shall perform the tests enumerated in Sections 2.10 through 2.14.

(g) Within 10 days of any action taken pursuant to Subsection (a) of this section, the commissioner shall provide written notice of such action to the director and to each state licensing board having jurisdiction over practitioners.

#### Schedule I Tests

Sec. 2.10. The commissioner shall place a substance in Schedule I if he finds that:

(1) the substance has high potential for abuse; and

(2) the substance has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

#### Schedule II Tests

Sec. 2.11. The commissioner shall place a substance in Schedule II if he finds that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) abuse of the substance may lead to severe psychological or physical dependence.

#### Schedule III Tests

Sec. 2.12. The commissioner shall place a substance in Schedule III if he finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

#### Schedule IV Tests

Sec. 2.13. The commissioner shall place a substance in Schedule IV if he finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

#### Schedule V Tests

Sec. 2.14. The commissioner shall place a substance in Schedule V if he finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance may lead to limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

#### Alterations in Schedule: Notice and Hearing

Sec. 2.15. Each alteration made by the commissioner in a schedule under Subchapter 2 of this Act, except pursuant to Section 2.09(e), must be preceded by a public hearing held by the commissioner in Austin following publication of notice in at least three newspapers of general circulation in this state. The notice shall state the time and place of the hearing, which must be at least 30 days but not more than 60 days after the date of the publication, and the substance of the proposed alteration.

**Republishing of Schedules**

Sec. 2.16. The commissioner shall republish the schedules semiannually for two years from the effective date of this Act, and thereafter annually, reflecting the changes, if any, made in the schedules. The commissioner shall publish the schedules by filing a certified copy with the secretary of state.

**Dangerous Drugs**

Sec. 2.17. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes):

- (1) procaine, its salts, derivatives, or compounds or mixtures thereof; or
- (2) any substance that bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

**SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES**

**Registration Requirements**

Sec. 3.01. (a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within this state must possess a valid registration. Registrations must be obtained annually from the director in accordance with rules promulgated by him under Section 3.02.

(b) Persons registered by the director under this Act to manufacture, distribute, dispense, analyze, or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Act.

(c) No registration to manufacture, distribute, analyze, or conduct research with controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect the controlled premises as defined in Subchapter 5 of this Act.

(d) No registration to dispense controlled substances shall be issued without a signed consent form executed by the applicant granting the director or his designee the right to inspect records required to be kept by this Act.

(e) The following persons need not register and may lawfully possess controlled substances under this Act:

- (1) an agent or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user, as that term is defined herein, or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance;

(4) an official of the Texas Department of Health, a medical school researcher, or a research program participant possessing tetrahydrocannabinols and their derivatives as authorized under Subchapter 7 of this Act; or

(5) a practitioner or an ultimate user possessing tetrahydrocannabinols and their derivatives as a participant in a federally approved therapeutic research program which the Commissioner has reviewed and has found, in writing, to contain a medically responsible research protocol.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, dispenses, analyzes, or possesses controlled substances.

(g) The director may inspect the establishment of an applicant for registration in accordance with this Act.

(h) The director may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety, provided the Attorney General of the United States has issued a similar waiver pursuant to the Federal Controlled Substances Act.<sup>1</sup>

<sup>1</sup> Sec 21 U.S.C.A. § 822(d).

**Rules**

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge an annual fee of up to \$5 per registrant for the costs necessary to administer this Act. Except as provided by Subsection (c) of this section, the fees shall be paid to the director of the department of public safety.

(c) The director may authorize a contract between the department of public safety and an appropriate state agency for the collection and remittance of fees required under this section.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

(e) Fees collected by the director of the department of public safety under the terms of this section shall be deposited in the state treasury in the operator's and chauffeur's license fund and said fees deposited may be used only by the department of public safety in the administration of this Act.

## Registration

Sec. 3.03. (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

(1) the applicant furnishes the director evidence that the applicant is registered for such purpose pursuant to the Federal Controlled Substances Act;

(2) the applicant has made proper application and paid the applicable fee; and

(3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

(1) the applicant is a practitioner licensed under the laws of this state;

(2) the applicant has made proper application and paid the applicable fee; and

(3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

(c) The director shall not require separate registration under this subchapter for a practitioner engaged in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Only practitioners registered under federal law to conduct research with or analyze Schedule I substances may conduct research with or analyze Schedule I substances within this state upon furnishing the director evidence of that federal registration.

(d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(f) This section does not apply to the use of tetrahydrocannabinols in the research program established under Subchapter 7 of this Act.

(g) This section does not apply to the use of tetrahydrocannabinols and their derivatives in a federally approved therapeutic research program which the Commissioner has reviewed and has found, in

writing, to contain a medically responsible research protocol.

## Grounds for Revocation and Suspension

Sec. 3.04. (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended, denied, or revoked in accordance with this Act upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;

(3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; or

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

(b) The revocation or suspension of a registration may be limited to the particular schedule or controlled substance within a schedule with respect to which grounds for revocation or suspension exist.

(c) If a registration is suspended or revoked, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state as provided under Section 5.04 of this Act.

(d) The purpose of this Act being to promote the public health and welfare by the control of the illegal drug traffic, the operation of any registrant in violation of the regulations specified in this section is hereby declared to be a public nuisance, and the director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender.

(e) The Rules of Civil Procedure shall govern proceedings under this section except when in conflict herewith.

(f) The director shall promptly notify the bureau and state agencies of all orders suspending or revoking registration and all forfeitures of controlled substances.

#### Procedure for Suspension and Revocation

Sec. 3.05. (a) A registration under this Act may be revoked or suspended for cause set forth in Section 3.04 by any district court of this state. The attorney representing the state in the various district courts shall have the authority, and it shall be his duty, to file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant under this Act upon presentation of competent evidence by the director. A proceeding under this section may be maintained in the county of residence of the registrant, in the county where the registrant maintains a place of business or practice, or in the county in which a wrongful act under Section 3.04 was committed.

(b) The petition shall be sufficient if it contains substantially the following requisites:

- (1) the petitioner shall be "The State of Texas";
- (2) it shall be directed to the registrant whose license is sought to be revoked or suspended;
- (3) it shall contain a short statement of the cause of action sufficient to give notice of the grounds upon which revocation or suspension of the registration is sought;
- (4) it shall ask for a revocation or suspension of the registration; and
- (5) it shall be signed and verified by the director.

#### Records of Registrants

Sec. 3.06. Persons registered to manufacture, distribute, analyze, or dispense controlled substances under this Act shall keep records and maintain inventories in conformance with recordkeeping and inventory requirements of federal law and with any additional rules the director issues.

#### Order Forms

Sec. 3.07. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

#### Prescriptions

Sec. 3.08. (a) No controlled substance in Schedule II may be dispensed or administered without the written prescription of a practitioner on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 3.09 of this Act, except that:

(1) in emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed or administered upon oral or telephonically communi-

cated prescription of a practitioner, reduced promptly to writing by the pharmacy or (in the case of an emergency authorization to administer) the person administering the Schedule II drug, which shall include in the written record of the oral or telephonically communicated prescription the name, address, and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by the practitioner under Subsection (c) of Section 3.09 of this Act, and all information required to be provided by the dispensing pharmacist under Subsection (e) of Section 3.09 of this Act and shall send a copy of the written record to the Department of Public Safety within 30 days from the date the prescription is filled; and

(2) a prescription written for a patient who is admitted to a hospital at the time the prescription is written and filled is not required to be on a form that meets the requirements of Section 3.09 of this Act, and the provisions of Section 3.09 of this Act are not applicable to such prescriptions. No prescription for a Schedule II substance may be refilled.

(b) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act,<sup>1</sup> shall not be dispensed without a written, oral, or telephonically communicated prescription of a practitioner. A prescription for a Schedule III or IV drug shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(c) A telephonically communicated prescription of a practitioner under this subchapter may be communicated only by the practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone. Such telephonically communicated prescriptions shall be reduced promptly to writing by the pharmacy and filed and retained in conformity with this subchapter. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety.

(d) Upon request from a pharmacist, the practitioner shall furnish a copy of such written designation of an agent authorized to communicate prescriptions on behalf of such practitioner. Nothing herein shall be construed as to relieve such a practitioner or his designated agent from the requirements of Section 40 of the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), and such practitioner shall be personally responsible for the actions for such designated agent in communicating prescriptions to a pharmacist.

(e) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07, of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(f) No prescription for Schedule II narcotic drugs shall be filled after the end of the second day following the day on which the prescription was issued.

(g) A practitioner, as defined by Section 1.02(24)(A) of this Act, may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

(h) No person may administer or dispense a controlled substance in Schedule I, except as otherwise authorized by this Act.

<sup>1</sup> 21 U.S.C.A. § 301 et seq.

#### **Triplicate Prescription Program Requirements**

*Text of section added effective until January 1, 1986*

Sec. 3.09. (a) Except as otherwise provided in Subsection (a) of Section 3.08 of this Act, each prescription for a controlled substance in Schedule II must be recorded on a prescription form that meets the requirements of Subsection (b) of this section and that is issued to practitioners at cost by the Department of Public Safety. No more than one such prescription shall be recorded on each form. Before delivering forms to a practitioner, the department shall print on the forms the name, address, and federal drug enforcement administration number of the practitioner.

(b) Each prescription form used to prescribe a controlled substance must be serially numbered and in triplicate, with the original copy labeled "Copy 1," the duplicate copy labeled "Copy 2," and the triplicate copy labeled "Copy 3." Each form must contain spaces for:

- (1) the date the prescription is written;
- (2) the date the prescription is filled;
- (3) the drug prescribed, the dosage, and instructions for use;
- (4) the name, address, and federal drug enforcement administration number of the dispensing pharmacy and the name of the pharmacist who fills the prescription; and
- (5) the name, address, and age of the person for whom the controlled substance is prescribed.

(c) Except for oral prescriptions prescribed under Subsection (a) of Section 3.08 of this Act, the prescribing practitioner shall:

(1) fill in on all three copies of the form in the space provided:

- (A) the date the prescription is written;
- (B) the drug prescribed, the dosage, and instructions for use; and
- (C) the name, address, and age of the patient (or, in the case of an animal, its owner) for whom the controlled substance is prescribed;

(2) sign copies 1 and 2 of the form and give them to the person authorized to receive the prescription; and

(3) retain Copy 3 of the form with his records for a period of not less than two years from the date the prescription is written.

(d) In the case of an oral prescription prescribed under Subsection (a) of Section 3.08 of this Act, the prescribing practitioner shall give the dispensing pharmacy the information it needs to complete the form.

(e) Each dispensing pharmacist shall:

(1) fill in on copies 1 and 2 of the form in the space provided the information not required to be filled in by the prescribing practitioner or the Department of Public Safety;

(2) retain Copy 2 with the records of the pharmacy for a period of not less than two years; and

(3) sign Copy 1 and send it to the Department of Public Safety within 30 days from the date the prescription is filled.

(f) A practitioner in possession of prescription forms issued under Subsection (a) of Section 3.09 of this Act whose license to practice or federal drug enforcement administration number is suspended or revoked shall within seven days after the suspension or revocation becomes effective return to the department all of such forms which have not been used to issue prescriptions.

(g) The director shall not permit access to information submitted to the Department of Public Safety pursuant to this section to any person, except:

(1) investigators for the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the State Board of Pharmacy; or

(2) authorized officers of the Department of Public Safety engaged in bona fide investigation of suspected criminal violations of this Act, who obtain such access with the approval of an investigator listed in Subdivision (1) of Subsection (g) of this section, who shall cooperate and assist such peace officers in obtaining information for bona fide investigations of suspected criminal violations of this Act.

(h) The system for retrieval of information submitted to the Department of Public Safety pursuant to this section shall be designed in all respects so as to preclude improper access to information through use of automated information security techniques and devices. The director shall submit the system design to the State Board of Pharmacy and the Texas State Board of Medical Examiners for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it would be unreasonable to do so. The Texas State Board of Medical Examiners and the State Board of Pharmacy shall promptly approve or comment on the system design submitted by the director.

(i) Information submitted to the Department of Public Safety pursuant to this section shall be used only for bona fide drug-related criminal investigatory or evidentiary purposes or for investigatory or evidentiary purposes in connection with the functions of one or more of the regulatory boards listed in Subdivision (1) of Subsection (g) of this section.

(j) Each identity of an individual which is submitted to the Department of Public Safety pursuant to this section shall be removed from the system for retrieval of such information and shall be destroyed and rendered irretrievable not later than the end of the sixth calendar month following the month in which such identity was submitted to the department; provided that an individual identity which is necessary for use in a specific ongoing investigation conducted in accordance with this section may be retained in the system until the end of the month in which the necessity for retention of such identity ends. The department shall issue a report at least quarterly to the Legislative Budget Board certifying that the provisions of this subsection have been complied with and setting forth in detail the results of monthly audits showing that identities have been removed from the system and rendered irretrievable in compliance with this subsection. Failure to comply with any provision of this subsection shall be corrected as soon as practicable after discovery, and any person responsible for failure to comply with this subsection shall be subject to disciplinary action for such failure, including but not limited to dismissal.

(k) The director may promulgate rules to implement this section.

(l) On or before September 1, 1984, the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the State Board of Pharmacy, and the Department of Public Safety shall jointly submit a public report to the attorney general on the effectiveness of the triplicate program. Such report shall include, for each of the years 1982 and 1983, and for the first six-month period of 1984:

- (1) the number of triplicate blanks issued;
- (2) the number of lost or stolen triplicate blanks;

(3) the number of indictments, convictions, and peer review proceedings attributable to the triplicate program;

(4) the cost of administering the program; and

(5) such other information as the reporting agencies shall deem appropriate.

#### SUBCHAPTER 4. OFFENSES AND PENALTIES

##### Classification of Offenses and Punishment

Sec. 4.01. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) a fine not to exceed \$2,000;

(B) confinement in jail for a term not to exceed one year; or

(C) both such fine and imprisonment.

(2) Class B misdemeanors. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(A) a fine not to exceed \$1,000;

(B) confinement in jail for a term not to exceed 180 days; or

(C) both such fine and imprisonment.

(3) Class C misdemeanors. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$200.

(b) Those felonies for which a specific punishment is not provided are classified according to the relative seriousness of the offense into three categories:

(1) Felonies of the first degree. An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years. In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$20,000.

(2) Felonies of the second degree. An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 20 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

(3) Felonies of the third degree. An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 10 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of

the third degree may be punished by a fine not to exceed \$5,000.

(c), (d) Repealed by Acts 1981, 67th Leg., p. 707, ch. 268, § 18, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2417, ch. 425, § 27, eff. Aug. 29, 1983.

#### Preparatory Offenses

Sec. 4.011. The provisions of Title 4, Penal Code,<sup>1</sup> apply to Section 4.052 and offenses designated as aggravated offenses under Subchapter 4 of this Act, except that the punishment for a preparatory offense is the same as the punishment prescribed for the offense that was the object of the preparatory offense.

<sup>1</sup> Penal Code, § 15.01 et seq.

#### Repeat Offenders

Sec. 4.012. (a) If it is shown on the trial of an offense listed under Subsection (b) of this section that the defendant has previously been convicted of a felony offense under this subchapter, on conviction the defendant shall be punished by the term of confinement and amount of fine imposed by this section.

(b) An offense under this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than:

(1) 10 years, and a fine not to exceed \$100,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(1), 4.031(d)(1), 4.032(d)(1), 4.04(d)(1), 4.041(d)(1), 4.042(d)(1), 4.043(d)(1), 4.05(d)(1), 4.051(d)(1), or 4.052(b);

(2) 15 years, and a fine not to exceed \$250,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(2), 4.031(d)(2), 4.032(d)(2), 4.04(d)(2), 4.041(d)(2), 4.042(d)(2), 4.043(d)(2), 4.05(d)(2), or 4.051(d)(2); and

(3) 20 years, and a fine not to exceed \$500,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(3), 4.05(d)(3), or 4.051(d)(3).

(c) A person who is subject to prosecution under both this section and Section 12.42, Penal Code, may be prosecuted under either section.

#### Criminal Classification

Sec. 4.02. (a) For the purpose of establishing criminal penalties for violation of a provision of this Act, there are established the following groups of controlled substances.

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted whenever the existence of these isomers, esters,

ethers, and salts is possible within the specific chemical designation:

- (A) Allylprodine;
- (B) Benzethidine;
- (C) Betaprodine;
- (D) Clonitazene;
- (E) Diampromide;
- (F) Diethylthiambutene;
- (G) Difenoxin;
- (H) Dimenoxadol;
- (I) Dimethylthiambutene;
- (J) Dioxaphetyl butyrate;
- (K) Dipipanone;
- (L) Ethylmethylthiambutene;
- (M) Etonitazene;
- (N) Etoxeridine;
- (O) Furethidine;
- (P) Hydroxypethidine;
- (Q) Ketobemidone;
- (R) Levophenacymorphan;
- (S) Meprodine;
- (T) Methadol;
- (U) Moramide;
- (V) Morpheridine;
- (W) Noracymethadol;
- (X) Norlevorphanol;
- (Y) Normethadone;
- (Z) Norpipanone;
- (AA) Phenadoxone;
- (BB) Phenampromide;
- (CC) Phenomorphan;
- (DD) Phenoperidine;
- (EE) Piritramide;
- (FF) Proheptazine;
- (GG) Properidine;
- (HH) Propiram;
- (II) Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;
- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Drotebanol;
- (J) Etorphine;
- (K) Heroin;
- (L) Hydromorphinol;

- (M) Methyldesorphine;
- (N) Methyldihydromorphine;
- (O) Monoacetylmorphine;
- (P) Morphine methylbromide;
- (Q) Morphine methylsulfonate;
- (R) Morphine-N-Oxide;
- (S) Myrophine;
- (T) Nicocodeine;
- (U) Nicomorphine;
- (V) Normorphine;
- (W) Pholcodine;
- (X) Thebacon.

(3) Any of the following substances, except those narcotic drugs listed in another group, however produced:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naloxone and its salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Hydrocodone;
- (x) Hydromorphone;
- (xi) Metopon;
- (xii) Morphine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Thebaine;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(4) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers,

WTSC Civil Statutes—5

whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (A) Alphaprodine;
- (B) Anileridine;
- (C) Bezitramide;
- (D) Dihydrocodeine;
- (E) Diphenoxylate;
- (F) Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;
- (G) Isomethadone;
- (H) Levomethorphan;
- (I) Levorphanol;
- (J) Metazocine;
- (K) Methadone;
- (L) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (M) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (N) Pethidine;
- (O) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (P) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (Q) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (R) Phenazocine;
- (S) Piminodine;
- (T) Racemethorphan;
- (U) Racemorphan.

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers.

(6) Methamphetamine, including its salts, isomers, and salts of isomers.

(7) 1-Phenylcyclohexylamine;

(8) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(9) 1-Piperidinocyclohexane-Carbonitrile;

(10) Phencyclidine.

(c) Penalty Group 2. Penalty Group 2 shall include the following controlled substances: (1) Any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(A) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);



(B) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

(C) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(D) 5-methoxy-3, 4-methylenedioxy amphetamine;

(E) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(F) 3, 4-methylenedioxy amphetamine;

(G) 3, 4, 5-trimethoxy amphetamine;

(H) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(I) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(J) Dimethyltryptamine (Some trade and other names: DMT);

(K) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2';:1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

(L) Mescaline;

(M) N-ethyl-3-piperidyl benzilate;

(N) N-methyl-3-piperidyl benzilate;

(O) Psilocin;

(P) Psilocybin;

(Q) Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(R) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(S) Etorphine Hydrochloride.

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following

substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Fenethylamine;

(C) Methylphenidate and its salts;

(D) Phenmetrazine and its salts;

(2) Methaqualone;

(3) Mecloqualone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any substances which contain any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

(B) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients which are not listed in any schedule;

(C) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

(D) Amobarbital;

(E) Secobarbital;

(F) Pentobarbital;

(G) Chlordiazepoxide;

(H) Clonazepam;

(I) Clorazepate;

(J) Chlorhexadol;

(K) Diazepam;

(L) Flurazepam;

(M) Glutethimide;

(N) Lorazepam;

(O) Lysergic acid, including its salts, isomers, and salts of isomers;

(P) Lysergic acid amide, including its salts, isomers, and salts of isomers;

(Q) Mebutamate;

(R) Methyprylon;

(S) Nitrazepam;

(T) Oxazepam;

(U) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;

(V) Prazepam;

(W) Sulfondiethylmethane;

(X) Sulfonethylmethane;

(Y) Sulfonmethane.

(5) Nalorphine.

(6) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(I) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(7) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection (d)(4) of this section is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(8) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (A) Barbitol;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Ethchlorvynol;
- (E) Ethinamate;
- (F) Methohexital;
- (G) Meprobamate;
- (H) Methylphenobarbital;
- (I) Paraldehyde;
- (J) Petrichloral;
- (K) Phenobarbital.

(9) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (d)(8) is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(10) Peyote, unless unharvested and growing in its natural state, (meaning all parts of the plant presently classified botanically as *Lophophora*, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts);

(11) Unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of its isomers, if the existence of the salts, isomers, and salts of isomers is possible, within the specific chemical designation:

- (A) Benzphetamine;
- (B) Chlorphentermine;
- (C) Clortermine;
- (D) Diethylpropion;
- (E) Fenfluramine;
- (F) Mazindol;
- (G) Pemoline (including organometallic complexes and chelates thereof);
- (H) Phendimetrazine;
- (I) Phentermine.

(12) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

- (A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(e) Penalty Group 4. Penalty Group 4 shall include the following controlled substances: (1) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(B) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(C) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(D) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(E) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams;

(F) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Loperamide.

**Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 1**

Sec. 4.03. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) of this section is a felony of the first degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 200 grams;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine

not to exceed \$100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

**Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 2**

Sec. 4.031. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 2.

(b) An offense under Subsection (a) of this section is a felony of the second degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

**Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 3 or 4**

Sec. 4.032. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses

with intent to manufacture or deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) of this section is a felony of the third degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

#### Unlawful Possession of Controlled Substance in Penalty Group 1

Sec. 4.04. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 1 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggregated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not

more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

#### Unlawful Possession of Controlled Substance in Penalty Group 2

Sec. 4.041. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 2 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

#### Unlawful Possession of Controlled Substance in Penalty Group 3

Sec. 4.042. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 3 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

#### Unlawful Possession of Controlled Substance in Penalty Group 4

Sec. 4.043. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 4 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his practice.

(b) An offense under Subsection (a) of this section is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not

more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

#### Unlawful Delivery of Marihuana

Sec. 4.05. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a felony of the third degree if the amount of marihuana delivered is four ounces or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is five pounds or less but more than four ounces; and

(5) a felony of the first degree if the amount of marihuana delivered is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of marihuana delivered is more than 50 pounds.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana delivered is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the marihuana delivered is more than 2,000 pounds.

#### Unlawful Possession of Marihuana

Sec. 4.051. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a felony of the third degree if the amount of marihuana possessed is five pounds or less but more than four ounces; and

(4) a felony of the second degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this Act and the amount of marihuana possessed is more than 50 pounds.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana possessed is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the marihuana possessed is more than 2,000 pounds.

(e) An offense for which the punishment is prescribed in Subsection (b) of this section may not be considered a crime of moral turpitude.

#### Illegal Investment

Sec. 4.052. (a) A person commits an offense if the person knowingly or intentionally:

(1) expends funds he knows are derived from the commission of an offense under Section 4.03(c), 4.031(c), 4.032(c), 4.04(c), 4.041(c), 4.042(c), 4.043(c), 4.05(c), or 4.051(c) of this Act; or

(2) finances or invests funds he knows or believes are intended to further the commission of an offense listed in Subdivision (a)(1) of this subsection.

(b) An offense under Subsection (a) of this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine of not more than \$1,000,000 or less than \$50,000.

#### Delivery of Controlled Substance to Minor

Sec. 4.053. (a) Except as authorized by this Act, a person commits an aggravated offense if the person knowingly or intentionally delivers a controlled substance listed in Penalty Group 1, 2, or 3 or knowingly or intentionally delivers marihuana and the person delivers the marihuana or controlled substance to a person:

(1) who is 17 years of age or younger;

(2) that the actor knows or believes intends to deliver the controlled substance or marihuana to a person 17 years of age or younger;

(3) who is enrolled in an elementary or secondary school; or

(4) that the actor knows or believes intends to deliver the controlled substance or marihuana to a person who is enrolled in an elementary or secondary school.

(b) It is an affirmative defense to prosecution under this section that the actor was less than 18 years of age when the offense was committed.

(c) It is an affirmative defense to prosecution under this section that the actor was less than 21 years of age at the time the offense was committed and delivered solely marihuana in an amount less than one-fourth ounce for which the actor received no remuneration.

(d) An offense under this section is a felony of the first degree.

#### Resentencing

Sec. 4.06. (a) Any person who has been convicted of an offense involving a substance defined as marihuana by this Act prior to the effective date of this Act may petition the court in which he was convicted for resentencing in accordance with the provisions of Section 4.05 of this Act whether he is presently serving a sentence, is on probation or parole, or has been discharged from the sentence.

(b) On receipt of the petition, the court shall notify the appropriate prosecuting official and shall set the matter for a hearing within 90 days.

(c) At the hearing the court shall review the record or the prior conviction. The court shall resentence the petitioner in accordance with the appropriate provision of Section 4.05 and shall grant him credit for all time served on the original sentence prior to the resentencing hearing.

(d) If the time served on the original sentence exceeds the revised sentence imposed by the court under the appropriate provision of Section 4.05, the court shall order the petitioner discharged.

(e) In no event may resentencing under this section lengthen the petitioner's sentence or require him to pay an additional fine.

(f) Nothing in this section shall be construed to authorize the release of a person who is serving concurrent sentences for two or more offenses, if

after resentencing such person still has time remaining to be served on a concurrent sentence.

#### Possession of Delivery of Drug Paraphernalia

Sec. 4.07. (a) A person commits an offense if he knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this Act or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act.

(b) A person commits an offense if he knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this Act or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act.

(c) A person commits an offense if he commits an offense under Subsection (b) of this section, is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is under 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) of this section is a Class C misdemeanor, unless the actor has been convicted previously under Subsection (a), in which event it is a Class B misdemeanor.

(e) An offense under Subsection (b) of this section is a Class A misdemeanor. If it be shown on a trial for violation of Subsection (b) of this section, that the defendant has been previously convicted of Subsection (b) or (c) of this section, then an offense under Subsection (b) of this section is a felony of the third degree.

(f) An offense under Subsection (c) of this section is a felony of the third degree.

#### Commercial Offenses

Sec. 4.08.

*Text of subsec. (a) effective until January 1, 1986*

(a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this Act;

(4) to refuse an entry into any premises for any inspection authorized by this Act; or

(5) to refuse or fail to return triplicate prescription forms as required by Subsection (f) of Section 3.09 of this Act.

*Text of subsec. (a) effective January 1, 1986*

(a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this Act; or

(4) to refuse an entry into any premises for any inspection authorized by this Act.

(b) An offense under this section is a felony of the second degree.

#### Unauthorized Disclosure of Information

*Text of section added effective until January 1, 1986*

Sec. 4.081. (a) A person commits an offense if he intentionally or knowingly gives, permits, or obtains unauthorized access to information submitted to the Department of Public Safety under Section 3.09 of this Act.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

#### Fraud Offenses

Sec. 4.09. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07 of this Act;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire, obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required

to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV or V is a Class B misdemeanor.

#### Penalties Under Other Laws

Sec. 4.10. Any penalty imposed for violation of this Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise imposed by law.

#### Exemptions

Sec. 4.11. (a) The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church. However, persons who supply the substance to the church are required to register and maintain appropriate records of receipts and disbursements in accordance with rules promulgated by the director. The exemption granted to members of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this Act relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if the humane society or animal control agency is registered with the drug enforcement administration. The provisions of this Act relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Section 3.01 of this Act, as amended, distributing the substance for that purpose to a humane society or an animal control agency registered with the drug enforcement administration.

(c) If the possession or delivery of tetrahydrocannabinols or their derivatives or the possession or delivery of drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body is for use in a federally approved therapeutic research program which the Commissioner has reviewed and has found, in writing, to contain a medically responsible research protocol,

the possession or delivery is not a violation of Section 4.031, 4.041, 4.051, as added by Section 8, Chapter 268, Acts of the 67th Legislature, 1981, or 4.07 of this Act.

#### Conditional Discharge for First Offense

Sec. 4.12. (a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with or found guilty of a violation of this subchapter, except an aggravated offense or an offense under Section 4.052 or 4.053, after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

(b) Upon violation of a condition of the probation, the court may enter an adjudication of guilt, pronounce sentence, and punish him accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge him from probation before the expiration of the maximum period prescribed for his probationary period. If during the period of his probation the defendant does not violate any of the conditions of the probation, then upon expiration of the probationary period the court shall discharge him and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without an adjudication of guilt, but a nonpublic record of the proceedings shall be retained by the director solely for use by the courts in determining whether or not, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime, including any provision for enhancement of punishment for repeat or habitual offenders. There may be only one discharge and dismissal under this section with respect to any person.

(d) This section shall not be construed to provide an exclusive procedure. Any other procedure provided by law relating to suspension of trial or probation may be followed, in the discretion of the trial court.

#### Additives Required for Abusable Glue and Aerosol Paint

Sec. 4.13. (a) A person commits an offense if he knowingly and intentionally manufactures, delivers, or possesses with intent to manufacture or deliver abusable glue or aerosol paint which does not contain additive material in accordance with rules promulgated by the commissioner.



(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under Subsection (a) of this section that the abusable glue or aerosol paint is packaged in bulk quantity containers each holding two gallons or more and is intended for ultimate use only by industrial or commercial enterprises.

(d) The commissioner shall promulgate rules approving and designating additive materials to be included in abusable glue and aerosol paint and prescribing the proportions of such materials to be placed in such abusable glue or aerosol paint; provided that the rules promulgated under this subsection shall be designed to safely and effectively discourage intentional abuse by inhalation of abusable glue or aerosol paint at the lowest practicable cost to the manufacturers and distributors of such abusable glue or aerosol paint.

(e) In this section, "abusable glue or aerosol paint" means an adhesive substance or aerosol mixture of pigment and liquid that forms a thin coating containing any of the following volatile solvents:

- (1) acetone;
- (2) amyl acetate;
- (3) benzol or benzene;
- (4) butyl acetate;
- (5) butyl alcohol;
- (6) carbon tetrachloride;
- (7) chloroform;
- (8) cyclohexanone;
- (9) ethanol or ethyl alcohol;
- (10) ethyl acetate;
- (11) hexane;
- (12) isopropanol or isopropyl alcohol;
- (13) isopropyl acetate;
- (14) methyl "cellosolve" acetate;
- (15) methyl ethyl ketone;
- (16) methyl isobutyl ketone;
- (17) toluol or toluene;
- (18) trichloroethylene;
- (19) tricresyl phosphate; or
- (20) xylol or xylene.

(f) A person commits an offense if he knowingly or intentionally:

- (1) delivers abusable glue or aerosol paint to a person who is under 17 years of age; or
- (2) displays abusable glue or aerosol paint in a business establishment in a manner that makes the abusable glue or aerosol paint accessible to patrons of the business without assistance of personnel of the business.

(g) An offense under Subsection (f) of this section is a Class B misdemeanor.

(h) It is a defense to prosecution under Subsection (f) of this section that the abusable glue or

aerosol paint which is delivered or displayed contains additive material which effectively discourages intentional abuse by inhalation or which is in compliance with rules promulgated by the commissioner pursuant to Subsection (d) of this section.

(i) It is an affirmative defense to prosecution under Subdivision (1) of Subsection (f) of this section that the person making the delivery is an adult having supervisory responsibility over the person under 17 years of age and:

(1) the adult permits the use of the abusable glue or aerosol paint only under his direct supervision and in his presence and only for its intended purpose; and

(2) the adult removes the substance from the person under 17 years of age on completion of that use.

#### SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

##### Inspections

Sec. 5.01. (a) As used in this section, the term "controlled premises" means:

(1) places where original or other records or documents required under this Act are kept or required to be kept; and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under this Act may lawfully hold, manufacture, or distribute, dispense, administer, possess, or otherwise dispose of controlled substances.

(b) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his functions under this Act, the director is authorized, in accordance with this section, to enter controlled premises and to conduct inspections thereof, and of the things specified in this section, relevant to those functions.

(c) Inspections under Subsection (b) of this section shall be carried out through officers or employees designated by the director. Any such officer or employee shall have the right to enter premises and conduct such inspection at reasonable times upon stating his purpose and presenting to the owner, operator, or agent in charge of the premises appropriate credentials and written notice of his inspection authority.

(d) An officer or employee of the director shall have the right to:

(1) inspect and copy records, reports, and other documents required to be kept or made under this Act;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and label-

ing found therein, and except as provided in Subsection (e) of this section, all other things therein including records, files, papers, processes, controls, and facilities appropriate for verification of the records, reports, and documents required to be kept under this Act or otherwise bearing on the provisions of this Act;

(3) examine and inventory any stock of any controlled substance therein and obtain samples of any such substance; and

(4) examine any hypodermic syringe, needle, pipe, or other instrument, device, or contrivance, equipment, control, container, label, or facility relating to possible violation of this Act or any material used, to be used, or capable of use in diluting or adulterating a controlled substance.

(e) Except when the owner, operator, or agent in charge of the controlled premises consents in writing, no inspection authorized by this section shall extend to:

- (1) financial data;
- (2) sales data other than shipment data; or
- (3) pricing data.

#### Cooperative Arrangements and Confidentiality

Sec. 5.02. (a) The director shall cooperate with federal and state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate and coordinate in training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the bureau and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders within this state, and make the information available for federal, state, and local law enforcement purposes, except that he may not furnish the name or identity of a patient or research subject whose identity could not be obtained under Subsection (c) of this section; and

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau and state agencies relating to the regulatory functions of this Act, including results of inspections conducted by it may be relied and acted upon by the director in the exercise of his regulatory functions under this Act.

*Text of subsection (c) effective until January 1, 1986*

(c) Except as provided in Subsection (a) of Section 3.08 or Subsection (c) of Section 3.09 of this Act, a

practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department of public safety, the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

#### Forfeitures

Sec. 5.03. (a) The following are subject to forfeiture as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw material, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, concealment, or delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any other person shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to an aggravated offense under this Act or an offense under Section 4.052 of this Act;

(6) all money, certificates of deposit, negotiable instruments, securities, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property, or other things of value derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act;

(7) all drug paraphernalia; and

*Text of subdivision effective until January 1, 1986*

(8) triplicate prescription forms required by this Act to be returned to the Department of Public Safety.

(b) No property shall be forfeited under this subchapter by reason of any act established by the owner thereof to have been committed without his knowledge or consent.

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act which caused the property to be subject to forfeiture.

#### Seizure

Sec. 5.04. (a) Property subject to forfeiture under this subchapter may be seized by any peace officer under authority of a search warrant issued pursuant to this Act.

(b) Seizure of any property subject to forfeiture may be made without warrant if:

(1) the owner, operator, or agent in charge of the property consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property consents;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this Act; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

#### Notification of Forfeiture Proceedings

Sec. 5.05. (a) When any property, other than a controlled substance or raw material, is seized, proceedings under this section shall be instituted within 30 days after the seizure and not thereafter.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court in the county in which the seizure is made, or if the property is a conveyance, in any county in which the conveyance was used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of any property described in Paragraph (1), (2) or (3) of Section 5.03(a), a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if address is known;

(2) any secured party who has registered his lien or filed a financing statement as provided by law; and

(3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Department of Public Safety has knowledge.

(c) If the property is a motor vehicle susceptible of registration under the motor vehicle registration

laws of this state and if there is any reasonable cause to believe that the vehicle has been registered under the laws of this state, the officer in charge of initiating the forfeiture proceedings shall make inquiry of the State Department of Highways and Public Transportation as to what the records of the State Department of Highways and Public Transportation show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(d) If the property is a motor vehicle and is not registered in Texas, then the officer in charge of initiating the proceeding shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, he shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest, or other instrument in the nature of a security device which affects the vehicle.

(e) If the property is of a nature that a financing statement is required by the laws of this state to be filed to perfect a security interest affecting the property and if there is any reasonable cause to believe that a financing statement covering the security interest has been filed under the laws of this state, the officer in charge of initiating the proceeding shall make inquiry of the appropriate official designated in Chapter 9, Business & Commerce Code, as to what the records show as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(f) If the property is an aircraft or part thereof and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceedings shall make inquiry of the administrator of the Federal Aviation Administration as to what the records of the administrator show as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device which affects the property.

(g) In the case of all other property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, then the officer in charge of initiating the proceeding shall make a good faith inquiry to identify the holder of any such instrument.

(h) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, security interest, or other interest in the nature of a security interest which affects the property, the officer in charge of initiating the proceeding shall cause any record owner and also any

lienholder, secured party, or other person who holds an interest in the property in the nature of a security interest which affects the property to be named a party to the proceeding and to be served with citation of the pendency thereof as provided by the Texas Rules of Civil Procedure.

(i) If a person was in possession of the property subject to forfeiture at the time that it was seized, he shall also be made a party to the proceeding.

(j) If no person was in possession of the property subject to forfeiture at the time that it was seized and if the owner of the property is unknown, the officer in charge of initiating the proceeding shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall issue a citation for service by publication addressed to "the Unknown Owner of ...", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation shall contain the other requisites prescribed in Rules 114 and 115 and shall be served as provided by Rule 116 of the Texas Rules of Civil Procedure.

(k) No proceedings instituted pursuant to the provisions of this subchapter shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with, and the officer initiating the proceeding shall introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c) through (g) of this section.

#### Replevy of Seized Property

Sec. 5.06. Any property, other than drug paraphernalia, a controlled substance or raw material, or money, negotiable instrument, or security furnished or intended to be furnished by a person in exchange for a controlled substance in violation of this Act, or used or intended to be used to facilitate a violation of this Act that is seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and abide the judgment of the court.

#### Forfeiture Hearing

Sec. 5.07. (a) An owner of property, other than a controlled substance or raw material, that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ

peace officers. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove by a preponderance of the evidence that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. However, for property other than a controlled substance, raw material, or drug paraphernalia, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers.

(e) Upon petition of the seizing officer, filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure of any controlled substance or raw material is made, the district court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires.

#### Disposition of Forfeited Property

Sec. 5.08. (a) Regarding all controlled substances, raw materials, and drug paraphernalia which have been forfeited, the district court shall by its order direct a law enforcement agency to:

- (1) retain the property for its official purposes;
- (2) deliver the property to a government agency or department for official purposes;

(3) deliver the property to a person authorized by the court to receive it; or

(4) destroy the property that is not otherwise disposed in the manner prescribed by Section 5.081 of this Act.

(b) All other property that has been forfeited, except the money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act, and except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.

(c) The state or an agency of the state or a political subdivision of the state authorized by law to employ peace officers may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department or agency receiving the forfeited vehicle may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department or agency receiving the forfeited vehicle. The department or agency receiving the forfeited vehicle may maintain, repair, use, and operate the property with money appropriated to the department or agency for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department or agency receiving the forfeited vehicle is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department or agency receiving the forfeited vehicle pending the outcome of the forfeiture proceedings shall be paid by the department or agency out of its appropriations if such property after final hearing is not forfeited to the department or agency.

(e) The State Department of Highways and Public Transportation shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

(f) All money, securities, negotiable instruments, stocks, or bonds forfeited to an agency of the state or an agency or office of a political subdivision of the state authorized by law to employ peace officers shall be deposited in a special fund to be administered by the agency or office to which they are forfeited. Except as otherwise provided by this subsection, expenditures from this fund shall be used solely for the investigation of any alleged violations of the criminal laws of this state. The director of an agency of the state may use not more than 10 percent of the amount credited to the fund for the prevention of drug abuse and for treatment of persons with drug-related problems. The director of an agency or office of a political subdivision that has received funds under this section shall comply with the request of the governing body of the political subdivision to deposit not more than 10 percent of the amount credited to the fund into the treasury of the subdivision. The governing body of the subdivision shall use the funds received for the prevention of drug abuse and for treatment of persons with drug-related problems. Nothing in this subsection shall be construed to decrease the total salaries, expenses, and allowances which an agency or office is receiving from other sources at or from the time this subsection takes effect.

#### Forfeiture and Destruction of Excess Quantities

Sec. 5.081. (a) If notice is given in accordance with Subsection (b) of this section, a peace officer may file a petition before a magistrate who has jurisdiction over the subject matter asking that any controlled substance or mixture containing a controlled substance that has been seized be forfeited to the state and destroyed.

(b) At least five days before a peace officer files a petition under Subsection (a) of this section, the sheriff of the county in which the seizure was made shall serve notice in accordance with the Texas Rules of Civil Procedure of the peace officer's intention to file the petition to each person arrested and charged with an offense under this Act related to the property which is the subject of the petition, and to each person who claims an interest in the seized property at the time notice is given. A copy of the petition must accompany each notice.

(c) Each petition filed under this section must identify the controlled substance or mixture containing the controlled substance, establish its location, and include an affidavit stating that:

(1) at least five random and representative samples have been taken from the total amount of controlled substance or mixture containing the controlled substance, and a sufficient quantity has been preserved to provide for discovery by parties entitled to discovery;

(2) photographs have been taken which reasonably demonstrate the total amount of the controlled substance or mixture containing the controlled substance;

(3) the gross weight of the controlled substance or mixture containing the controlled substance has been determined, either by actually weighing the substance or by estimating its weight after making dimensional measurements of the total amount seized; and

(4) after considering the difficulty and security risk of transporting and storing the substance and the nature of available storage facilities, the peace officer that has custody of the controlled substance or mixture containing the controlled substance has determined that it is not reasonably practical to preserve the substance in place, or to remove it to another location.

(d) The magistrate shall provide an interested person an opportunity to object to the proposed destruction.

(e) If the objection of an interested person is not sustained and the magistrate finds that the requirements of Subsections (b) and (c) of this section have been met, the magistrate shall issue an order forfeiting the controlled substance or mixture containing the controlled substance to the state and ordering the peace officer that has custody of the controlled substance or mixture containing the controlled substance to destroy it.

(f) On destruction of the controlled substance or mixture containing the controlled substance, the peace officer accomplishing the destruction shall sign a sworn statement before the magistrate attesting to the fact that the property was destroyed, the place of destruction, and the type and quantity of controlled substance or mixture containing the controlled substance destroyed.

(g) Representative samples, photographs, and records made pursuant to this section are admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance was offered in evidence, regardless of whether or not the remainder of the substance has been destroyed. No inference or presumption of spoliation applies to substances destroyed pursuant to this section.

#### Schedules I and II Plant Species—Seizure and Forfeiture

Sec. 5.09. (a) Species of plants from which controlled substances in Schedules I and II may be derived that have been planted or cultivated in violation of this Act, of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state. The provisions of this subsection do not apply to unharvested peyote growing in its natural state.

(b) The failure, upon demand by any peace officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

#### Burden of Proof; Liabilities

Sec. 5.10. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Act, and the burden of going forward with the evidence with respect to any exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this Act.

(c) No liability is imposed by this Act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.

#### Designation for Federal Funds

Sec. 5.11. The Texas Department of Community Affairs or its designee as provided in this Act is hereby designated as the single state agency to administer, apply for, and disperse funds under Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972<sup>1</sup> and is given all powers necessary to receive these funds.

<sup>1</sup> 21 U.S.C.A. § 1101 et seq.

#### Education and Research

Sec. 5.12. (a) The Texas Department of Community Affairs,<sup>1</sup> in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The executive director of the Texas Department of Community Affairs shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of this Act, he may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this Act;

(B) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The executive director of the Texas Department of Community Affairs may establish accreditation standards for drug abuse treatment programs and treatment personnel consistent with those required by federal law and regulation and certify those drug abuse treatment programs and treatment personnel meeting accreditation standards. The Department of Community Affairs may charge reasonable fees for initial certifications and renewal certifications in such amounts as are necessary to cover the costs of the accreditation program. All certification fees collected by the Texas Department of Community Affairs under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Drug Dependency Treatment Program Certification Fund. The fund may be appropriated only to the Texas Department of Community Affairs for the purpose of administering the drug dependency treatment certification program.

<sup>1</sup> See art. 4413(201).

#### Search Warrants

Sec. 5.13. A search warrant may be issued to search for and seize controlled substances possessed or manufactured in violation of this Act. The application for the issuance of and the execution of a search warrant under this section shall conform to the provisions of the Code of Criminal Procedure, 1965, to the extent applicable.

#### Report of Arrests

Sec. 5.14. (a) All law enforcement agencies in this state shall file semiannually with the director a report of all arrests for drug offenses made by

them during the preceding six months. Such reports shall be made on forms provided by the director, and shall contain such information as required therein.

(b) The director shall publish an annual summary of all drug arrests in this state.

#### Evidentiary Rules

Sec. 5.15. In considering whether an item is drug paraphernalia under this Act, a court or other authority shall consider, in addition to all other logically relevant factors, but subject to current rules of evidence:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) the existence of any residue of controlled substances on the object;

(3) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows or should reasonably know intend to use the object to facilitate a violation of this Act (the innocence of an owner or of anyone in control of the object as to a direct violation of this Act does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia);

(4) instructions, oral or written, provided with the object concerning its use;

(5) descriptive materials accompanying the object which explain or depict its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or anyone in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

(10) the physical design characteristics of the item; and

(11) expert testimony concerning its use.

#### SUBCHAPTER 6. MISCELLANEOUS

##### Saving Provision

Sec. 6.01. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on and after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date

of this Act if any element of the offense occurs on or after the effective date.

(b) Conduct constituting an offense under existing law that is no longer an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a final conviction existing on the effective date of this Act, for conduct constituting an offense under existing law, is valid and unaffected by this Act.

(c) In a criminal action pending, on appeal, or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court requesting that the court sentence him under the provisions of this Act.

#### Repealer

Sec. 6.02. The Uniform Narcotic Drug Act, as amended (Article 725b, Vernon's Texas Penal Code); Chapter 237, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 725c, Vernon's Texas Penal Code); Chapter 300, Acts of the 54th Legislature, 1955, as amended (Article 725d, Vernon's Texas Penal Code); and Chapter 87, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(37), Vernon's Texas Civil Statutes), are repealed.

#### Conforming Amendments

Sec. 6.03. [Amends arts. 4476-5, 4476-14, 4542a, 6184m, 9206 and Penal Auxiliary Laws, art. 667-5f.]

#### Severability

Sec. 6.04. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does 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 severable.

### SUBCHAPTER 7. MEDICAL AND RESEARCH PROGRAM

#### Research Program

Sec. 7.01. The Texas Board of Health may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this Act.

#### Research Program Review Board

Sec. 7.02. (a) If the Texas Board of Health establishes a program under Section 7.01 of this Act, the board shall create a Research Program Review Board. The review board members are appointed

by the Texas Board of Health and serve at the board's pleasure.

(b) The review board shall be composed of:

(1) a licensed physician who is certified by the American Board of Ophthalmology;

(2) a licensed physician who is certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;

(3) a licensed physician who is certified by the American Board of Psychiatry;

(4) a licensed physician who is certified by the American Board of Surgery;

(5) a licensed physician who is certified by the American Board of Radiology; and

(6) a licensed attorney who has experience in law pertaining to the practice of medicine.

(c) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

#### Review Board Powers and Duties

Sec. 7.03. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the Board of Health, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

#### Termination of Tetrahydrocannabinols Distribution to Program

Sec. 7.04. The Texas Board of Health may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as it determines necessary.

#### Patient Participation

Sec. 7.05. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician licensed by the Board of Medical Examiners attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;



(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

#### Acquisition of Controlled Substance for Program

Sec. 7.06. The Texas Board of Health shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations promulgated by the institute, the Food and Drug Administration, and the Drug Enforcement Administration.

#### Distribution of Controlled Substance

Sec. 7.07. The Texas Board of Health shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives thereof may be distributed only by the person in charge of the research program, under rules promulgated by the Texas Board of Health in such manner as to prevent unauthorized diversion of the substances and in compliance with any and all requirements of the Drug Enforcement Administration, to physicians caring for program participant patients. The physician is responsible for dispensing the substances to patients.

#### Rules

Sec. 7.08. The Texas Board of Health shall adopt rules necessary for implementing the research program.

#### Report

Sec. 7.09. If the Texas Board of Health establishes a program under Section 7.01 of this Act, the commissioner of health shall publish a report before January 2 of each year in which the Texas Legislature meets in regular session on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

#### Authorized Possession or Delivery not Violation

Sec. 7.10. If the possession or delivery of tetrahydrocannabinols or their derivatives or the possession or delivery of drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body is for use in the therapeutic research program established under this subchapter, the possession or delivery is not a violation of Section 4.031, 4.041, 4.051, as added by Section 8,

Chapter 268, Acts of the 67th Legislature, 1981, or 4.07 of this Act.

[Acts 1973, 63rd Leg., p. 1132, ch. 429, eff. Aug. 27, 1973. Amended by Acts 1975, 64th Leg., p. 123, ch. 58, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 749, ch. 295, §§ 1 to 4, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1842, ch. 572, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1269, ch. 492, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1860, ch. 737, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 59, ch. 37, §§ 1 to 5, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 163, ch. 90, §§ 1 to 7, eff. May 2, 1979; Acts 1979, 66th Leg., p. 1278, ch. 598, §§ 1 to 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2159, ch. 826, §§ 1 to 3, eff. Jan. 1, 1980; Acts 1981, 67th Leg., p. 181, ch. 82, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 696, ch. 268, §§ 1 to 15, 18, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 741, ch. 276, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 742, ch. 277, §§ 1 to 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2313, ch. 570, §§ 1 to 5, 7, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2346, ch. 577, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2933, ch. 777, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., 1st C.S., p. 82, ch. 9, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 529, ch. 111, §§ 1, 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 632, ch. 141, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2362, ch. 425, §§ 1 to 24, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3266, ch. 566, §§ 1 to 6, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4578, ch. 766, § 1, eff. Aug. 29, 1983.]

Section 2 of Acts 1975, 64th Leg., ch. 58, provided:

"For the fiscal year ending August 31, 1975, all money in the fund, or as much of it as is necessary, is appropriated to the department of public safety to be used for the purpose of performing the department's functions under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)."

Section 10 of Acts 1979, 66th Leg., ch. 90, provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Section 7 of Acts 1979, 66th Leg., ch. 598, provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense governed by the Texas Controlled Substances Act that is committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 2 of Acts 1981, 67th Leg., p. 182, ch. 82, provides:

"(a) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

"(b) For purposes of this section, an offense is committed before the effective date of this Act if all elements of the offense occur before the effective date."

Section 19 of Acts 1981, 67th Leg., p. 707, ch. 268, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 4 of Acts 1981, 67th Leg., p. 742, ch. 276, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For

purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 5 of Acts 1981, 67th Leg., p. 745, ch. 277, provides:

"(a) This Act applies only to offenses committed on or after its effective date.

"(b) A criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force.

"(c) For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 9 of Acts 1981, 67th Leg., p. 2319, ch. 570, provides:

"Unless reenacted on or before December 31, 1985, the amendments to the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), and to Subsection (a) of Section 3, Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), made by this Act shall become null, void, and of no further force or effect as of 12:01 a.m. on January 1, 1986."

Section 5.03(a) of this article being amended by two other Acts of the 67th Legislature, as well as by ch. 570, the only portion of § 5.03(a) which would effectively become null, void, and of no further force on effect under the above provision would be subd. (7) as added by ch. 570.

Sections 28 and 29 of Acts 1983, 68th Leg., p. 2417, ch. 425, provide:

"Sec. 28. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

"Sec. 29. Unless reenacted on or before December 31, 1985, the amendments to Section 5.03(a)(8), and the portion of Section 3.08(a) referring to Section 3.09, of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes) made by this Act shall become null and void and of no further force or effect as of 12:01 a.m. on January 1, 1986."

## Art. 4476-15a. R.B. McAllister Drug Treatment Program Act

### ARTICLE I. DEFINITIONS

#### Title

Sec. 100. This Act shall be cited as the R.B. McAllister Drug Treatment Program Act.

#### Definitions

Sec. 101. For purposes of this Act:

(1) "Executive director" means the executive director or his designee of the Texas Department of Community Affairs.

(2) "Commitment" means the relationship established by a court order that places a drug-dependent person or person incapacitated by controlled substances in the custody of the executive director for purposes of treatment under this Act.

(3) "Controlled substance" means any substance designated as such in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil

Statutes) or toxic inhalants as defined by the executive director.

(4) "Criminal justice system" means law enforcement officials, district attorney(s), county attorney(s), courts, and the Texas Department of Corrections.

(5) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

(6) "Day care services" means treatment services for drug dependence provided for a part-time resident client in a treatment facility.

(7) "Nearest relative" means, in the order of priority stated, a person's legal guardian, spouse, adult issue, whether natural or adopted, parent or adult sibling, or any other person with whom the person is residing, whether related or not.

(8) "Outpatient services" means treatment services for drug dependence provided to a client who is not a resident of a treatment facility.

(9) "Person incapacitated by controlled substances" means a person who, as a result of the effects of one or more controlled substances, needs treatment and either is unconscious of or has had his judgment so impaired that he is incapable of making a rational decision with respect to his need for treatment.

(10) "Private facility" means any facility providing treatment services which is not operated by the federal, state, or local government, whether or not it receives public funds and whether or not it operates for profit.

(11) "Public facility" means any facility providing treatment services which is operated by the federal, state, or local government.

(12) "Residential services" means treatment services for drug dependence provided for a full-time resident client in a treatment facility.

(13) "Treatment" means (A) emergency services for drug-dependent persons, persons incapacitated by controlled substances; or persons under the influence of controlled substances; and (B) the full range of residential, day care, and outpatient services for drug-dependent persons designed to aid them to gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community. Treatment includes but is not limited to diagnostic evaluation; medical, psychiatric, psychological, and social services; drug maintenance services; vocational rehabilitation, job training, and career counseling; educational and informational guidance; family counseling; and recreational services.

(14) "Treatment facility" means a public or private facility to which the executive director has authorized public agencies to refer persons for treatment.

(15) "Prevention" means a constructive process designed to promote personal and social growth of the individual toward full human potential and thereby inhibit or reduce physical, mental, emotional, or social impairment which results in or from the abuse of licit or illicit chemical substances.

## ARTICLE II. ORGANIZATION, OBJECTIVE, AND STANDARDS OF DRUG DEPEND- ENCE TREATMENT PROGRAM

### Establishment of Program

Sec. 201. (a) The executive director shall establish and supervise a drug dependence treatment program. Within funds appropriated to the Texas Department of Community Affairs, the executive director shall provide integrated health, education, information, and welfare services through appropriate public and private facilities to persons who seek the services voluntarily or who are referred from public or private agencies.

(b) The program shall include, so far as practicable, a comprehensive range of treatment services in each locality. The number, location, and types of services included in the treatment program and the amount of public resources allocated thereto shall be determined by the executive director based in whole or in part by the estimated size and location of the current and potential numbers of drug-dependent persons in designated council of government regions. The executive director shall give particular attention to the potential drug problem in rural areas in developing the program.

(c) In establishing and supervising the program, the executive director may contact any public or private person, agency, organization, or institution for services or for the use of any facility or personnel.

(d) The executive director shall utilize and coordinate public and private treatment facilities and resources, wherever practicable, utilizing community mental health centers and general hospitals.

### Powers and Duties of Executive Director

Sec. 202. The director shall:

(1) prescribe by rule those controlled substances that pose a substantial risk of severe psychic or physical dependence and the types of drug dependence for which treatment is feasible and available under this Act;

(2) require programs receiving funds under this Act to meet established standards;

(3) prepare, publish, and distribute throughout the state as often as necessary a list of all public and private treatment facilities the director finds to conform to the established standards and periodical-

ly notify the courts of the treatment facilities within their respective jurisdictions and of the types of services offered at each facility;

(4) evaluate, on a continuing basis, the services provided by treatment facilities funded through this Act to assure that the services are effective, humanely operated, and properly staffed and meet the standards established under this Act, and make the evaluations a matter of public record;

(5) use funds appropriated through this Act to carry out the mandate of this Act, the Texas Controlled Substances Act, and Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972;<sup>1</sup> and

(6) use funds to provide matching funds for local programs and to increase the overall state allotment of federal funds.

<sup>1</sup> 21 U.S.C.A. § 1101 et seq.

### Prevention Services

Sec. 203. The executive director shall develop prevention services that include:

(1) information to promote awareness within the general public about controlled substances and inhalants and treatment services for drug dependence;

(2) education designed to promote a deeper understanding of drug abuse and its concomitant problems and to promote the support, participation, and cooperation of selected groups in drug abuse prevention education;

(3) intervention services to persons who do not require drug dependence treatment but who are risking drug dependence and are not being adequately served by the standard social service institutions; and

(4) alternatives to drug abuse through the development of public activities that promote positive growth and fulfillment.

### Coordination with Other Treatment Agencies

Sec. 204. (a) The executive director shall establish coordinated efforts with the Texas Rehabilitation Commission, Texas Department of Human Resources, Texas Department of Health, Texas Adult Probation Commission, Texas Department of Mental Health and Mental Retardation, councils of government, and other appropriate agencies.

(b) The executive director and the director of the Texas Department of Corrections may establish appropriate drug dependence treatment in the correctional institutions of this state.

### Other Duties of Executive Director

Sec. 205. In addition to the other duties specified in this Act, the executive director shall:

(1) develop, encourage, and evaluate public and private plans and services to discourage the improper use of controlled substances, with special attention to developing, in cooperation with the schools,

public health agencies, courts, and other public and private agencies, programs to discourage the improper use of controlled substances by juveniles and young adults;

(2) provide, so far as practicable, technical assistance and advice to public and private agencies within and without the state on services designed to treat drug-dependent persons;

(3) conduct, in cooperation with the United States Departments of Justice and Health, Education and Welfare,<sup>1</sup> the police, the courts, and other public and private agencies, a program for educating policemen, prosecuting attorneys, court personnel, the judiciary, probation and parole officers, correctional officials, and other criminal justice personnel on the causes, effects, and treatment of drug dependence; and

(4) conduct and develop, in cooperation with the Texas Department of Human Resources and the Texas Rehabilitation Commission, services for educating all personnel of those agencies on the causes, effects, and treatment of drug dependence.

<sup>1</sup> Name changed to Department of Health and Human Services, see 20 U.S.C.A. § 3508.

#### Treatment Services in Program

Sec. 206. The treatment program shall include:

(1) residential services for short-term and long-term treatment of drug-dependent persons; residential services for persons not incarcerated under sentence shall be provided at a location other than a correctional institution unless no other facilities are available, in which case those persons shall be segregated from persons incarcerated under sentence; and

(2) day care and outpatient services; the executive director shall give priority to developing these services, which must be community-based and readily accessible to patients, and may include clinics, social centers, vocational rehabilitation and job referral facilities, welfare centers, and supportive residential facilities such as foster homes and halfway houses.

#### Treatment Objective

Sec. 207. For a drug-dependent person being treated under this Act, the primary purpose of treatment is to enable the person to live as a productive, functioning member of the community. Insofar as possible, treatment shall be designed to aid the person to overcome his dependence on controlled substances. Treatment also may be designed to maintain or control the person's drug dependence through approved drug maintenance services that conform to applicable state and federal laws and are limited to persons who consent to such treatment.

### ARTICLE III. VOLUNTARY TREATMENT OF DRUG-DEPENDENT PERSONS AND OTHER PERSONS

#### Application

Sec. 301. (a) A person, whether adult or minor, who needs emergency services as a result of using controlled substances may apply directly to a treatment facility.

(b) A person, whether adult or minor, who considers himself drug-dependent may apply directly to a treatment facility. A private physician who diagnoses a person as drug-dependent and determines he is unable to provide adequate treatment may refer the person, with his consent, to a treatment facility.

(c) The executive director shall make necessary efforts to develop outreach services that identify drug-dependent persons and encourage application for treatment under this Act.

### ARTICLE IV. TREATMENT AND CIVIL COMMITMENT OF PERSONS CHARGED WITH CRIMES

#### Applicability

Sec. 401. This article applies to policies of the State of Texas regarding referral procedures between the criminal justice system and the executive director which apply to a person from the time he is first taken into police custody for the purpose of being charged with a crime under the laws of this state until the charge is dismissed or, if the person is convicted, until his sentence has been finally discharged.

#### State Interagency Cooperation

Sec. 402. The executive director is authorized, within funds appropriated to the Texas Department of Community Affairs, to accept persons referred from the criminal justice system under the terms of bail, probation, conditional discharge, parole, or other conditional release which is not inconsistent with medical or clinical judgment or in conflict with this Act or applicable federal rules, regulations, or standards.

#### Emergency Treatment of Persons in Police Custody

Sec. 403. The executive director, within funds appropriated for this Act, may develop emergency treatment resources for persons who appear to be (1) incapacitated by controlled substances, (2) under the influence of controlled substances and in need of medical attention, or (3) drug-dependent and undergoing withdrawal or experiencing medical complications.

#### Treatment of Drug-Dependent Persons on Conditional Release

Sec. 404. (a) The director of the Texas Department of Corrections and the Board of Pardons and Paroles may refer persons who are or were drug-de-

pendent to treatment facilities established under this Act if available when they are placed on work release, parole, or other conditional release.

(b) A person who is released from any correctional institution on the condition that he participate in the treatment program established under this Act may be required to submit to periodic urinalysis or other medically accepted means of detecting the presence of controlled substances in the body. If, in the judgment of the physician in charge of his treatment, a person fails to conform to the conditions of treatment, the court or the Board of Pardons and Paroles shall decide whether to retain, restrict, or revoke parole or other conditional release according to what is most consistent with both the treatment of the individual and the safety of the community.

(c) If required for effective treatment, the director of the Texas Department of Corrections and the Board of Pardons and Paroles may transfer an offender placed on conditional release from one day care or outpatient treatment facility to another.

(d) The executive director shall report periodically to the director of the Texas Department of Corrections and the Board of Pardons and Paroles on compliance with the conditions of treatment by persons participating in the program under this section.

#### ARTICLE V. EMERGENCY TREATMENT AND POLICE REFERRAL OF PERSONS NOT CHARGED WITH CRIMES

##### Applicability

Sec. 501. This article applies to a person against whom no criminal charge is pending under the laws of this state or for whom any sentence previously assessed has been finally discharged.

##### Emergency Treatment for Persons Under the Influence of Controlled Substances

Sec. 502. (a) When, in the judgment of a law enforcement officer, a person is under the influence of a controlled substance in a public place and needs emergency treatment, the person may be taken to his home or to a treatment facility. If the person is taken to a treatment facility and the physician in charge of emergency services confirms the need for treatment, the person shall, with his consent, be either admitted or referred to another treatment facility. If the person is admitted, reasonable efforts shall be made to notify his nearest relative. If the person is referred to another treatment facility, reasonable efforts shall be made to provide transportation to that facility. Medical assistance may be provided to a person who is neither admitted nor referred.

(b) A person admitted to a treatment facility under this section may be detained until emergency treatment is completed, but he may not be detained without his consent for longer than 24 hours after admission.

##### Emergency Treatment for Incapacitated Persons

Sec. 503. (a) If a law enforcement or public health officer is notified by an interested person that another person appears incapacitated by controlled substances, the law enforcement or public health officer may take the person to a treatment facility for emergency treatment. If a person appears incapacitated by controlled substances in a public place in the judgment of a law enforcement officer or in a treatment facility in the judgment of a public health officer, the person may be brought to or detained at a treatment facility for emergency treatment. A law enforcement or public health officer, in detaining a person in or taking him to a treatment facility, takes him into protective custody and shall make every effort to protect his health and safety. Entry into protective custody under this section is not to be considered an arrest, and no entry or other record may be made to indicate that the person has been arrested for or charged with a crime.

(b) A person brought to a treatment facility under Subsection (a) of this section shall be examined as soon as practicable by the physician in charge of emergency services. If the physician determines that the person is incapacitated by controlled substances, the person shall be either admitted as a client or referred to another treatment facility. If he is admitted, the patient's nearest relative shall be notified as soon as practicable. If the person is referred to another treatment facility, the referring facility shall arrange for his transportation. If the physician determines that the person is not incapacitated by controlled substances and does not admit or refer the person for treatment under Section 502 of this Act, the person may be taken to his home.

(c) A person admitted to a treatment facility under this section may be required to remain until he is no longer incapacitated by controlled substances, but no longer than 48 hours unless commitment is authorized by a court in accordance with other applicable law.

(d) Law enforcement officers, public health officers, and physicians are not criminally or civilly liable for acts undertaken in the good faith conduct of their official functions under this section.

##### Release and Conditional Referral to Treatment Services by Police

Sec. 504. (a) This section applies to a person who has been apprehended, either with or without a warrant, for a violation of Section 4.04, 4.05, or 4.07 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(b) With the consent of a person covered by Subsection (a) of this section, a police or law enforcement officer may, in lieu of normal criminal processing, take the person before a magistrate, and with the approval of the magistrate refer the person for treatment. If the person agrees to participate in treatment, the police officer may either (1) release

the person unconditionally, or (2) issue a conditional citation for the offense for which the person was apprehended to be returned to the police department in 90 days and to be dismissed if the person has participated satisfactorily in the treatment program. The person's agreement to participate in treatment shall not be used against him in any criminal proceeding nor does it waive any rights that he has in any criminal proceedings later brought on the original offense.

(c) If, in the judgment of the person or agency supervising the treatment program, a person who has been issued a citation under Subsection (b) of this section fails to participate satisfactorily in the program or if the person fails to appear on the return date of the citation, a warrant shall issue for his arrest on the original offense, unless he is already in police custody. Timeliness of the person's initial appearance before the court on the original offense shall be determined on the basis of the return date of the citation.

(d) The police department shall record all dispositions under Subsection (b) of this section as detentions and not as arrests. Such records shall be treated as confidential, except for use in determining whether a person is given the benefit of this section upon apprehension at a later time.

#### ARTICLE VI. GENERAL PROVISIONS

##### *Policy for Governmental and Private Employees*

Sec. 601. (a) The executive director may develop and maintain, in cooperation with other state and local agencies, appropriate services for the prevention and treatment of drug dependence among state and local employees consistent with this Act. Drug-dependent employees of this state or any political subdivision shall be granted the same employment and other benefits as persons afflicted with serious illness while undergoing treatment under Article III or V of this Act and shall not be denied pension, retirement, medical, or other rights because of their drug dependence. However, acceptance of appropriate treatment may be made a condition of their continued employment.

(b) The executive director shall encourage private industry to develop treatment services within the state.

##### *Applicability to the Mentally III*

Sec. 602. The services provided under this Act shall be made available to a mentally ill, drug-dependent person.

##### *Applicability to Juveniles*

Sec. 603. Articles III, IV, and V of this Act are available to a juvenile. Nothing in this Act shall take precedence over any provision of the Family Code relating to juveniles unless expressly stated herein.

#### *Rules and Delegation of Powers*

Sec. 604. The executive director may promulgate rules for the implementation of this Act and may designate any state officer or employee to carry out any of its functions under this Act.

#### ARTICLE VII. MISCELLANEOUS

##### *Continuation of Rules*

Sec. 701. Any orders and rules promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

##### *Appropriation*

Sec. 702. The sum of \$210,000 is appropriated from the General Revenue Fund to the Texas Department of Community Affairs for each year of the biennium beginning September 1, 1979, for the purpose of implementing the provisions of this Act.

##### *Effective Date*

Sec. 703. This Act takes effect September 1, 1979; provided that for the period beginning September 1, 1979, and ending August 31, 1981, the Act shall authorize but not require the executive director to make emergency drug treatment services available pursuant to this Act.

[Acts 1979, 66th Leg., p. 1843, ch. 750, eff. Sept. 1, 1979.]

#### Art. 4476-15b. Simulated Controlled Substances

##### *Definitions*

Sec. 1. In this Act:

(1) "Controlled substance" has the same meaning as given that term in Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

(2) "Deliver" or "delivery means the actual or constructive transfer from one person to another of a simulated controlled substance, whether or not there is an agency relationship. For the purposes of this Act, it also includes an offer to sell a simulated controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be.

##### *Delivery Prohibited*

Sec. 2. (a) A person commits an offense if the person knowingly or intentionally manufactures

with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of his official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of his professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a felony of the third degree.

#### Evidentiary Rules

Sec. 3. In determining whether a person has represented a simulated controlled substance to be a controlled substance in a manner that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance; and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

#### Forfeiture

Sec. 4. A simulated controlled substance seized as a result of an offense under this Act is subject to

forfeiture and disposition in the same manner as is a controlled substance under Section 5.081, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes).

#### Saving Clause

Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

[Acts 1983, 68th Leg., p. 1614, ch. 306, §§ 1 to 5, eff. Sept. 1, 1983.]

#### Art. 4476-16. 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.

[1925 P.C.]

### CHAPTER THREE A. BEDDING

#### Art. 4476a. Bedding, Manufacture, Repair, Renovation and Sale

##### Definitions

Sec. 1. (a) The term "bedding," as used in this Act shall mean any mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chairbed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, chaise lounge pad, utility or all purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, and other stuffed or filled article of any description which can be used by any human being for sleeping or reclining purposes.

(b) The term "department," when used in this Act, shall mean the State Department of Health.

(c) The term "person," as used in this Act, shall include persons, partnerships, companies, corporations and associations.

(d) The term "renovate," as used in this Act, shall mean to restore to former condition or to place in good state of repair.

(e) The term "materials," as used in this Act, shall mean all articles, materials or portions thereof, used in the manufacture, repair or renovation of bedding.

(f) The term "new," as used in this Act, shall mean any article or material which has not previously been used for any purpose.

(g) The term "secondhand," as used in this Act, shall mean any article or material or portion thereof, of which former use has been made in any manner whatsoever.

(h) The term "sell," or any of its variants, as used in this Act, shall include any of, or any combinations of the following: sell, offer or expose for sale, include in a sale, barter, trade, deliver, consign, lease, possess with intent to sell or dispose of in any other commercial manner. The possession of any article of bedding, as herein defined, by any manufacturer, renovator, wholesaler or germicidal treatment operator, in the course of business, shall be presumptive evidence of intent to sell.

(i) The term "manufacturer," as used in this Act, shall mean any person whose principal business is the manufacture, from new materials, of articles of bedding for the purpose of resale in or into the State of Texas by a distributor, jobber, wholesaler, retail outlet or subsidiary outlet where the ownership and the name are identical with the manufacturer and/or which is an exclusive sales outlet for that manufacturer.

(j) The term "wholesaler," as used in this Act shall mean any person located outside the State of Texas who on his own account, sells, distributes or jobs into the State of Texas to another for the purpose of resale any article of bedding or filling material to be used in bedding but shall not include an affiliate or subsidiary where the ownership and the name are identical with the manufacturer and which is the exclusive sales outlet of the manufacturer.

(k) The term "processor," as used in this Act, shall mean any person who manufactures, processes and sells in or into the State of Texas any felt, batting, pads, foam or other filling materials to be used or that could be used in articles of bedding, but shall not include wooden frames and/or metal springs.

(l) The term "germicidal treatment operator," as used in this Act, shall mean any person who is registered by the Department to apply an approved germicidal process to articles of bedding for the purpose of resale by said operator or as a commercial service for another person.

(m) The terms "permit," "license," "registration," or any of their respective variants, as used in this Act, shall be synonymous and may be used interchangeably.

(n) Wherever in this Act the singular is used, the plural shall be included; and where the masculine gender is used, the feminine and neuter shall be included.

#### Labeling of Bedding Required

Sec. 2. (a) No person shall manufacture, repair, renovate or sell, or have in his possession with intent to sell, any article of bedding, unless there is securely attached, where clearly visible, a white tag, made of substantial cloth or a material of equal quality, as provided in this Act. All tags required by this Section shall be attached at the factory.

(b) Bedding manufactured in whole from all new material shall have attached a tag not less than six (6) square inches in size upon which shall be plainly stamped or printed, in black ink, in the English language, the statement "All New Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the kind and grade of each material used in the filling, expressed in percentages by weight when more than one kind or grade of material is used; and the manufacturer's permit number, assigned by the Department.

(c) Bedding manufactured in whole, or in part, from second hand material shall have securely attached a tag not less than twelve (12) square inches in size upon which shall be plainly printed in red ink, in the English language, the statement "Second Hand Material" in lettering not less than one-fourth ( $\frac{1}{4}$ ) inch in height and the manufacturer's permit number assigned by the Department. The provisions of this paragraph (c) of Section 2 are not intended to apply to bedding reworked, repaired or renovated for the owner for his own use.

(d) Bedding renovated, reworked or repaired for the owner, for the owner's use, from the owner's material, which is in whole or in part second hand, shall have attached a tag not less than six (6) square inches in size, upon which shall be plainly printed in black ink, in the English language, the statement "Not for Sale, Owner's Own Material which is Second Hand Material" in lettering not less than one-eighth ( $\frac{1}{8}$ ) inch in height; the name and address of the owner; and the manufacturer's permit number assigned by the Department.

(e) The terms used on the tag to describe kinds and grades of materials used in filling shall be restricted to those defined in the regulation of the Department, and no trade or substitute terms shall be used.

(f) It shall be unlawful to make any false or misleading statements on the tag required by this Section. It shall be unlawful for any person to remove, deface, alter or cause to be removed, defaced or altered, any tag or statement contained thereon for the purpose of defeating any of the provisions of this Act. The placing of registration stamps required in Section 7 of this Act over any lettering on the tag shall be construed to be defacement of the tag.

#### Use and Sale of Materials from Dump-Grounds and Junkyards

Sec. 3. No person shall manufacture, repair or renovate bedding or batting, using discarded materi-



als obtained from dump-grounds or junkyards within or without the State of Texas nor shall any person sell or include in a sale any item of discarded bedding obtained from the sources set out in this section.

#### Germicidal Treatment of Bedding and Materials

Sec. 4. (a) No person shall sell, offer for sale or include in a sale any article of secondhand bedding or any article of bedding manufactured in whole or in part from secondhand material, except sofa beds and studio couches, unless such bedding has been germicidally treated and cleaned, by a method approved by the Department. Upholstered sofa beds and studio couches shall be germicidally treated and cleaned only when required by the Rules and Regulations of the Department.

(b) No person shall use in the manufacture, repair and renovation of bedding any material which has been used by a person with an infectious or contagious disease, or which is filthy, oily or harbors loathsome insects or pathogenic bacteria, unless such material is cleaned and germicidally treated by a process or treatment approved by the Department.

(c) No person shall sell, or offer for sale or include in a sale any material or bedding requiring germicidal treatment by this Act unless there is securely attached, by a method approved by the Department, by the person applying the germicidal treatment, a white tag not less than twelve (12) square inches in size, made of substantial cloth or a material of equal quality, upon which shall be plainly printed, in black ink, in the English language, a statement showing that the article or material has been germicidally treated by a method approved by the State Health Department, the method of germicidal treatment applied, the lot number and the tag number of the article germicidally treated, the name and address of the person for whom germicidally treated, and the permit number of the person applying germicidal treatment.

#### Enforcement of Act

Sec. 5. (a) The Department is hereby charged with the enforcement of this Act, for the protection of the public health and the public welfare. It is further empowered, and its duty shall be to make, amend, alter or repeal general rules and regulations of procedure for carrying into effect all the provisions of this Act, and to prescribe means, methods, and practices to make effective such provisions.

(b) No person shall interfere, obstruct, or hinder an authorized representative of the Department in the performance of his duty as set forth in the provisions of this Act.

(c) The Department, through its authorized representative, shall have the authority to enter any place or establishment where bedding is manufactured, repaired, renovated, stored, sold, offered for sale, or where materials are prepared for use in

bedding, or where germicidal treatment of bedding is performed, for the purpose of ascertaining whether the requirements of this Act and the regulations of the Department have been met.

(d) The Department, through its authorized representative, is empowered to take samples of materials for inspection and analysis, and to hold for evidence, at a trial, for the violation of this Act any article of bedding or materials manufactured, repaired, renovated, sold or offered for sale, in violation of this Act.

(e) The Department, through its authorized representative, shall have authority to place "Off-Sale" any article of bedding or material which is offered for sale, or which could be offered for sale, in violation of this Act. When articles of bedding or materials are removed from sale, they shall be so tagged; and such tags shall not be removed from the article nor shall the article be disposed of in any manner whatsoever without prior approval by an authorized representative of the Department, or as the Department may direct, after satisfactory proof of compliance with all requirements of this Act and of the regulations of the Department and after a "Release for Sale" has been issued by the Department through its authorized representative.

(f) The violation of a general rule or regulation of procedure promulgated under this Act shall be a violation of this Act.

(g) If the party at interest be dissatisfied with any act, order, ruling or decision of the State Department of Health in connection with the administration of this Act, such party may file an action, naming the State Department of Health as defendant, in any of the District Courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the State Department of Health or in its file while the matter was pending before the Department for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the State Department of Health. All acts, orders, rulings and decisions of the State Department of Health shall be final unless an action to set aside as herein authorized is filed within thirty days after the action, ruling or decision is taken or made by the State Department of Health.

## Permits

Sec. 6. (a) No person shall engage in the business of manufacturing, wholesaling, renovating, and selling any article of bedding in or into the State of Texas unless he shall have first obtained a permit from the Department, nor shall any processor of filling materials to be used in articles of bedding sell such materials in or into the State of Texas unless he shall have first obtained a permit from the Department.

(b) No person shall be considered to have qualified to apply an acceptable germicidal process until such process has been registered with and approved by the Department, after which a numbered permit shall then be issued by the Department. Such permit shall expire one year from date of issue and shall thereafter be annually renewed at the option of the permit holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department. Every person to whom a permit has been issued shall keep such permit conspicuously posted on the premises of his place of business near the treatment device. Holders of permits to apply germicidal treatment shall be required to keep an accurate record of all materials which have been subjected to germicidal treatment, including the source of material, date of treatment, and name and address of the owner of each item. Such records shall be available for inspection at any time by authorized representatives of the Department.

(c) For all initial permits issued, as required by the preceding Paragraph (a) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Fifteen Dollars (\$15). All permits shall expire one year from date of issue and an annual renewal charge of Ten Dollars (\$10) shall be paid to the same Department in order to keep them in force.

(d) For all initial permits issued, as required by the preceding Paragraph (b) of this Section, there shall, at the time of issuance thereof, be paid by the applicant, to the Department, a fee of Fifteen Dollars (\$15). All permits shall expire one year from date of issue and an annual renewal charge of Ten Dollars (\$10) shall be paid to the same Department in order to keep them in force.

(e) Any permit issued in accordance with the provisions of this Act may be revoked by the Commissioner of Health, after a hearing and upon proof of violation of any of the provisions of this Act.

## Stamping, Exemption and Reporting

## Sec. 7. (a) Stamping.

(1) No person shall manufacture, renovate, sell or lease or have in his possession with intent to sell or lease in the State of Texas, any article of bedding covered by the provisions of this Act, unless there be affixed to the tag required by this Act by the person manufacturing, renovating, selling or leas-

ing the same, an adhesive stamp prepared and issued by the Department, except that any person desiring to do so may make application to the Department for a stamp exemption, which, if issued, will relieve the holder of the above requirement that an inspection stamp be attached to every tag.

(2) The Department shall register all applicants for stamps and assign to every such person a registry number and/or separate and different serial numbers to be printed on each stamp as a means of identifying the applicant and the stamps issued thereto, and such identification shall not be used by any other person.

(3) Adhesive stamps as provided for by this Act shall be furnished by the Department in quantities of not less than five hundred (500), for which the applicant shall pay at the rate of Five Dollars (\$5) for each five hundred (500) stamps. The Department is hereby authorized to prepare and cause to be printed, adhesive stamps which shall contain a replica of the Seal of the State of Texas, the registry number and/or serial numbers assigned by the Department, and such other matter as the Department shall direct.

## (b) Exemption.

(1) The Department shall register all applicants for stamp exemptions and assign to every such person an exemption number upon receipt by the Department of a proper application on an approved form when such application is accompanied by a registration fee as specified in Paragraph (b)(2) of this Section. Such exemption shall not be transferable and shall not be used by any other person.

(2) For all stamp exemptions as stated in Paragraph (b)(1) of this Section, there shall at the time of issuance thereof, be paid by the applicant to the Department a fee of Twenty-five Dollars (\$25). Such stamp exemption shall expire one year from date of issue and shall thereafter be annually renewed at the option of the exemption holder upon submission of proof of continued compliance with the provisions of this Act and the regulations of the Department and payment of the Twenty-five Dollars (\$25) annual renewal fee.

## (c) Reporting.

(1) Each holder of a stamp exemption shall file with the Department a report within fifteen (15) days after the expiration of each two-month period. Such report shall be made under oath by the owner or official of the registrant that the information therein is true to his best knowledge and belief and shall show the exact number of articles of bedding sold in or into the State of Texas during the said two-month period. The registrant shall remit with said report an amount of money computed as follows: The sum of one cent (1c) for each article of bedding sold in or into the State of Texas during said report period. The first report required by this Section shall be for the period September 1, 1967, through October 31, 1967.

(2) The requirement for reporting as set out in Paragraph (c)(1) of this Section shall apply to each holder of a stamp exemption who makes or causes to be made the initial sale of an article of bedding in or into the State of Texas.

(3) Each holder of a stamp exemption shall keep accurate records of all articles of bedding manufactured, renovated and sold in or into the State of Texas. The Department shall have the authority to verify necessary shipping records when a registrant fails to make a report as required by Paragraph (c)(1) of this Section or when such report is unsatisfactory for purposes of determining the correct payment due from said registrant.

(4) In case of default in payment, failure to report or evidence of false reporting the registrant shall automatically forfeit his stamp exemption. Any exemption which has been revoked or forfeited as the result of a failure to comply with any of the provisions of the Act or the regulations of the Department shall not be renewed or reissued unless and until the applicant for said exemption presents satisfactory evidence to the Department that he will abide by all provisions of the Act and all rules and regulations promulgated under the Act.

(d) Exceptions.

Processors of filling materials shall be excluded from the stamping, exemption and reporting requirements as set out in Paragraphs (a), (b) and (c) of this Section, but each processor shall be required to identify any shipment or delivery, however contained, of processed filling materials used for filling articles of bedding by affixing thereto in a conspicuous place a tag, label or indelible marking which clearly indicates the kind of material, whether the material is new or secondhand and the permit number of the processor.

**Proceeds Placed in General Fund**

Sec. 8. All moneys obtained from the sale of stamps, fees and other moneys collected in the administration of this Act shall be payable to the Department, and when collected shall thereafter be transmitted to the State Treasury and be placed in the General Fund and be appropriated out in such amounts that may be deemed necessary by the Legislature. In the administration of this enactment the Regular Departmental Appropriation Bill will be adopted.

**Expenditure of Moneys**

Sec. 8c. The expenditure of any moneys under this Act shall never exceed the amount of money obtained from the collection of money required by any fee, permit, license or registration required by the provisions of this Act.

**Penalties**

Sec. 9. Every person who violates any of the provisions of this Act and the rules and regulations established thereunder, is guilty of a misdemeanor

and punishable for each offense by a fine of not less than Fifty Dollars (\$50) and not more than Two Hundred Dollars (\$200).

**Sanitary Premises**

Sec. 10. Every bedding manufacturer or renovator shall keep his place of business in a sanitary condition satisfactory to the Health Department, and failure to do so shall be sufficient cause to revoke his permit.

**Exceptions**

Sec. 11. The provisions of this Act shall apply to all bedding manufactured, repaired, renovated and/or sold after the effective date hereof; but the same shall not apply to bedding which has been manufactured, repaired or renovated prior to the effective date hereof.

[Acts 1939, 46th Leg., p. 376. Amended by Acts 1949, 51st Leg., p. 918, ch. 497, §§ 1 to 5; Acts 1955, 54th Leg., p. 578, ch. 192, §§ 1, 1-a, 2; Acts 1957, 55th Leg., p. 207, ch. 95, § 1; Acts 1959, 56th Leg., p. 126, ch. 74, §§ 1, 2; Acts 1961, 57th Leg., p. 262, ch. 137, § 1; Acts 1967, 60th Leg., p. 572, ch. 260, §§ 1 to 5, eff. May 22, 1967.]

The introductory clause of Acts 1967, 60th Leg., p. 572, ch. 260, § 1 purports to amend "Section 1 of Senate Bill No. 200, General Laws of the 46th Legislature, Regular Session, page 376, 1939, as amended by Chapter 297, Acts of the 51st Legislature". The reference to "Chapter 297" probably should read "Chapter 497".

Acts 1967, 60th Leg., p. 572, ch. 260, which amended various sections of this article, provided in sections 6 and 7:

"Sec. 6. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of conflict only.

"Sec. 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remaining provisions 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."

**CHAPTER FOUR. SANITARY CODE**

Art. 4477. Sanitary Code.

**QUARANTINE AND DISINFECTION**

Rule 1 to 33. Repealed.

**VITAL STATISTICS**

- 34. Repealed.
- 34a. State Department of Health.
- 35. Repealed.
- 35a. State Health Officer and Registrar of Vital Statistics.
- 36. Repealed.
- 36a. Registration districts.
- 37. Repealed.
- 37a. Local Registrar.
- 38. Repealed.
- 38a. Dead bodies.
- 39. Repealed.
- 39a. Report of fetal death.
- 40. Repealed.
- 40a. Death certificates.
- 41. Repealed.
- 41a. Death without medical attendance.
- 42. Repealed.

**Rule**

- 42a. Undertaker's certificate.
- 43. Repealed.
- 43a. Form of burial-transit permit.
- 44. Repealed.
- 44a. Report as to interment.
- 45. Repealed.
- 45a. Births.
- 46. Repealed.
- 46a. Birth certificates.
- 47. Repealed.
- 47a. Form and contents of birth certificates; supplementary certificate; certificates of adoption, annulment and revocation.
- 47b. "For Medical and Health Use Only" section of birth certificate.
- 48 to 50. Repealed.
- 50a. Record of inmates of hospitals and institutions.
- 50b. Marriage license application.
- 50c. Reporting of divorces and annulments of marriage.
- 51. Repealed.
- 51a. Blanks and registration forms; index of births and deaths; records; delayed registrations; judicial procedure to establish facts of birth.
- 52. Repealed.
- 52a. Duties of local registrars.
- 53. Repealed.
- 53a. Fees.
- 54. Repealed.
- 54a. Copies of records.
- 55. Repealed.
- 55a. Reports of violations of Act.
- 56, 57. Repealed.

**DEPOTS, COACHES AND SLEEPERS**

- 58 to 76. Repealed.

**TRANSPORTATION OF DEAD BODIES**

- 77 to 86. Repealed.

**Art.**

- 4477a, 4477b. Repealed.
- 4477c. Penalty for Birth or Death Information Violations.
- 4477d. Repealed.
- 4477e. Spanish Surname Information on Vital Statistics Records.
- 4477f. Application for Copy; Hearing.

**Art. 4477. Sanitary Code**

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

**QUARANTINE AND DISINFECTION**

**Rules 1 to 33.** Repealed by Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983.

**VITAL STATISTICS**

**Rule 34.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 34a. State Department of Health.**—The State Department of Health shall have charge of

the registration of vital statistics; shall establish a Bureau of Vital Statistics with suitable offices properly equipped for the preservation of its official records; shall install a state-wide system of vital statistics; shall make and may amend necessary regulations, give instructions and prescribe forms for collecting, recording, transcribing, compiling and preserving vital statistics; shall require the enforcement of the Vital Statistics Law and the regulations made pursuant thereto; shall in time of emergency be authorized to suspend any part or parts of the Vital Statistics Law which tend to hinder or impede uniform and efficient registration of vital events and substitute therefor emergency regulations designed to expedite such registration under disaster conditions; and shall from time to time recommend any additional legislation that may be necessary for this purpose.

**Rule 35.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 35a. State Health Officer and Registrar of Vital Statistics.**—The State Health Officer shall have general supervision over the central Bureau of Vital Statistics, and shall appoint the director of the Bureau of Vital Statistics, who shall be a competent vital statistician, and who shall be the State Registrar of Vital Statistics.

**Rule 36.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 36a. Registration districts.**—For the purposes of this Act the State shall be divided into primary registration districts as follows: Each justice of the peace precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a primary registration district, provided the State Board of Health may combine two (2) or more registration districts, or may divide a primary registration district into two (2) or more parts, so as to facilitate registration, and in the justice of the peace precinct, the justice of the peace shall be local registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census, the city clerk or city secretary shall be the local registrar of births and deaths.

It is hereby declared to be the duty of the justice of the peace in the justice of the peace precinct, and the city clerk or city secretary in the city of two thousand, five hundred (2,500) or more population to secure a complete record of each birth, death, and fetal death that occurs within their respective jurisdictions.

**Rule 37.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 37a. Local Registrar.**—Every Local Registrar shall select a Deputy-Registrar to the end that at all times a Registrar may be available for the registration of births and deaths, and all reports

made to the Bureau of Vital Statistics shall be over the signature of the Local Registrar.

In any district where the Local Registrar fails or refuses to secure the registration of all births and deaths in his district, or neglects to discharge the duties of his office as set forth in this Act, the County Judge or the City Mayor, as the case may be, shall appoint a new Local Registrar of Births and Deaths for that District and shall send the name and mailing address of the person appointed as the Local Registrar to the State Registrar.

**Rule 38.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 38a. Dead bodies.**—(a) When a death or fetal death occurs outside this State, a burial-transit permit issued in accordance with the law and regulations in force where the death or fetal death occurred shall authorize the transportation of the body into or through this State, and further such permit shall be accepted by any cemetery or crematory as authorization for burial, cremation, or other disposal of the body in this State.

(b) The State Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies, to such extent as may be reasonable and necessary for the protection of the public health and safety.

**Rule 39.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 39a. Report of fetal death.**—Subject to the regulations of the State Department of Health, a certificate of each fetal death which occurs in this state shall be filed with the local registrar of the district in which the fetal death occurred, and if the place of fetal death is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of fetal death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of fetal death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by the person best qualified to supply them; (b) Except as otherwise provided, the medical certification shall be made by the person in attendance at the fetal death. Fetal deaths occurring without attendance shall be treated as deaths without medical attendance as provided in Rule 41a, Article 4477, Revised Civil Statutes of Texas. The certificates of fetal death shall be filed in the same manner as a certificate of death.

**Rule 40.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 40a. Death certificates.**—Not later than the 10th day after the date of each death that occurs in this state, a certificate of death shall be filed with the local registrar of the district in which the death occurred, and if the place of death is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by a competent person having knowledge of the facts, (b) Except as otherwise provided, the medical certification shall be made by the physician, if any, last in attendance on the deceased. If the deceased shall have rendered service in any war, campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or who at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any war, campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the funeral director or person having charge of the disposition of the body shall show the following facts on the reverse side of the death certificate: the organization in which service was rendered, the serial number taken from the discharge papers or the adjusted service certificate, the name and post office address of the next of kin or next friend of the deceased. And provided that when such a death certificate is filed, the local registrar shall immediately notify the nearest Congressionally Chartered Veteran Organizations. And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller.

**Rule 41.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 41a. Death without medical attendance.**—In case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification; provided that when the local health officer is not a physician, or when there is no such official, and in

such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided further, that if the registrar or the local health officer, as the case may be, as<sup>1</sup> in doubt as to the cause of death, or if the case be one otherwise properly referable to a Justice of the Peace for inquest into the cause of death, he shall then refer the case to a proper Justice of the Peace for inquest, investigation, and certification. And the Justice of the Peace or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death shall state in his certificate the name of the disease causing death, or, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death; provided, further, that when a death of any person not a resident of that district, or unknown in that district, occurs, the Justice of the Peace or person acting as coroner shall secure the finger prints of the deceased and the following physical marks of identification:

- (a) Color of hair
- (b) Color of eyes
- (c) Height
- (d) Weight
- (e) Deformities
- (f) Tattoo marks

(g) Such other facts as set forth by the State Board of Health as will be of assistance in identifying the deceased.

The finger prints and the physical identification marks shall be placed on a form prescribed by the State Board of Health, and shall be attached to the death certificate. The State Registrar shall forward to the State Department of Public Safety the report showing the finger prints and other physical marks of identification.

<sup>1</sup> So in enrolled bill; probably should read "is".

**Rule 42.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 42a. Undertaker's certificate.**—That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred; provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or

coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 and 8.<sup>1</sup> And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar.

<sup>1</sup> Rules 40a, 41a.

**Rule 43.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 43a. Form of burial-transit permit.**—The standard burial-transit permit shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health.

**Rule 44.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 44a. Report as to interment.**—The person in charge of any premises on which interments are made shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the undertaker and such other information as the state registrar may direct; which record shall at all times be open to official inspection.

**Rule 45.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 45a. Births.**—That the birth of each and every child born in this state shall be registered as hereinafter provided.

**Rule 46.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 46a. Birth certificates.**—That within five days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Department of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 of this Act.<sup>1</sup>

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth.

In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in Section 14 of this Act, it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14, and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar.

<sup>1</sup> Rule 47a of this article.

**Rule 47.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 47a. Form and contents of birth certificates; supplementary certificate; certificates of adoption, annulment and revocation.**—(a) The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the Texas Department of Health. The father of an illegitimate child may acknowledge paternity by executing an affidavit acknowledging paternity according to the requirements of Section 13.22, Family Code. The affidavit may be filed with the Texas Department of Health. If so filed, the affidavit shall be maintained with the original birth record, but shall not become a part thereof. Once filed, such affidavit becomes privileged, and shall be available only to a court of competent jurisdiction, in which a suit of paternity respecting the subject of the affidavit is pending, on motion of the trial judge. Any person may apply to the Texas Department of Health to have any indication of illegitimacy removed from his or her birth record, including separate medical records and the paternity affidavit. The Department shall charge a fee of \$10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The items on the birth, death, or fetal death certificate of a child relating to the father of the child shall be completed to show the name and other related information about the father only if:

(1) the mother of the child was married to the father at the time of conception or birth of the child or at some point after birth; or

(2) if the paternity of the child was established by a decree issued by a court of competent jurisdiction. The Texas Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births

in connection with programs to notify the mothers of young children about health needs for the children.

(b) Subject to the regulations of the Texas Department of Health, any person: (1) who becomes the legitimate child of its father by the subsequent marriage of its parents; (2) whose parentage has been determined by a court of competent jurisdiction; or (3) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted. The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the Texas Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the Texas Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of the court that rendered the decree of adoption, notwithstanding the venue provisions of Article 1995, Revised Statutes, except as hereinafter provided.

(c) A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is granted. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the Texas Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

(d) Subsections (b) and (c) of this section may not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property. Provided further, that a person seeking access

to the original certificate of birth and the documents filed upon which the supplementary certificate is based shall be entitled to know the identity and location of the court that granted the adoption. Provided further, that if such information is not on file, then the director of the Bureau of Vital Statistics shall provide such person with an affidavit stating that the state registrar does not have on file information regarding the identity and location of the court that granted the adoption in question. Such person may then present such affidavit to any court of competent jurisdiction in connection with his or her application to gain access to the original birth certificate, and that court shall have jurisdiction to order such access, notwithstanding anything to the contrary in this article.

(e) Subject to the regulations of the Texas Department of Health, any person whose name has been changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the Texas Department of Health may by regulation prescribe.

**Rule 47b. "For Medical and Health Use Only" section of birth certificate.**—The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

**Rule 48.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 48a.** Repealed by Acts 1983, 68th Leg., p. 3812, ch. 588, § 7, eff. Aug. 29, 1983.

**Rule 49.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 49a.** Repealed by Acts 1983, 68th Leg., p. 2020, ch. 365, § 21, eff. Sept. 1, 1983.

**Rule 50.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 50a. Record of inmates of hospitals and institutions.**—That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this Act,<sup>1</sup> which are required in the forms of the certificates provided for by this Act, as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do

so; and when they can not be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 50b. Marriage license application.**—(a) After January 1, 1966, the county clerk in each county in this state shall file without fee a copy of each completed application for marriage license with the Bureau of Vital Statistics of the State Department of Health within 90 days after the date of the application.

(b) The Bureau of Vital Statistics shall establish and maintain a consolidated state-wide alphabetical index of all applications for a marriage license based upon the names of both parties. The state-wide index does not take the place of the indexes required in each county.

(b-1) After December 31, 1969, the county clerk of each county shall transmit to the Bureau of Vital Statistics, within 90 days after execution, a copy of each declaration of informal marriage executed under Section 1.92 of the Family Code. The Bureau shall incorporate the information in each declaration in the state-wide alphabetical index established under Subsection (b) of this section, and the information shall be treated as provided in Subsection (c) of this section.

(c) The Bureau of Vital Statistics shall upon request furnish any information it has on record pertaining to the marriage of any person, but the Bureau shall not issue any certificate or certified copies of the information. The Bureau may charge a fee of \$2 for the information it gives relating to any person under this Section. All fees collected under this Section shall be deposited in the State Treasury to the credit of the Vital Statistics Fund.

**Rule 50c. Reporting of divorces and annulments of marriage.**—(a) The State Bureau of Vital Statistics shall adopt a form for the reporting of divorces and annulments of marriage, which form shall provide for the following items of information:

(1) the full names of the parties, their usual residences, their ages, their places of birth, their color or race, and the number of children, date and place of marriage.

(2) the date of the granting of the divorce or annulment of marriage, the style and docket number of the case, and the court in which the divorce or annulment of marriage was granted.

(b) The State Bureau of Vital Statistics shall furnish sufficient copies of the form to each district court clerk.

(c) When a final judgment for a divorce or annulment of marriage is presented to the court for a final decree the attorney shall enter the above-listed items of information regarding the parties on the report of divorce or annulment of marriage form prescribed by the State Bureau of Vital Statistics,



and such form shall be submitted to the district court clerk with the final judgment.

(d) Before the 10th of each month the district court clerk shall file with the State Bureau of Vital Statistics a completed form for each divorce or annulment of marriage granted in the district court during the preceding calendar month.

(e) For each report of divorce or annulment of marriage filed with the State Bureau of Vital Statistics, the district court clerk shall receive a fee of \$1.00 which is to be taxed as costs in each case in which a divorce or annulment of marriage is granted.

(f) The State Bureau of Vital Statistics shall establish and maintain a consolidated statewide alphabetical index of all divorce and annulment of marriage forms based upon the names of both parties.

(g) The state registrar shall, upon request, furnish to any applicant any information he has on record pertaining to any divorce or annulment of marriage, but he shall not issue certified copies of reports of divorces or annulments of marriages. The state registrar shall charge the applicant a fee of \$2.00 for searching the statewide index of divorces and annulments of marriages, and all fees collected under this section shall be deposited in the state treasury to the credit of the Vital Statistics Fund.

(h) The provisions of this section shall apply to all petitions for divorce or annulment of marriage filed on and after January 1, 1968.

**Rule 51.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 51a. Blanks and registration forms; index of births and deaths; records; delayed registrations; judicial procedure to establish facts of birth.—A.** The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and fetal deaths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or fu-

neral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or fetal death upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or fetal death shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or fetal death. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. When the State Registrar receives the death certificate of a person under 18 years of age whose birth has been registered in this state, the State Registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead and shall provide copies of the death certificate to the county clerk of the county in which the decedent was born and to the local registrar of the district in which the decedent was born. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar.

A-1. If an amending certificate of birth filed under Subsection A of this section completes or corrects information in a person's original or supplementary record of birth concerning the person's sex or color or race, then on request of that person or his legal representative, the State Registrar of Vital Statistics, local registrar, or other person who issues birth certificates shall issue a corrected or completed certificate of birth that incorporates the necessary changes in one document instead of issuing a copy of the original or supplementary certificate of birth with an amending certificate attached. The Texas Department of Health shall prescribe the form for certificates issued under this subsection.

A-2. A person whose certificate of birth was amended before the effective date of Subsection A-1 of this section to correct or complete information concerning sex or color or race, or such person's legal representative, may request a corrected or completed certificate of birth under Subsection A-1.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

1. An application to file a delayed certificate of the birth of a person born in this state, and not previously registered as provided by law, shall be made to the State Registrar of Vital Statistics.

2. When the birth occurred more than five days but less than one year prior to the application for registration, the birth may be registered on a certificate of live birth and be submitted for filing to the local registrar of the district in which the birth occurred. The local registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the local registrar. A statement may be required to explain the delay in filing the certificate.

3. When the birth occurred one year but less than four years prior to the application for registration, the birth shall be registered on a form prescribed by the State Registrar of Vital Statistics and shall be submitted to him for filing. The State Registrar may accept the certificate for filing when such evidence is submitted to substantiate the facts of birth as may be required by the State Registrar. A statement may be required to explain the delay in filing the certificate. Each certificate thus filed shall be marked "Delayed."

4. When the birth occurred four or more years prior to the application for registration, the certificate of birth shall be prepared on a form entitled "Delayed Certificate of Birth," which form shall be prescribed and furnished by the State Department of Health. The information provided on such registration form shall be subscribed and sworn to by the person whose birth is to be registered before an official authorized to administer oaths. When such person is not competent to swear to this information, it shall be subscribed and sworn to by a parent, legal guardian, or the representative of such person.

a. The form shall provide for the name and sex of the person whose birth is to be registered, and place and date of birth, the names of the parents, and their birthplaces; and such other information as may be required by the State Registrar.

b. When the certificate is submitted, the State Registrar shall add a description of each document submitted in support of the delayed registration including the title or kind of document; the name and address of the affiant if the document is an affidavit of personal knowledge, or of the custodian, if the document is a record of a business entry or a certified copy thereof; the date of the original entry and the date of the certified copy; and

c. The certification of the State Registrar shall be added to those certificates accepted for filing. The State Registrar shall issue certified copies of such certificates in accordance with the provisions of Section 21 of this Act.<sup>1</sup>

5. The State Registrar shall accept the registration if the applicant was born in this state and if the applicant's statement of date and place of birth and parentage is established to the satisfaction of the State Registrar by the following evidence:

a. If the birth occurred four years but less than fifteen years prior to the date of filing:

(1) The statement of date and place of birth shall be supported by at least two documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

b. If the birth occurred fifteen or more years before the date of filing:

(1) The statement of date and place of birth shall be supported by at least three documents, only one of which may be an affidavit of personal knowledge.

(2) The statement of parentage shall be supported by at least one document, which may be one of the above documents.

(3) Any document accepted as evidence, other than an affidavit of personal knowledge, shall be at least five years old. A copy or abstract of such document may be accepted if certified as true and correct by the custodian of the document.

6. When an applicant does not submit the documentary evidence as specified above, or when the State Registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence, the State Registrar shall not register the delayed certificate, but shall furnish the applicant with a statement of the reasons for such action, and shall advise the applicant of his right to appeal to the county court for probate matters of the county of birth as provided in Subsection C of this Section.

7. A certificate of birth registered one year or more after the date of birth shall show on its face the date of the registration and shall be marked "Delayed."

8. If an application for a delayed registration of birth is not actively prosecuted, the State Registrar shall return the application, supporting evidence, and any related instruments to the applicant or make such other disposition thereof as the State Registrar may deem appropriate.

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled to a fee not to exceed Fifteen Dollars (\$15.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

C. Judicial Procedure to Establish Facts of Birth.

1. If a delayed certificate of birth is not accepted by the State Registrar under the provisions of Subsection B of this Section, a petition may be filed

with the county court for probate matters of the county in which the birth occurred for an order establishing a record of the date of birth, place of birth, and parentage of the person whose birth is to be registered.

2. Such petition shall be made on a form prescribed and furnished by the State Department of Health.

3. The petition shall be accompanied by a statement of the State Registrar issued in accordance with Subsection B(6) of this Section and all documentary evidence which was submitted to the State Registrar in support of such registration.

4. If the court, from the evidence presented, finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the date and place of birth and parentage and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the State Department of Health to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

5. The fees of the court shall be the same as those set out in Articles 3925 and 3930, Vernon's Texas Civil Statutes.

6. The clerks of the courts shall forward each such order to the State Registrar within seven days after it was entered. Such order shall be registered by the State Registrar and shall constitute the record of birth, from which copies may be issued in accordance with the provisions of Section 21 of this Act.<sup>1</sup>

#### D. Delayed Registration of Deaths.

Any person wishing to file the record of any death occurring in Texas and not previously registered may submit to the county court for probate matters of the county in which the death occurred a record of that death, written on the adopted form of death certificate. The certificate shall be substantiated by the affidavit of the physician last in attendance upon the deceased, or the funeral director who buried the body. When the affidavit of the physician or funeral director cannot be secured, the certificate shall be supported by:

(a) the affidavit of some person who was acquainted with the facts surrounding the death, at the time the death occurred; and

(b) the affidavit of some person who was acquainted with the facts surrounding the death, and who is not related to the deceased by blood or marriage. Provided that when application is made as provided in this paragraph, a fee of One Dollar (\$1.00) shall be collected by the court, Fifty Cents (50¢) of which shall be retained by the court, and Fifty Cents (50¢) of which shall be retained by the clerk of the court for recording said death certificate. Within seven (7) days after the certificate has

been accepted and ordered filed by the court, the clerk of that court shall forward the certificate to the State Bureau of Vital Statistics with an order from the court to the State Registrar that the certificate be accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act.<sup>1</sup> Such certified copies shall be prima facie evidence in all courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose.

<sup>1</sup> Rule 54a of this article.

*Repeal of fees provided for county clerks in laws, or parts of laws, conflicting with the provisions of article 3930 (including subsec. D. of this rule), see note under article 3930.*

**Rule 52.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 52a. Duties of local registrars.**—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,<sup>1</sup> to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any

month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

When the state registrar notifies the county clerk of the county in which the decedent was born and the local registrar of the district in which the decedent was born, the county clerk and the local registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead.

<sup>1</sup> Rule 51a of this article.

**Rule 53.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 53a. Fees.**—That each local registrar shall be paid the sum of Fifty Cents (50¢) for each birth, death, and fetal death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the State Bureau of Vital Statistics, as required by this Act, unless such local registrar shall be acting as registrar in an incorporated city where the compensation of the registrar is otherwise fixed by city ordinance.

The State Registrar shall annually certify to the county commissioners court or county auditor, as the case may be, the number of birth, death and fetal death certificates filed by each local registrar at the rate fixed herein, and provided that the State Registrar may render such statements monthly or quarterly, at the discretion of the State Board of Health, and the commissioners court or county auditor, as the case may be, shall audit such statement and the county treasurer shall pay such fees as are approved by the commissioners court or the county auditor, at the time such statement is issued.

And provided further, that the justice of the peace, city clerk or secretary, and the appointed local registrar shall, on or before the 10th day of each month, submit to the commissioners court or county auditor, as the case may be, a true and accurate copy of each birth, death, and fetal death certificate filed with him during the preceding month, and such copies shall bear his file date and signature and shall be deposited in the county clerk's office, provided, however, that this provision shall not apply to cities having an ordinance requiring that true and accurate copies of each birth, death, and fetal death certificate be permanently filed in the office of the city registrar. The county clerk shall be paid for indexing and preserving such records, such compensation as may be agreed upon by the commissioners court.

**Rule 54.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 54a. Copies of records.**—(a) Subject to the regulations of the Texas Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the

provisions of this Act.<sup>1</sup> The State Registrar is entitled to a fee of Five Dollars (\$5.00) for each copy of a birth record or part of a record and Five Dollars (\$5.00) for the first copy of a death record and Two Dollars (\$2.00) for each additional copy of the record requested by the applicant in a single request. The fee is to be paid by the applicant. A local registrar who issues certified copies of death certificates shall charge the same fee as is charged by the State Registrar. Certified copies shall be issued only in the form approved by the Texas Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Five Dollars (\$5.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the Texas Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

(b) The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue

a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

(c) The State Registrar shall be entitled to a fee of Ten Dollars (\$10.00) for filing a new birth certificate based on adoption, a fee of Ten Dollars (\$10.00) for filing a new birth certificate based on legitimation or paternity determination, a fee of Seven Dollars (\$7.00) for filing an amendment to a birth certificate based on a court order of change of name, and a fee of Seven Dollars (\$7.00) for filing an amendment to complete or correct a birth or death certificate, said fees to be paid by the applicants.

<sup>1</sup> Rules 34a to 55a of this article and art. 4477c.

**Rule 55.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

**Rule 55a. Reports of violations of Act.**—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act in his registration district, under the supervision and direction of the state registrar. The local registrar shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the appropriate district or county attorney for prosecution, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the district or county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act.

**Rules 56 and 57.** Repealed by Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 24.

#### DEPOTS, COACHES AND SLEEPERS

**Rules 58 to 76.** Repealed by Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983.

#### TRANSPORTATION OF DEAD BODIES

**Rules 77 to 86.** Repealed by Acts 1951, 52nd Leg., p. 128, ch. 79, § 5.

[Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, §§ 1 to 24. Amended by Acts 1929, 41st Leg., 1st C.S., p. 7, ch. 4, §§ 1 to 5; Acts 1933, 43rd Leg., p. 57, ch. 28; Acts 1935, 44th Leg., p. 441, ch. 179, § 1; Acts 1937, 45th Leg., p. 1289, ch. 480, § 1; Acts 1939, 46th Leg., p. 343, §§ 1, 2; Acts 1939, 46th Leg., p. 346, §§ 1, 2; Acts 1941, 47th Leg., p. 782, ch. 486, §§ 1, 2; Acts 1941, 47th Leg., p. 850, ch. 525, § 1; Acts 1941, 47th Leg., p. 933, ch. 564, § 1; Acts 1943, 48th Leg., p. 112, ch. 83, § 1; Acts 1943, 48th Leg., p. 289, ch. 184, § 1; Acts 1945, 49th Leg., p. 618, ch. 354, § 1; Acts 1947, 50th Leg., p. 145, ch. 369, § 6; Acts 1949, 51st Leg., p. 755, ch. 405, § 1; Acts 1949, 51st Leg., p. 777, ch. 417, § 1; Acts 1951, 52nd Leg., p. 128, ch. 79, §§ 1 to 5; Acts 1951, 52nd Leg., p. 145, ch. 87, §§ 1 to 4; Acts 1951, 52nd Leg., p. 355, ch. 223, §§ 1, 2; Acts 1957, 55th Leg., p. 256, ch. 120, §§ 1, 2; Acts 1957, 55th Leg., p. 532, ch. 249, § 1; Acts 1959, 56th Leg., p. 379, ch. 181, §§ 22 to 27; Acts 1959, 56th Leg., p. 640, ch. 293, § 1; Acts 1959, 56th Leg., p. 787, ch. 359, § 1; Acts 1961, 57th Leg., p. 163, ch. 84, § 1; Acts 1965, 59th Leg., p. 1151, ch. 543, § 2; Acts 1967, 60th Leg., p. 560, ch. 247, § 1; Acts 1969, 61st Leg., p. 815, ch. 209, §§ 1, 2; Acts 1969, 61st Leg., p. 2707, ch. 888, § 4; Acts 1971, 62nd Leg., p. 878, ch. 111, § 1; Acts 1973, 63rd Leg., p. 812, ch. 367, § 1, eff. June 12, 1973; Acts 1975, 64th Leg., p. 117, ch. 54, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 30, ch. 14, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 316, ch. 149, §§ 2 and 3, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1689, ch. 669, §§ 1 and 2, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 2089, ch. 837, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 89, ch. 54, §§ 1, 2, eff. April 19, 1979; Acts 1979, 66th Leg., p. 1135, ch. 543, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 504, ch. 211, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 824, ch. 295, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 1811, ch. 400, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 381, ch. 81, §§ 12(f) to (i), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 1700, ch. 322, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 1785, ch. 342, § 5, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 3806, ch. 588, §§ 1 to 6, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4797, ch. 842, §§ 1, 2, eff. June 19, 1983.]

Acts 1977, 65th Leg., p. 1689, ch. 669, which by §§ 1 and 2 amended subsec. B, par. 9 of rule 51a and rule 54a of this article, provided in § 3: "This Act takes effect January 1, 1978."

**Art. 4477a.** Repealed by Acts 1981, 67th Leg., p. 504, ch. 211, § 1, eff. Aug. 31, 1981

See, now, art. 4477, rule 51a, subsecs. A-1, A-2.

**Art. 4477b.** Repealed by Acts 1979, 66th Leg., p. 317, ch. 146, § 2, eff. May 11, 1979

**Art. 4477c. Penalty for Birth or Death Information Violations**

#### Definitions

**Sec. 1.** As used in this Act, the following words or phrases have the meaning indicated:

(a) "Person" means an individual, corporation, association, or partnership;

(b) "Vital Statistics Act" means Rules 34a to 55a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended;

(c) "State registrar" means the director of the Bureau of Vital Statistics;

(d) "Local registrar" means a person serving as registrar of vital statistics in a primary registration district as specified in Rule 36a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended, or a combination of primary registration districts.

#### False Entries; Fraudulent Records

Sec. 2. (a) A person commits an offense if he:

(1) intentionally or knowingly makes any false statement in a certificate, record, or report required by the Vital Statistics Act, or in an application for an amendment thereof, or in an application for a delayed certificate of birth or death, or in an application for a certified copy of a vital record, or intentionally or knowingly supplies false information or intentionally or knowingly creates any false record to be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by the Vital Statistics Act or a certified copy of such certificate, record, or report;

(3) intentionally or knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by the Vital Statistics Act or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased.

(b) An offense under this section is a felony of the third degree.

#### Failure to Furnish Required Information, File Required Certificates, or Perform Required Duties

Sec. 3. (a) A person commits an offense if he:

(1) refuses or fails to furnish correctly any information in his possession affecting any certificate or record required by the Vital Statistics Act;

(2) being required by the Vital Statistics Act to fill out a certificate of birth or death and file 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;

(3) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by the Vital Statistics Act and by the instructions and directions of the state registrar thereunder.

(b) An offense under this section is a Class C misdemeanor.

#### Construction with Penal Code

Sec. 4. If the conduct of a person, which constitutes an offense under this Act, also constitutes an offense defined by the Penal Code of the State of Texas, as amended, the provisions of this Act shall not be applicable and the Penal Code shall govern.

[Acts 1927, 40th Leg., 1st C.S., p. 116, ch. 41, § 22. Amended by Acts 1973, 63rd Leg., p. 814, ch. 367, § 2, eff. June 12, 1973; Acts 1979, 66th Leg., p. 316, ch. 146, § 1, eff. May 11, 1979.]

**Art. 4477d. Repealed by Acts 1983, 68th Leg., p. 1141, ch. 255, § 2, eff. Sept. 1, 1983**

See, now, art. 4419b-1, § 6.01 et seq.

**Art. 4477e. Spanish Surname Information on Vital Statistics Records**

#### Purpose

Sec. 1. The purpose of this Act is to enable this state to participate in a study being conducted by a group of states in the Southwest to obtain information about the birth rates and mortality patterns of persons with Spanish surnames and to implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

#### Revision of Vital Statistic Forms

Sec. 2. In the next official revision of the prescribed forms for birth certificates, fetal death certificates, and death certificates, the Texas Department of Health shall include the following inquiries and instructions:

(A) on a birth certificate or fetal death certificate:

"(1) Is father of Spanish origin?"

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

"(3) Is mother of Spanish origin?"

"(4) If yes, specify Mexican, Cuban, Puerto Rican, etc."

(B) on a death certificate:

"(1) Was the decedent of Spanish origin?"

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc."

[Acts 1979, 66th Leg., p. 1112, ch. 529, eff. Aug. 27, 1979.]

**Art. 4477f. Application for Copy; Hearing**

#### Definitions

Sec. 1. In this article:

(1) "Person" means an individual, corporation, or association.

(2) "Vital Statistics Act" means Sections 1-21 and 23, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rules 34a-55a, Article 4477, Vernon's Texas Civil Statutes), Section 22, Chapter 41, Acts of the 40th Legislature, 1st Called Session,

1927 (Article 4477c, Vernon's Texas Civil Statutes), and Chapter 529, Acts of the 66th Legislature, Regular Session, 1979 (Article 4477e, Vernon's Texas Civil Statutes).

(3) "Bureau" means the bureau of vital statistics.

(4) "State registrar" means the chief of the bureau.

(5) "Department" means the Texas Department of Health.

(6) "Copy" means a reproduction of a record made by any means.

(7) "Local registration official" means a county clerk or a person authorized by the Vital Statistics Act to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

#### Addendum

Sec. 2. If the state registrar receives information that may contradict the information shown in a birth, death, or fetal death record required to be maintained in the bureau, the state registrar shall attach an addendum to the original record setting out the conflicting information. The state registrar shall instruct each local registration official in whose jurisdiction the birth, death, or fetal death described in the record occurred, to attach an identical addendum to any duplicate of the record in the custody of the official.

#### Refusal of Application for Copy

Sec. 3. If the bureau or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum was attached as prescribed by Section 2 of this article, the application shall be sent immediately to the state registrar. After an examination of the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

#### Notification of Refusal

Sec. 4. If the state registrar refuses to issue the certified copy as prescribed by Section 3 of this article, the state registrar shall notify the applicant of the refusal not later than the 10th day after the day on which the state registrar received the application. The notification shall state the reason for the refusal.

#### Hearing

Sec. 5. If the state registrar refuses to issue the certified copy as prescribed by Section 3 of this article, the department shall give the applicant an opportunity for a hearing before the department to determine if there is substantial evidence to support the state registrar's action. The department shall hold the hearing in accordance with the department's formal hearing rules and the applicable provisions

of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Decision

Sec. 6. When the department makes a final decision after a hearing held as prescribed by Section 5 of this article, the state registrar shall notify the local officials who have duplicates of the questioned record of the results of the hearing. The department may order the officials to issue or refuse to issue certified copies of the record.

#### Powers

Sec. 7. A duty imposed on or a power granted to the state registrar in this article may be performed by a designee of the state registrar.

[Acts 1983, 68th Leg., p. 4801, ch. 842, § 3, eff. June 19, 1983.]

### CHAPTER FOUR A. SANITATION AND HEALTH PROTECTION

#### Art.

- 4477-1. Minimum Standards of Sanitation and Health Protection Measures.
- 4477-1a. Sewage Discharge into Open Ponds; Municipal Corporations of 600,000 to 900,000.
- 4477-1b. Sewage Discharge into Open Ponds; San Antonio.
- 4477-2. Mosquito Control Districts.
- 4477-3. Professional Sanitarians.
- 4477-4. Repealed.
- 4477-5. Texas Clean Air Act.
- 4477-5a. Clean Air Financing Act.
- 4477-5b. Air Pollution.
- 4477-6. Renderers' Licensing Act.
- 4477-6a. Rabies Control Act of 1981.
- 4477-6b. Animal Shelters.
- 4477-7. Solid Waste Disposal Act.
- 4477-7a. Solid Waste Resource Recovery Financing Act.
- 4477-7b. Garbage Reclamation Project Operated by City or Town.
- 4477-7c. Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.
- 4477-7d. Home-Rule City Contracts Relating to Solid Waste Management; Duration.
- 4477-8. County Solid Waste Control Act.
- 4477-9. Repealed.
- 4477-9a. Litter Abatement Act.
- 4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More.

#### Art. 4477-1. Minimum Standards of Sanitation and Health Protection Measures

##### Definitions

Sec. 1. (a) The following terms wherever found in this Act, unless otherwise defined, shall be understood to mean:

(b) APPROVED PRIVY: Any unit for the disposal of human excreta constructed and maintained in conformity with the specifications of the State Department of Health.

(c) **COMMON CARRIER:** Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service. The term "Common Carrier" shall also include any vehicle employed in such transportation service.

(d) **COMMON DRINKING CUP:** Any receptacle used for serving water or other beverage to two or more persons in any public place or any establishment catering to the public; provided this term shall not apply to receptacles properly washed and sterilized after such service.

(e) **DRINKING WATER:** All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleansing of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(f) **HUMAN EXCRETA:** The urinary and bowel discharges of any human being.

(g) **NUISANCE:** Any object, place or condition which constitutes a possible and probable medium of transmission of disease to or between human beings or any other object, place or condition which may be specifically declared by this Act to be a nuisance.

(h) **PUBLIC HEALTH ENGINEER:** Any engineer who has been duly licensed to practice as a registered professional engineer and who is further versed in the sciences of water purification, sewage, treatment, and in the public health principles of conditioning the environment.

(i) **SANITARIAN:** Any trained worker who has a practical knowledge of sanitation as it pertains to disease control.

(j) **SANITARY:** Any condition of good order and cleanliness which precludes the probability of disease transmission.

(k) **SEPTIC TANK:** Any covered water-tight tank, designed for the treatment of sewage.

(l) **SEWERAGE PLANT OPERATOR:** Any person, trained in the collection, treatment, or disposal of sewage who has a practical working knowledge of the mechanics, maintenance and operating principles of the collection, treatment, and disposal of sewage.

(m) **SWIMMING POOL:** Any body of water maintained expressly for public recreational purposes, swimming and similar aquatic sports.

(n) **TOILET:** The hopper device for the deposit and discharge of human excreta into a water carriage system.

(o) **TOURIST COURT:** Any camping place or group of two or more mobile or permanent housing

units operated as rental property for the use of transient trade or any or all trailer units housing human beings.

(p) **WATER PLANT OPERATOR:** Any person trained in the purification or distribution of a public water supply who has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification and who is capable of conducting and maintaining the purification processes in an efficient manner.

(q) **WATER SUPPLY:** Any source or reservoir of water distributed to and used for human consumption.

#### Nuisances

Sec. 2. (a) Any and all of the following conditions are hereby specifically declared to be nuisances dangerous to the public health;

(b) Any condition or place allowed to exist in populous areas which constitutes a breeding place for flies;

(c) Any spoiled or diseased meats intended for human consumption;

(d) Any restaurant, food market, bakery, or other place of business or any vehicle where food is prepared, packed, stored, transported, sold or served to the public which is not constantly maintained in a sanitary condition;

(e) Any place, condition or building controlled or operated by any governmental agency, state or local, which is not maintained in a sanitary condition;

(f) All sewage, human excreta, waste water, garbage, or other organic wastes deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in the transmission of disease to or between any person or persons;

(g) Any vehicle or container used in the transportation of garbage, human excreta, or other organic material which is defective and allows leakage or spilling of contents;

(h) Any collection of water in which mosquitoes are breeding within the limits of any city, town or village;

(i) Any condition which may be proven to injuriously affect the public health and which may directly or indirectly result from the operations of any bone boiling, fat rendering, tallow or soap works or other similar establishments;

(j) Any place or condition harboring rats in populous areas;

(k) The presence of ectoparasites (bedbugs, lice, mites, et cetera) suspected to be carriers of disease in any place where sleeping accommodations are offered to the public;

(l) The maintenance of any open surface privy or of any overflowing septic tank, the contents of either of which may be accessible to flies.



**Abatement of Nuisances**

Sec. 3. (a) Every person, possessing any place in or on which there is a nuisance shall, as soon as its presence comes to his knowledge, proceed at once and continue to abate the said nuisance.

(b) Every local health officer who receives information and proof of the existence of a nuisance within his jurisdiction shall issue a written notice to any person responsible for the said nuisance ordering the abatement of same. He shall at the same time send a copy of the said notice to the local city, county, or district attorney. Such notice shall specify the nature of the nuisance and shall designate a reasonable time within which such abatement shall be accomplished. In the event such notice is not complied with within the specified time, the local prosecuting attorney who received the copy of the original notice shall be so advised by the local health officer, and he shall immediately institute proceedings for the abatement thereof.

**Garbage and Refuse**

Sec. 4. (a) All premises occupied or used for residential, business or pleasure purposes shall be kept in a sanitary condition.

(b) No kitchen waste, laundry waste, or sewage shall be allowed to accumulate, discharge or flow into any public place, gutter, street, or highway.

(c) No waste products, offal, polluting material, spent chemicals, liquors, brines or other wastes of any kind shall be stored, deposited or disposed of in any manner as may cause the pollution of the surrounding land or the contamination of the well waters to the extent of endangering the public health.

(d) All persons, firms, corporations or municipalities using or permitting the use of any land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited thereon and for the disposition of other waste materials and rubbish to the extent of eliminating any and all possibility that such materials and rubbish might constitute breeding places for insects, rodents or flies.

(e) No person shall permit any vacant or abandoned property owned or controlled by him to be or remain in such a condition as will afford the creation of a nuisance or other conditions prejudicial to the public health.

**Disposal of Human Excreta**

Sec. 5. (a) All human excreta in populous areas must be disposed of through properly managed sewers, treatment tanks, chemical toilets, approved privies, or by other methods approved by the State Department of Health. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of any drinking water supply, the infection of any flies, cockroaches, or the creation of any other nuisance.

(b) All effluent from septic tanks hereafter constructed shall be disposed of through a subsurface drainage field designed in accordance with good public health engineering practice or any other method which does not create a nuisance.

(c) No privy shall hereafter be constructed within seventy-five (75) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the Local Health Officer or the Texas Board of Health Resources<sup>1</sup> and no privy shall be erected or maintained over any abandoned well or over any stream; provided further that no privy shall be constructed or maintained in any unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, which is located within thirteen hundred and twenty (1320) feet of any water well which is used for drinking water purposes, and the construction, maintenance, and use of such privy in violation of this section shall be a nuisance.

(d) The superstructure and floor surrounding the seat riser and hopper device of every approved privy shall be kept in a sanitary condition at all times, and shall have adequate lighting and ventilation.

(e) All material and human excreta removed from any privy vault or from any other place shall be handled so as not to create a nuisance. Such matter shall not be deposited within three hundred (300') feet of any highway unless buried or otherwise treated in accordance with the instructions of the local or State Health Officer.

<sup>1</sup> Board of Health Resources abolished and Board of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

**Toilet Facilities**

Sec. 6. All operators, managers, or superintendents of any public buildings, school houses, theaters, filling stations, tourist courts, bus stations and taverns shall provide and maintain sanitary toilet accommodations.

**Unincorporated Villages**

Sec. 7. (a) Every person in possession of or owning any properties used for human habitation within an unincorporated village which shall hereafter come within the provisions of Article 4434-35 of the Revised Civil Statutes of Texas, 1925, shall:

(b) Install, remodel or maintain an approved privy or other approved type of disposal unit;

(c) Protect all wells providing drinking water from contamination;

(d) Dispose of all garbage and other waste matter in a sanitary manner;

(e) Abate all mosquito and fly breeding areas or mediums;

(f) Exterminate and destroy all rodents by poisoning, trapping or other appropriate means.

**Public Buildings**

Sec. 8. Any and all public buildings hereafter constructed shall have incorporated therein all such heating, ventilation, plumbing, screening, and rat-proofing features as may be necessary to properly protect the health and safety of the public.

**Ice Plants**

Sec. 9. (a) No person except officers, employees, or others whose duties require such shall be permitted to go upon the platform covering the tanks in which ice is frozen in ice factories. All employees whose services are required on tanks shall be provided with clean shoes or boots which shall be used for no other purpose.

(b) No ice contaminated with sand, dirt, cinders, lint, or any other foreign substances shall be sold or offered for sale for human consumption.

(c) All water used in the manufacturing of ice shall be from an approved source and be of a safe quality.

(d) Every ice plant operator shall provide sanitary handwashing and toilet facilities for the use of all employees thereof.

**Drinking Water**

Sec. 10. (a) All drinking water for public use shall be free from deleterious matter and shall comply with the standards established therefor by the State Department of Health or the United States Public Health Service.

(b) The use of the common drinking cup is hereby prohibited in this state. No drinking water shall be served except in sanitary containers or through other sanitary mediums.

**Protection of Public Water Supplies**

Sec. 11. (a) No district, municipality, firm, corporation, or individual shall furnish to the public any drinking water for which any charge is made, unless the production, processing, treatment, and distribution is at all times under the supervision of a competent water works operator holding a valid certificate of competency issued under direction of the Texas State Department of Health.

(b) No owner, agent, manager, or operator or other person having charge of any water works supplying water for public or private use shall knowingly furnish to any person any contaminated drinking water or permit the appliances thereof to become insanitary.

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the Texas Department of Health Resources with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal

Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the Texas Department of Health Resources at least one (1) specimen of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

(d) No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless such other water is of a safe sanitary quality and the interconnection is approved by the State Department of Health. No water connection from any public drinking water supply shall be made to any sprinkling, condensing, cooling, plumbing, or any other system unless the said connection is of such a design as will insure against any backflow or siphonage of sewage or contaminated water from said system into the drinking water supply. Upon discovery of any condition contrary to these provisions, written notice shall be given to the owner or agent maintaining such condition by the local health officer, and such owner or agent shall make such corrections as are necessary to eliminate the condition complained of.

(e) No part of sub-sections (a), (b), and (c) of Section 11 shall apply to the production, distribution or sale of raw, untreated surface water.

**Approved Plans Required for Public Water Supplies and Sewerage Systems**

Sec. 12. (a) Every person, firm, corporation, public or private, contemplating the establishment of any drinking water supply or sewage disposal system for public use shall, previous to construction thereof, submit completed plans and specifications therefor to the State Department of Health and the said Department shall approve same; provided said plans conform to the water safety and stream pollution laws of this state. The said water supply or sewage disposal system shall be established only after approval has been given by the State Department of Health.

(b) Any governing body of any municipality or any other agency supplying drinking water or sewage disposal service to the public desiring to make any material or major changes in any water or sewerage system that may affect the sanitary features of such utility shall, before making such changes, give written notice of such intentions to the State Department of Health.

(c) No water supply owner, manager, operator or agent thereof shall advertise or announce any water supply as being of any quality other than is disclosed by the latest rating by the State Department of Health. It shall be the duty of the State Department of Health to assemble and tabulate all necessary data relative to public drinking water supplies, which shall form the basis of an official comparative rating of all public drinking water supply systems,

at least once each year and as often during the year as conditions may demand or justify. All supply systems attaining an approved rating shall have the privilege of erecting signs of a design approved by the State Department of Health on highways approaching the city of such supply; and these signs shall be immediately removed upon due notice from the State Department of Health in the event the supply system fails to continue to meet the specified standards.

#### Sanitary Defects

Sec. 13. (a) All sanitary defects existent at public drinking water plants which obtain their supply from underground sources shall be immediately corrected.

(b) No public drinking water supply system furnishing drinking water from underground sources to the public shall be established in any place subject to possible pollution by any flood waters, unless adequately protected against flooding.

(c) All suction wells or suction pipes, used in any public drinking water supply system shall be constantly protected by practical safeguards against surface or sub-surface pollution.

(d) No livestock shall be permitted to enter or remain within the wellhouse enclosure of a public drinking water supply system.

(e) All public drinking water distribution lines shall be constructed of impervious material with tight joints, a reasonably safe distance from sewer lines.

(f) No water from any surface public drinking water supply shall be made accessible or delivered to any consumer for drinking purposes unless it has first received treatment essential to rendering it safe for human consumption. All treatment plants including aeration, coagulation, mixing, settling filtration, and chlorinating units shall be of such size and type as may be prescribed by good public health engineering practices.

(g) Clear water reservoirs shall be covered and be of such type and construction as will prevent the entrance of dust, insects, and surface seepage.

#### Impounded Water

Sec. 14. All persons, firms, corporations, and governmental agencies that impound any body of water for public use shall cooperate with the state and local departments of health in the control of disease bearing mosquitoes on the impounded area.

#### Swimming Pools and Bath Houses

Sec. 15. (a) All owners, managers, operators, and other attendants in charge of any public swimming pool shall maintain all such pools in a sanitary condition. The bacterial content of the water in any public swimming pool shall not be allowed to exceed the safe limits as prescribed by established standards of the State Department of Health. Residual

chlorine from 0.2 to 0.5 parts per million units of water or any other method of disinfectant approved by the State Department of Health shall be maintained in every public swimming pool throughout the period of their use.

(b) No water in any swimming pool open for the public shall ever be permitted to show an acid reaction to a standard pH test.

(c) Any and all parts of any public bath house and the surroundings thereto shall at all times be kept in a sanitary condition.

(d) No comb or hairbrush used by two or more persons shall be permitted or distributed in any bath house of a public swimming pool.

(e) Facilities shall be provided in all swimming pools for adequate protection of bathers against sputum contamination.

(f) All persons known or suspected of being infected with any transmissible condition of a communicable disease shall be excluded from the pool.

(g) The construction and appliances of all public swimming pools shall be such as to reduce to a practical minimum any possibility of drowning or injury of bathers. All swimming pools hereafter constructed shall be in conformity with good public health engineering practices.

(h) All bathing suits and towels furnished to bathers by any person or persons shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) All dressing rooms of any swimming pool shall contain shower bath facilities.

(j) The operator or manager of any public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers thereof.

#### School Houses and Grounds

Sec. 16. (a) Every school building shall be located on grounds that are well drained and maintained in a sanitary condition.

(b) Every school building shall be properly ventilated and provided with an adequate supply of drinking water and approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities, all of which shall conform with established standards of good public health engineering practices.

(c) All public school lunch rooms maintained and operated shall comply with the State Food and Drug Regulations.

(d) All public school buildings and appurtenances thereto shall be maintained in a sanitary manner.

(e) All building custodians and janitors employed on a full-time basis shall be versed in the fundamentals of safety and school sanitation.

**Tourist Courts, Hotels, Inns and Rooming Houses**

Sec. 17. (a) Every agency, person, firm, or corporation operating any tourist court and hotels, inns and rooming houses in this state shall provide a safe and ample water supply for the general conduct thereof and shall submit samples of said water at least once each year before the month of May to the State Department of Health for bacteriological analysis.

(b) Every tourist court and hotels, inns and rooming houses shall be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) All owners or operators of any tourist court and hotels, inns and rooming houses shall provide every practical facility essential to keeping the entire area of each of said courts in a sanitary condition.

(d) Every owner or operator of a tourist court and hotels, inns and rooming houses providing gas stoves for the heating of any unit thereof shall determine that such stoves are properly installed and maintained in properly ventilated rooms.

(e) All owners, operators, or managers of every tourist court and hotels, inns and rooming houses shall maintain all sanitary appliances situated therein in good repair.

(f) All food offered for sale at any tourist court and hotels, inns and rooming houses shall be adequately protected from flies, dust, vermin, spoilage, and shall be kept in a sanitary condition at all times.

(g) No owner, manager or agent shall rent or furnish any unit of any tourist court and hotels, inns and rooming houses to any person succeeding a previous occupant without having first thoroughly cleaned the said unit, and having provided clean and sanitary sheets, towels, and pillow cases therefor.

(h) Every tourist court and hotels, inns and rooming houses failing to conform to any provision of this Act is hereby declared to constitute a nuisance.

(i) All owners, operators, or managers of any hotel, inn, or rooming house shall maintain all such premises in a sanitary condition.

**Fair Grounds, Public Parks and Amusement Grounds**

Sec. 18. Every fair ground, public park or amusement center of any kind shall be maintained in a sanitary condition and any and all food and beverages which may be sold in any part of such place shall be adequately protected against flies, dust, vermin, spoilage, and shall be kept in a sanitary condition.

**Industrial Establishments**

Sec. 19. (a) No person, firm, corporation or other employer shall use, or permit to be used in the conduct of any business, manufacturing establishments or other place of employment, any process, material, or condition known to have any possible

adverse effect on the health of any person or persons employed therein unless arrangements have been made to maintain the occupational environment to the extent that such injury will not result. Every industrial establishment shall be continually maintained in a sanitary condition.

(b) The Texas State Department of Health shall make available to the citizens of Texas current information concerning minimum allowable concentrations of toxic gases and such environmental standards as may pertain to the health and safety of the employees of industrial establishments in this state.

(c) The Texas State Department of Health shall make health and sanitary surveys and studies of industrial establishments including such special items as water supplies and distribution, waste disposal, adverse conditions caused by processes which may be responsible for or cause ill health of industrial workers. Such Texas State Department of Health shall bring to the attention of each surveyed establishment a summary of the studies and findings resultant thereof, together with any recommendations which may be deemed necessary for the adequate protection of the health, safety and well-being of the workers.

**Sewage**

Sec. 20. (a) The management of every public sewerage treatment plant shall employ a sewerage plant operator holding a valid certificate of competency issued under the direction of the Texas State Department of Health. Such sewerage plant operator shall be in charge of said plant. This certificate shall not apply to sewerage treatment plants using septic tanks and subsoil treatment.

(b) The Texas State Department of Health shall take all necessary procedures essential to the protection of any spring, well, pond, lake, reservoir, or other streams in Texas, from any condition or pollution resulting from sewage, that may endanger the public health, and shall have full authority to enforce all the laws of this state relating thereto.

**Typhus and Pest Control**

Sec. 21. (a) The word "place" as used in this Section shall be construed as meaning any enclosed structure frequented or inhabited by or operated for public trade.

(b) Every person, firm or corporation possessing any place that is infested with rodents shall, as soon as each such condition comes to their knowledge, proceed and continue in good faith to endeavor to exterminate and destroy all such rodents by the process of poisoning, trapping, fumigation or any other appropriate means and shall immediately proceed to provide every possible practical means of rat stoppage in any such place.

(c) All new public buildings which may hereafter be constructed shall have rat proofing features incorporated therein.

(d) The State Health Officer is directed to promote rodent control programs in all rat infested areas and in localities where typhus fever has appeared.

(e) It shall hereafter be unlawful for any person, firm or corporation to engage in commercial pest control activities in any structure used as a domicile, or otherwise used by human beings, to employ or distribute lethal gases, or other poisons used for the purpose of exterminating pests, unless such exterminating agency conforms to commonly accepted standards for safety in pest control.

#### Common Carriers

Sec. 22. (a) All persons, firms or corporations managing or operating bus lines or airlines in the State of Texas, or any person, firm or corporation operating any coastwise vessel along the shores of the State of Texas shall maintain sanitary conditions in all of their equipment and at all terminals or docking points.

(b) All drinking water provided by common carriers or their agents, shall be taken only from supplies certified as meeting the standards established by the Texas State Department of Health. All such water shall be kept and dispensed in a sanitary manner.

(c) Every place where drinking water is placed aboard any vehicle operated as a common carrier shall be known as a common carrier watering point. Every common carrier's watering point shall meet all required standards of sanitation, and water handling practices as may be established for such purposes by the State Board of Health. All common carrier watering points meeting such standards shall be so certified by the State Department of Health.

(d) In the event any sanitary defects exist at the watering point, the Texas State Department of Health shall issue or cause to be issued a supplemental certification showing that the watering point is only provisionally approved; and if said defects are suffered to continue after a reasonable time for the correction of same has expired, then the State Health Department shall notify or cause to be notified the common carriers not to receive drinking water at the watering point involved.

#### Authority of Home Rule Cities Not Affected

Sec. 23. (a) All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175-76 of the Revised Civil Statutes of Texas of 1925.

(b) The Texas Board of Health Resources may adopt rules consistent with the general intent and purposes of this Act, and establish standards and procedures for the management and control of sanitation and health protective measures.

#### Home-Rule Cities of 800,000 or More; Appointment of Environmental Health Officer

Sec. 23a. In a home-rule city in cities of a population of 800,000 or more according to the last federal census, an environmental health officer may be appointed to enforce the provisions of this article. An environmental health officer must be a registered professional engineer, subscribe to the official oath, and file a copy of his oath and appointment with the State Board of Health. He shall assist the State Board of Health in the enforcement of this article and is subject to the authority of the State Board of Health and to removal from office in the same manner as a city health officer.

#### Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or sub-division of this Act, or any rule adopted under this Act, shall be fined not less than Ten Dollars (\$10.00) and not more than Two Hundred Dollars (\$200.00), and each day of such violation shall constitute a separate offense.

#### Enforcement

Sec. 25. The Texas Department of Health Resources may apply to any district court in this state to enforce, prevent, or restrain violations of this Act or violations of rules adopted pursuant to this Act.

[Acts 1945, 49th Leg., p. 234, ch. 178. Amended by Acts 1951, 52nd Leg., p. 764, ch. 416, § 1; Acts 1961, 57th Leg., p. 1019, ch. 446, § 1; Acts 1975, 64th Leg., p. 227, ch. 86, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1188, ch. 456, §§ 1 to 5, eff. Aug. 29, 1977.]

#### Art. 4477-1a. Sewage Discharge into Open Ponds; Municipal Corporations of 600,000 to 900,000

##### Definitions

Sec. 1. In this Act:

"Municipal sewage" means any waterborne liquid, gaseous, or solid substances that are discharged from a publicly owned sewer system, waste treatment facility, or waste disposal system.

##### Prohibition

Sec. 2. No municipal corporation with a population of not less than 600,000 nor more than 900,000 according to the last preceding Federal census, may discharge any municipal sewage into any open pond, the surface area of which pond covers more than 100 acres, if the discharge will cause or result in a nuisance. The Texas Water Quality Board, acting with the Texas Air Control Board and the Texas State Department of Health, shall make periodic

inspections of such ponds as necessary, but at least once every year, and shall ascertain whether such pond is causing or will cause or result in a nuisance.

If the Texas Water Quality Board, acting in accord with the Texas Air Control Board and the Texas State Department of Health, shall ascertain that the maintenance of such pond creates or continues a nuisance, it shall advise the municipal corporation making such discharge and shall allow such municipal corporation adequate time to abate such nuisance.

#### Penalty

Sec. 3. (a) Any municipal corporation with a population of not less than 600,000 nor more than 900,000 which fails to abate a nuisance pursuant to a directive of the Texas Water Quality Board as provided in Section 2 above, within a reasonable time after notification of such failure by the Texas Water Quality Board, shall be liable to a civil penalty of not more than \$1,000 a day for each day that it maintains such a nuisance.

(b) The Attorney General shall institute suit in district court in the county in which the alleged nuisance exists to collect the penalty described by the Act.

#### Effective Date

Sec. 4. This Act takes effect on September 1, 1971.

[Acts 1971, 62nd Leg., p. 2815, ch. 916, eff. Sept. 1, 1971. Amended by Acts 1981, 67th Leg., p. 588, ch. 237, §§ 115, 116, eff. Sept. 1, 1981.]

### Art. 4477-1b. Sewage Discharge into Open Ponds; San Antonio

#### Definitions

Sec. 1. In this Act:

(1) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(2) "Municipal sewage" means any water-borne liquid, gaseous, or solid substances that are discharged from a publicly owned sewer system, treatment facility, or disposal system.

#### Prohibition

Sec. 2. The City of San Antonio shall operate Mitchell Lake in accordance with rules and regulations set by the Texas Water Quality Board.

#### Sludge Removal

Sec. 3. The accumulated waste sludge which is creating a nuisance in any open pond into which municipal sewage has been discharged for more than one year prior to the effective date of this Act by the City of San Antonio must be removed within two years following the effective date of this Act, in order to prevent public health hazards by convert-

ing the water in the pond to meet Texas State Department of Health standards.

#### Penalty

Sec. 4. (a) If the City of San Antonio discharges municipal sewage into an open pond whose surface area covers more than one acre in violation of Section 2 of this Act, it is liable to a civil penalty of not less than \$1,000 nor more than \$10,000 a day for each day it continues to discharge the municipal sewage in violation of Section 2 of this Act.

(b) If the City of San Antonio fails to remove accumulated waste sludges as provided in Section 3 of this Act, it is liable to a civil penalty of not less than \$1,000 nor more than \$10,000 a day for each day until the accumulated waste sludges are removed.

(c) The attorney general shall institute suit in a district court in the county in which the alleged violation occurred to collect the penalty prescribed by this Act.

[Acts 1973, 63rd Leg., p. 1744, ch. 632, eff. June 16, 1973.]

### Art. 4477-2. Mosquito Control Districts

#### Election on Establishment

Sec. 1. In all counties of this State, the Commissioners Court may call an election within sixty (60) days after the effective date of this Act, and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified voters of such county desire the establishment of a Mosquito Control District to embrace all or a portion of the territory within said county, for the purpose of eradicating mosquitoes in said area. The form of the ballot shall be as follows:

FOR the establishment of a Mosquito Control District in \_\_\_\_\_ County.

AGAINST the establishment of a Mosquito Control District in \_\_\_\_\_ County.

#### Election on Tax Levy

Sec. 2. The Commissioners Court in each county governed by the provisions of this Act may call an election within sixty (60) days after the effective date of this Act and at subsequent elections when called by the County Judge upon his being petitioned by two hundred (200) qualified voters to call such election to determine if the qualified real property taxpaying voters of said county or portion of said county desire a levy of a tax not to exceed twenty-five cents (25¢) on each one hundred dollar tax valuation to finance the program provided in this Act. The form of the ballot shall be as follows:

FOR the levy of a tax of \_\_\_\_\_ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within \_\_\_\_\_ County.

AGAINST the levy of a tax of \_\_\_\_\_ cents on each one hundred dollar tax valuation to finance the Mosquito Control District within \_\_\_\_\_ County.

#### Combining Elections

Sec. 3. The elections provided in Section 1 and Section 2 shall be combined in one election; provided, however, that only qualified property taxpaying voters shall be authorized to vote to create such district and on the question of a tax levy as provided in Section 2.

#### Levy and Collection of Tax

Sec. 4. If the elections provided in Section 1 and Section 2 of this Act are in favor of the establishment of a Mosquito Control District and the levy of a tax not to exceed twenty-five cents (25c) on each one hundred dollar tax valuation, the Commissioners Court is authorized to levy a tax not to exceed the amount fixed by the election; provided, however, that the Commissioners Court is authorized to lower the tax to any designated sum it may determine, should the approximate revenue be in excess of the needed revenue to carry out the provisions of this Act. The taxes so levied shall be collected by the County Tax Assessor and Collector and shall be deposited in a separate fund and be used for the purposes of carrying out the provisions of this Act and for no other purpose.

#### Advisory Commission

Sec. 5. There shall be appointed by the Commissioners Court in each county in which a Mosquito Control District is created, an Advisory Commission composed of five (5) members who shall be qualified property taxpaying voters of the county. Each Commissioner of the Commissioners Court and the County Judge shall appoint one (1) member of the Advisory Commission. Members of the Commission shall serve without compensation. The Advisory Commission shall make recommendations to the Commissioners Court as it deems are necessary to carry out the provisions of this Act and shall perform such other duties as the Commissioners Court may determine. Each member of the Commission shall take an oath of office prescribed by the Commissioners Court. The Commissioners Court shall have the power to remove any member of the Advisory Commission at any time it deems necessary.

#### Mosquito Control Engineer

Sec. 6. The Commissioners Court in each county which has established a Mosquito Control District is hereby authorized to appoint a Mosquito Control Engineer who shall be well qualified in the field of mosquito control and who shall serve at a salary to be determined by the Commissioners Court in such county. The powers and duties of the Mosquito Control Engineer shall be under the supervision of the Commissioners Court. The Engineer shall make recommendations to the Commissioners Court as to the number of assistants and employees as may be

needed, and the Commissioners Court shall appoint such assistants and employees as it deems necessary for mosquito eradication in said District. The engineer shall also make biannual reports to the Commissioners Court or as many reports as requested by the Court relative to the work of mosquito eradication, and of the expenses needed for the ensuing year. The first report shall be made not later than June 30th subsequent to the establishment of the Mosquito Control District, and the second report shall be made not later than December 31st following the first report.

#### Merger of Districts

Sec. 6A. The Commissioners Courts of any two or more counties operating under the provisions of this Act may enter into an agreement for the merging of their separate districts into a single mosquito control district composed of such two or more counties. Said Commissioners Courts shall enter into an agreement that in all respects complies with the provisions of this Act, except that the advisory commission and mosquito control engineer, as required above, may be appointed for the entire district, rather than for each county.

#### Election on Dissolution of District

Sec. 7. The Commissioners Courts in those counties which have established a Mosquito Control District under the provisions of this Act shall call an election to dissolve said Mosquito Control District upon a petition of at least ten per cent (10%) of the qualified voters of the county as determined by the number of votes cast for Governor of the State of Texas in the last preceding general election. Only the property taxpaying voters of the county, however, shall be authorized to vote in an election to dissolve the Mosquito Control District.

#### Partial Invalidity

Sec. 8. If any section, subsection, paragraph, sentence, phrase or word of this Act shall be held invalid, such holding shall not affect the remaining portions of this Act and it is hereby declared that such remaining portions would have been included in this Act though the invalid portion had been omitted.

[Acts 1949, 51st Leg., p. 82, ch. 46. Amended by Acts 1955, 54th Leg., p. 460, ch. 126, § 1; Acts 1961, 57th Leg., p. 1105, ch. 498, §§ 1 to 3.]

### Art. 4477-3. Professional Sanitarians

#### Purpose

Sec. 1. In order to safeguard life, health and property, and to establish and protect the professional status of those persons whose duties in environmental sanitation call for knowledge of the physical, the biological and the social sciences, there is hereby established a program for the Registration for Professional Sanitarians. It shall be the duty of

the State Board of Health to carry out the provisions of this Act.

#### Definitions

Sec. 2. As used in this Act:

(a) The term "field of sanitation" means the study, art, and technique of applying scientific knowledge for the improvement of the environment of man for his health and welfare.

(b) The term "sanitarian" means a person trained in the field of sanitary science to carry out educational and inspectional duties in the field of environmental sanitation.

(c) The term "Board" means the State Board of Health.

#### Audit; Annual Report

Sec. 3. The funds collected under this Act and all appropriations to the Board shall be subject to audit by the State Auditor. The Board shall preserve a copy of all annual reports and State Audit reports issued with respect to this Act.

#### Record of Proceedings; Register of Application

Sec. 4. The Board shall keep a record of all proceedings with respect to this Act, and a register of all applications for registration, which register shall show:

- (a) the place of residence, name and age of each applicant;
- (b) the name and address of employer or business connection of each applicant;
- (c) the date of the application;
- (d) complete information on educational and experience qualifications;
- (e) the action of the Board;
- (f) the serial number of the certificate of registration issued to the applicant;
- (g) the date on which the Board reviewed and acted on the application; and
- (h) such other information as may be deemed necessary by the Board.

#### Certificates of Registration; Eligibility for Registration

Sec. 5. The Board, upon application on the form prescribed by it, and upon the payment of a fee of Ten Dollars (\$10.00), shall issue a certificate of registration as a professional sanitarian to any person who has the qualifications stipulated under the provisions of this Act, and who submits evidence by passing a written examination prescribed by the Board satisfactory to the Board that the applicant is qualified under the provisions of this Act. In evaluating the evidence submitted to it, the Board shall carefully consider the applicant's knowledge and understanding of the principles of sanitation, the physical, biological, and social sciences, provided that:

(a) Any person, who, within six (6) months after the effective date of this Act, submits under oath evidence satisfactory to the Board that he has been a resident of the State of Texas for at least one (1) year immediately preceding the date of application, and that he was employed in the field of sanitation for a period of one (1) year prior to the effective date of this Act may be registered as a professional sanitarian.

(b) Any person, other than those covered under paragraph (a), who after the effective date of this Act applies for registration shall have had not less than one (1) year of full time experience in the field of sanitation and shall have completed training in the basic sciences and/or public health to the extent deemed necessary by the Board in order to effectively serve as a registered sanitarian. The educational requirements set forth by the Board shall not be at variance with the definition for Sanitarian set forth by the Position Classification Act of 1961.<sup>1</sup> Other qualifications may be established by the Board in accordance with the rules and regulations adopted under this Act. Persons employed in the field of sanitation who meet all qualifications for registration as a professional sanitarian, except the qualifications of experience, shall, upon the approval by the Board and after payment of a fee of Five Dollars (\$5.00) and by passing a written examination prescribed by the Board, be granted a certificate of Sanitarian in Training. This certificate shall remain in effect unless revoked by the Board for a period not to exceed one (1) year after date of issue.

<sup>1</sup>Article 6252-11.

#### Renewal of Certificates; Fee; Delinquency and Reinstatement

Sec. 6. Every professional sanitarian registered under the provisions of this Act who desires to continue in the field of sanitation shall annually pay to the Board a fee to be fixed by the Board for the annual renewal of each license, but the fee for renewal of license shall not be fixed in excess of Ten Dollars (\$10.00). Certificates of registration revoked for failure to pay renewal fees shall be reinstated under the rules and regulations of the Board.

#### Suspension or Revocation of Certification; Refusing Registration

Sec. 7. The Board shall have the power to suspend or revoke the certificate of registration of any registrant for the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency, or misconduct in the practice of professional sanitation. The Board may refuse to issue a certificate to any one whose certificate or license to engage in sanitation or in any other profession has been revoked, in this state or elsewhere, on the ground of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of his profession; and it may also refuse to issue a certificate to anyone upon satisfactory proof that he has



been guilty of any of these charges in the practice of sanitation or any other profession. No such suspension or revocation of a certificate or refusal to register shall be permitted until at such time as a hearing is held and the person affected given the opportunity to answer the charges that may have been filed against him with the Board.

#### Administration, Fees and Expenses

Sec. 8. (a) The Board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) There is created a special Sanitarians Registration and License Fund which will consist of any and all fees charged or collected under any of the provisions of this Act. The Fund shall be under the supervision of the Board which shall file annually a statement of income and expenses with the Secretary of State. All expenses necessary to the administration and enforcement of this Act, as well as any other expenses of whatsoever character that may arise because of the terms and provisions hereof, shall be made from the Fund, including the reimbursements made to Board members, as provided for by the provisions of this Act. Any surplus remaining in the Sanitarians Registration and License Fund, at the end of each fiscal year, not necessary to defray the expenses mentioned and provided under the terms of this Act, shall be paid into the State Treasury.

(c) All expenses necessary to administering the provisions of this Act shall be paid out of the special Sanitarians Registration and License Fund, mentioned under Subsection (b) above, so that the passage of this Act shall never become a financial burden or obligation to the State of Texas. If the fees and charges set out herein prove to be inadequate to pay all costs created by this Act, the Board is hereby authorized to increase such fees and charges in such amount as will make the administration of this Act financially self-supporting without incurring any new or additional financial obligations to the State of Texas.

#### Advisory Committee

Sec. 9. The Board shall appoint a Sanitarian Advisory Committee to assist in the establishing of rules and regulations under this Act, said Advisory Committee to consist of not over five (5) members. The Sanitarian Advisory Committee shall meet at the request of the Board, and the State Comptroller is authorized to pay travel expenses of the Sanitarian Advisory Committee at the same rate paid regular employees of the state when such expenses have been approved by the Commissioner of Health, but for not over four (4) meetings in any one (1) state fiscal year.

#### Reciprocity

Sec. 10. Agreements for reciprocity with those states having a registered Sanitarian's Act may be entered into by the Board under such rules and regulations as the Board may prescribe.

#### Exemptions

Sec. 11. Those persons such as physicians, dentists, engineers, and doctors of veterinary medicine, who are duly licensed by another official State Licensing Agency, who by nature of their employment or duties might be construed to come under the provisions of this Act, shall be exempt from the provisions of this Act.

#### Offenses

Sec. 12. After six (6) months from the effective date of this Act, no person engaging or offering to engage in work in the field of sanitation, in this state shall represent himself to be a sanitarian, or use any title containing the word "sanitarian," unless he is a registrant in good standing with the Board, either as a registered professional sanitarian or as a sanitarian in training. Any person who violates any provisions of this Section shall be guilty of a misdemeanor and shall be fined not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00).

#### Employment of Sanitarian

Sec. 12a. No term, Section, or provision of this Act shall ever be construed so as to require any city or governmental agency, or any person or persons whomsoever, to employ a sanitarian provided for or created under the terms of this bill.

[Acts 1965, 59th Leg., p. 606, ch. 300.]

Art. 4477-4. Repealed by Acts 1967, 60th Leg., p. 1952, ch. 727, § 17, eff. Sept. 1, 1967

See, now, art. 4477-5.

Art. 4477-5. Texas Clean Air Act

#### SUBCHAPTER A. GENERAL PROVISIONS

##### Short Title

Sec. 1.01. This Act may be cited as the Texas Clean Air Act.

##### Policy and Purpose

Sec. 1.02. It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility.

#### Definitions

Sec. 1.03. As used in this Act, unless the context requires a different definition:

(1) "air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor or odor, or any combination thereof produced by processes other than natural;

(2) "source" means a point of origin of air contaminants, whether privately or publicly owned or operated;

(3) "air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property;

(4) "board" means the Texas Air Control Board;

(5) "executive director" means the executive director of the Texas Air Control Board;

(6) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity; and

(7) "local government" means a county, an incorporated city or town; or a health district established under authority of Chapter 63, Acts of the 51st Legislature, 1949, as amended by Chapter 239, Acts of the 56th Legislature, 1959 (Article 4447a, Vernon's Texas Civil Statutes);

(8) "new source" means any stationary source, the construction or modification of which is commenced after the effective date of this statute;

(9) "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or which results in the emission of any air pollutant not previously emitted. Insignificant increases in the amount of any air pollutant emitted are not intended to be included, nor is maintenance or replacement of equipment components which do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted to the atmosphere.

#### Prior Actions of Air Control Board Validated

Sec. 1.04. All orders, determinations, rules, regulations and other actions issued, taken and performed by the Texas Air Control Board under Chapter 687, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-4, Vernon's Texas Civil Statutes), are validated and remain in effect unless and until amended or superseded by order of the Texas Air Control Board under this Act and are administered by and under the jurisdiction of the Texas Air Control Board under this Act.

#### Board as Principal Authority

Sec. 1.05. The Texas Air Control Board is the state air pollution control agency. The board is the principal authority in the state on matters relating to the quality of the air resources in the state and for setting standards, criteria, levels and emission limits for air content and pollution control.

#### Effect on Private Remedies

Sec. 1.06. Nothing in this Act affects the right of any private person to pursue all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor, or both.

#### Confidential Information

Sec. 1.07. Information submitted to the board relating to secret processes or methods of manufacture or production which is identified as confidential when submitted shall not be disclosed by any member, employee, or agent of the board.

### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

#### Texas Air Control Board

Sec. 2.01. The Texas Air Control Board is an agency of the state.

#### Application of Sunset Act

Sec. 2.01a. The Texas Air Control Board is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

<sup>1</sup> Article 5429k.

#### Members of the Board

Sec. 2.02. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be an agricultural engineer with at least ten years experience in his profession; and five shall be chosen to represent the public interest.

#### Terms of Board Members

Sec. 2.03. The members of the board hold office for staggered terms of six years, with the term of three members expiring on the 1st day of September in each odd-numbered year. Each member

holds office until his successor is appointed and has qualified.

#### Qualification by Members; Vacancies; Records

Sec. 2.04. (a) A member appointed by the governor while the Senate is in session is qualified to serve on the board after his nomination has been confirmed by the Senate and upon taking the Constitutional oath of office. A member appointed by the governor while the Senate is not in session is qualified to serve upon taking the Constitutional oath of office, and serves until the expiration of his term, or until his nomination is rejected by the Senate.

(b) If a vacancy occurs in the office of a member of the board, the position shall be filled by a person appointed by the governor in the same manner as for a regular appointment, and the person so appointed shall serve only to the end of the unexpired term and until his successor is appointed and has qualified.

(c) The official records of the board shall reflect the date each member's certificate of appointment was issued by the secretary of state, the date he took the oath of office, the person who administered the oath, the date the appointive term began, and the date the term expires.

(d) A board member who is appointed to represent the public interest may not derive a significant portion of his or her income from a person subject to the board's permits or enforcement orders.

#### Per Diem; Expenses

Sec. 2.05. A member of the board is not entitled to a salary for duties performed as a member of the board. However, a member is entitled to \$25.00 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

#### Board Officers

Sec. 2.06. The board shall elect a chairman and a vice-chairman to serve two-year terms beginning on February 1 of each odd-numbered year.

#### Board Meetings

Sec. 2.07. (a) The chairman, or in his absence the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and the vice-chairman from any meeting of the board, the members of the board present may select one of their number to serve as chairman for the meeting.

(b) The board shall have regular meetings at times specified by a majority vote of the board.

(c) The chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least two members of the board.

(d) A majority of the board constitutes a quorum to transact business.

#### Executive Director

Sec. 2.08. (a) The executive director shall be an employee of, and shall be designated by, the board.

(b) The executive director shall be the administrator of air pollution control activities for the board. In addition to his other duties prescribed in this Act and by the board, the executive director shall:

(1) keep full and accurate minutes of all transactions and proceedings of the board;

(2) be the custodian of all of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over all persons employed by the board; and

(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

(c) The executive director, or his authorized representative, shall:

(1) attend all meetings of the board but shall not be entitled to a vote; and

(2) handle or arrange for the handling of such correspondence, make or arrange for such inspections and investigations, and obtain, assemble or prepare such reports and data as the board may direct or authorize.

#### Staff Services

Sec. 2.09. The basic personnel and necessary laboratory and other facilities as may be required to carry out the provisions of this Act shall be the personnel, laboratory, and other facilities of the Texas Air Control Board. The board may by agreement secure such services as it may deem necessary from any other departments and agencies of the state government and may arrange for compensation for such services, and may employ and compensate, within appropriations available therefor, such professional consultants, technical assistants, and employees on a full or part-time basis as may be necessary to carry out the provisions of this Act and prescribe their powers and duties. The board may request, and upon request shall receive, the assistance of any state educational institution, experimental station, or other state agency.

#### Funds and Equipment from the State Department of Health

Sec. 2.10. Any legislative appropriation made or to be made to the State Department of Health for air pollution control and all federal grants, loans or other federal monies received as matching funds to these appropriations or any other federal funds for air pollution control purposes received or to be received by the State Department of Health and all previous or presently pending equipment purchases from any State Department of Health appropriation for air pollution control shall be transferred to the board.

#### Gifts and Grants

Sec. 2.11. The board may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. The board shall show in its records the source of all moneys or other things of value received by the board under this section from sources other than public sources.

#### Special Fund

Sec. 2.12. Money received by the board under Section 2.10 or Section 2.11 of this code shall be deposited in the state treasury and credited to a special fund. The board may use this fund for salaries, wages, professional and consulting fees, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this Act, as provided by legislative appropriation.

#### Documents, Etc., Public Property

Sec. 2.13. All information, documents and data collected by the board in the performance of its duties are the property of the state. Subject to the limitations of Section 1.07 of this Act, all records of the board are public records open to inspection by any person during regular office hours.

#### Copies of Documents, Proceedings, Etc.

Sec. 2.14. Subject to the limitations of Section 1.07 of this Act, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board. A certified copy with the seal of the board and the signature of the chairman of the board or the executive secretary is admissible as evidence in any court or administrative proceeding. The board shall prescribe in its rules the fees which shall be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Any other Acts concerning fees for copies of records do not apply to the board except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as last amended by Section 1, Chapter 446, Acts of the 59th Legislature, Regular Session, 1965.

#### Biennial Reports

Sec. 2.15. The board shall make biennial written reports to the governor and to the Legislature and shall include in each report a statement of its activities.

#### Fees

Sec. 2.16. Except as specifically authorized in this Act, no fees may be charged by the executive secretary or the board for the performance of any of their duties and functions under this Act.

#### Seal

Sec. 2.17. The board shall adopt a seal.

### SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

#### In General

Sec. 3.01. The board shall administer the provisions of this Act and shall establish the level of quality to be maintained in, and shall control the quality of, the air resources in this state as provided in this Act. The board shall seek the accomplishment of the purposes of this Act through the control of air contaminants by all practical and economically feasible methods consistent with the powers and duties of the board. The board has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities.

#### State Air Control Plan

Sec. 3.02. The board shall prepare and develop a general, comprehensive plan for the proper control of the air resources of the state.

#### Emission Inventory

Sec. 3.03. The board is authorized to require the submission of information by persons whose activities cause emissions of air contaminants to enable the board to develop an inventory of the emissions of air contaminants in the state.

#### Research, Investigations

Sec. 3.04. The board shall conduct, or have conducted, any research and investigations it considers advisable and necessary for the discharge of its duties under this Act.

#### Power to Enter Property

Sec. 3.05. The members, employees and agents of the board have the right to enter any public or private property at any reasonable time, other than property designed for and used exclusively as a private residence housing not more than three families, for the purpose of inspecting and investigating conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere. Any member, employee or agent who, acting under the authority in this section, enters private property which has management in resi-

dence shall notify management, or the person then in charge, of his presence and exhibit proper credentials. Members, employees, or agents entering private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection. Should any member, employee or agent of the board be refused the right to enter in or upon such public or private property, the board may have the remedies authorized in Section 4.02 of this Act.

#### Monitoring Requirements; Power to Examine Records

Sec. 3.06. The board may prescribe reasonable requirements for the measurement and monitoring of the emissions of air contaminants from any source or from any activity causing or resulting in the emission of air contaminants subject to the jurisdiction of the board under this Act; the board may also prescribe reasonable requirements for the owner or operator of the source to make and maintain records on the measurement and monitoring of emissions. The members, employees and agents of the board may examine during regular business hours any records or memoranda pertaining to the operation of any air pollution or emission control equipment or facility, or pertaining to any emission of air contaminants. This authority does not extend to the records or memoranda pertaining to the operation of such equipment or facility on a property designed for and used exclusively as a private residence housing not more than three families.

#### Enforcement Proceedings

Sec. 3.07. The board, or the executive secretary when authorized by the board, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances or other decisions of the board.

#### Contracts, Instruments

Sec. 3.08. The board may make contracts and execute instruments that are necessary or convenient to the exercise of its powers or the performance of its duties.

#### Rule-Making

Sec. 3.09. (a) The board has the power, in accordance with the procedures in this section, to make rules and regulations consistent with the general intent and purposes of this Act and to amend any rule or regulation it makes.

(b) Before adopting any rules and regulations, or any amendment or repeal thereof, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal thereof, will have a state-wide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state; if the rule or

regulation, or amendment or repeal thereof, will have effect in only a part of the state, the notice shall be published one time at least 20 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes).

(c) Any person may appear and be heard at the hearing on any rules or regulations. A record of the names and addresses of the persons appearing shall be made by the executive secretary. Any person heard or represented at the hearing, or requesting notice of the action taken by the board, shall be sent written notice by mail of the action taken by the board.

(d) Before it becomes effective, any rule or regulation, or amendment or repeal thereof, shall be approved in writing by at least five members of the board, and a certified copy filed with the secretary of state for the time specified in Article 6252-13, Vernon's Texas Civil Statutes.

#### Content of Rules

Sec. 3.10. (a) A rule or regulation, or any amendment thereof, adopted by the board may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In adopting rules and regulations, the board shall give due recognition to the fact that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state, and the board shall take into consideration, in this connection, all factors found by it to be proper and just including existing physical conditions, topography, population, and prevailing wind directions and velocities, and the fact that a rule or regulation and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state.

(b) Except as provided in Subsections (c), (d), (e) and (f) of this section, the rules and regulations may not specify any particular method to be used to control or abate air pollution, nor the type, design or method of installation of any equipment to be used to control or abate air pollution, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment.

(c) The board is authorized to adopt rules and regulations to control and prohibit the outdoor burning of waste and combustible material. The board may include in the rules and regulations requirements as to the particular method to be used to control or abate the emission of air contaminants

resulting from the outdoor burning of waste or combustible material.

(d) The board may include in the rules and regulations requirements as to the particular method to be used to control and reduce emissions from motors and engines used in propelling land vehicles. Any rules or regulations pursuant to this paragraph shall be consistent with provisions of federal law, if any, relating to the control of emissions from the vehicles concerned. The board shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if that feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(e) The board, when it deems control of air pollution is necessary, shall establish rules and regulations concerning the control of emissions of particulate matter from plants handling, loading and unloading, drying, manufacturing, and processing the following agricultural products: grain, seed, legumes and vegetable fibers, according to a formula derived from the process weight of the materials entering the process. Any person affected by a rule or regulation issued under the authority of this subsection may use the process weight method for controlling and measuring the emissions from the plant, or any other method selected by that person which the board or the executive secretary, when so authorized by the board, finds will provide adequate emission control efficiency and measurement.

(f) The board is authorized to prescribe the sampling methods and procedures which shall be used in determining violations of and compliance with the rules, regulations, variances, and other orders of the board. The board may prescribe ambient air sampling, stack-sampling, visual observation, or any other sampling method or procedure generally recognized in the field of air pollution control. The board may also prescribe new sampling methods and procedures when, in the judgment of the board, existing methods or procedures are not adequate to meet the needs and objectives of the rules, regulations, variances and other orders of the board, and where the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the board.

#### Limitations on Board Actions

Sec. 3.11. The board may not make any rule, regulation, determination or order with respect to air conditions existing solely within buildings and structures used for commercial and industrial plants, works or shops when the source of the offending air contaminants is under the control of the person who owns or operates the plant, works or shops, or which affects the relations between employers and their employees with respect to or arising out of any air condition from such a source. This provision does not and is not intended to limit

or restrict in any way the authority or powers granted to the board under the provisions of Subsections (c) and (f) of Section 3.10 of this Act.

#### Orders

Sec. 3.12. (a) The board is authorized to enter orders and determinations as may be necessary to effectuate the purposes of this Act. Except where otherwise specifically authorized in this Act, all orders shall be made by the board.

(b) If the board determines that air pollution exists, it may order such action as is indicated by the circumstances to control the condition. The board shall grant such time for the owner or operator of a source to comply with its order as is provided for in the rules and regulations of the board, which shall make provisions for such time gauged to such general situations as the hearings on any proposed rules and regulations may indicate are necessary.

#### Factors to be Considered

Sec. 3.13. In making orders and determinations, the board shall consider all of the facts and circumstances bearing upon the reasonableness of any emissions being made, including:

- (1) the character and degree of injury to, or interference with, the health and physical property of the people;
- (2) the social and economic value of the source;
- (3) the question of priority of location in the area involved; and
- (4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

#### Emergency Conditions

Sec. 3.14. (a) Whenever it appears to the board or the executive secretary that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the board or the executive secretary shall, with the concurrence of the governor, order any persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. The order shall fix a time and place for a hearing to be held before the board, which shall be held as soon after the order is issued as is practicable. The requirements of Section 3.17 as to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as in the judgment of the board or the executive secretary is practicable under the circumstances. Not more than twenty-four hours after the commencement of the hearing, and without adjournment of the hearing, the board shall affirm, modify or set aside the order.

(b) Whenever the board or the executive secretary finds that emissions from one or more air contaminant sources is causing imminent danger to

human health or safety, but that there is not a generalized condition of air pollution of the type referred to in Subsection (a) of this section, the board or the executive secretary may order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the provisions in Subsection (a) of this section pertaining to a hearing before the board, notice, and affirmance, modification or setting aside of orders shall apply.

(c) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and to act on the basis of that declaration, if the power is conferred by statute or constitutional provision, or inheres in the office.

#### Hearing Powers

Sec. 3.15. The board may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, regulations, orders or other actions of the board.

#### Delegation of Hearing Powers

Sec. 3.16. (a) The board may delegate the authority to hold hearings called by the board to:

- (1) one or more members;
- (2) the executive secretary;
- (3) one or more employees of the board; or
- (4) with the concurrence of the state commissioner of health, one or more employees of the State Department of Health.

(b) Except for those hearings required to be held before the board under Section 3.14 of this Act, the board may authorize the executive secretary to call and hold hearings on any subject on which the board may hold a hearing. The board also may authorize the executive secretary to delegate the authority to hold any hearing called by the executive secretary to one or more employees of the board or, with the concurrence of the state commissioner of health, to one or more employees of the State Department of Health.

(c) The board may establish the qualifications required of the individuals who may be delegated the authority by the board or the executive secretary to hold hearings.

(d) Any individual or individuals holding a hearing under authority of this section are empowered to administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the board.

#### Notice of Hearings; Continuance

Sec. 3.17. (a) Except as otherwise specified in Subsection (b) of Section 3.09 and in Section 3.14 of this Act, the provisions of this section apply to all hearings conducted pursuant to this Act.

(b) Notice of the hearing shall describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) Notice of the hearing shall be published at least once in a newspaper regularly published or having general circulation in each county where by virtue of the county's geographical relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(d) If notice of the hearing is required by this Act to be given to a person, the notice shall be served personally or mailed to the person at his last address known to the board, not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to any officer, agent or legal representative of the party.

(e) The individual or individuals holding the hearing (hereafter in this subsection called the hearing body) shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (d) of this section at a reasonable time prior to the new setting, but it is not necessary to publish a newspaper notice of the new setting.

#### Air Quality Control Regions

Sec. 3.18. The board is authorized to designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards.

#### Cooperation and Assistance; Compacts

Sec. 3.19. The board shall:

- (1) encourage voluntary cooperation by persons, or affected groups in the restoration and preservation of the purity of the air resources within this state;
- (2) encourage and conduct studies, investigations and research concerning air control;

(3) collect and disseminate information on air control;

(4) advise, consult and cooperate with other agencies of the state, political subdivisions of the state, industries, other states and the federal government, and with interested persons or groups in regard to matters of common interest in air control; and

(5) represent the State of Texas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts.

#### Investigations; Action on Violations

Sec. 3.20. (a) The executive secretary is authorized to make or cause to have made investigations as he may deem advisable in administering the provisions of this Act and the rules, regulations, orders and determinations of the board, including without limitation investigations of violations and general air pollution problems or conditions. The executive secretary shall make or cause to have made such investigations as may be requested or directed by the board.

(b) Whenever it appears that any provision of this Act or any rule, regulation, determination or order of the board is being violated, the board, or the executive secretary when authorized by the board or this Act, may proceed under Section 4.02 of this Act, or hold a public hearing and enter orders on the alleged violation, or take any other action authorized in this Act as the facts may warrant.

(c) If a public hearing is held on an alleged violation, the board or the executive secretary shall give notice of the hearing to the person complained against and to such other interested persons as the board or executive secretary may designate. The executive secretary, on behalf of the board, at the request of the person complained against, shall subpoena and compel the attendance of those witnesses, and shall require the production for examination of any book or paper relating to the matter under investigation at the hearing, as that person may reasonably designate.

#### Board May Grant Variances

Sec. 3.21. The board may grant individual variances beyond the limitations prescribed in this Act or in the rules and regulations of the board whenever it is found, upon presentation of adequate proof, that compliance with any provision of this Act, or any rule or regulation of the board, will result in an arbitrary and unreasonable taking of property, or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. Any person seeking a variance or to amend a variance shall submit a petition to the executive secretary containing all information reasonably required by the board or the executive secretary.

#### Action on Petition

Sec. 3.22. (a) The executive secretary shall mail a copy of the variance petition or a summary of its contents to the mayor and health authorities of the city or town, and the county judge and health authorities of the county, in which the source or sources are or will be located, and to the same officials of other counties, cities and towns which, in the judgment of the executive secretary or the board, may be affected. The information shall be sent not less than 20 days before the date on which the petition is to be considered by the board.

(b) The executive secretary shall also proceed promptly to investigate the petition and to make a recommendation to the board on the disposition to be made of it.

(c) Any person may file with the board his comments or recommendations on the requested variance.

(d) Upon receiving the recommendation of the executive secretary, the board may, if the recommendation is for the granting of a variance, do so without hearing. If the executive secretary recommends against the granting of the variance, if a local government requests a hearing, or if the board in its discretion concludes that a hearing would be advisable, then a hearing shall be held before the board acts on the petition for variance.

#### Conditions of Variance

Sec. 3.23. (a) In determining under what conditions and to what extent a variance from this Act or from a rule or regulation of the board may be granted, the board shall give due recognition to the progress which the person requesting the variance has made in controlling or preventing air pollution.

(b) In each variance, the board, in conformity with the intent and purpose of this Act to protect health and property, shall prescribe the conditions with which the holder of the variance shall comply, including:

(1) the duration of the variance;

(2) the extent of the abatement of emissions of air contaminants to be accomplished over a stated period of time, which shall be the time the board considers reasonable under the circumstances;

(3) any requirements as to the submission of periodic reports on the progress which the holder of the variance makes toward compliance with the Act or any rule or regulation as to which the variance has been granted; and

(4) the character and level of the emissions of air contaminants which may be made under the variance.

(c) After a public hearing, notice of which shall be given to the holder of the variance, the board may require the holder of a variance, from time to time, for good cause, to conform to new or additional conditions. The board shall allow the holder a rea-



sonable time to conform to the new or additional conditions and, on application of the holder, the board may grant additional time.

(d) A variance does not become a vested right in the holder; and it may be revoked or suspended for good cause, after a public hearing, notice of which shall be given to the holder of the variance, on any of the following grounds:

- (1) the holder has failed or is failing to comply with the conditions of the variance;
- (2) the variance or operations under the variance have been abandoned; or
- (3) the variance is no longer needed by the holder.

(e) The notice required by Subsections (c) and (d) of this section shall be sent to the holder of the variance at his last known address as shown by the records of the board.

#### Extensions of Variances

Sec. 3.24. The holder of a variance may request the board for an extension of the term of the variance. Notice of the request shall be mailed to the public officials as specified in Subsection (a) of Section 3.22 of this Act at least 10 days before the board acts on the request. Except as to the time for notice as specified in this section, the procedure which the board shall follow on a request for an extension of a variance shall be the same as in the case of an original petition for variance.

#### Failure of Board to Act on Variance

Sec. 3.25. Upon the failure of the board to take action within 120 days after receipt in proper form of a petition for variance or to amend a variance, or of a request to extend a variance, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the board shall continue to have jurisdiction to act on the petition.

#### Effect of Filing a Variance Petition

Sec. 3.26. The filing of a petition for variance or to amend a variance, or of a request to extend a variance, does not serve to abate any suit, whether by the board or a local government, or any hearing, investigation, or other proceeding which the board or a local government may then have in process or may thereafter initiate. The granting of a variance or amendment to a variance, or of an extension of a variance, shall operate to authorize emissions of air contaminants or other activities beyond the limitations prescribed in this Act or in the rules and regulations of the board from the effective date of the board's action, but only for the period and to the extent specified in the board's order.

#### Construction Permit

Sec. 3.27. (a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this State shall apply for and obtain a construction permit from the board before any actual work is begun on the facility. The board may exempt certain facilities or types of facilities from the requirements of Section 3.27 and Section 3.28 if it is found upon investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

(b) Along with the application for the permit, the person shall submit copies of all plans and specifications necessary for determining whether the proposed construction will comply with applicable air control standards and the intent of the Texas Clean Air Act, together with any other information which the board considers necessary.

(c) If, from the information submitted under subsection (b) of this section, the board finds the proposed facility will utilize at least the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility and no indication that the emissions from the proposed facility will contravene the intent of the Texas Clean Air Act, including protection of the health and physical property of the people, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(d) If the person applying for a permit makes the alterations in his plans and specifications to meet the specific objections of the board, the board shall grant the permit, but the board may refuse to accept new applications by a person until all previous objections of the board to the previously submitted plans of that person are rectified. If the person fails or refuses to alter the plans and specifications, the board shall refuse to grant the permit.

(e) A permit granted under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act.

(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt work on a facility which is being done without a permit issued under this section or is in violation of the terms of a permit issued under this section.

(g) The powers and duties set out in Section 3.27 and Section 3.28 may be delegated by the board to the executive director. The applicant may appeal to the board any decision made by the executive director under these sections.

(h) Provided, however, that at the time this Act becomes effective no provision of this Act shall apply where any person, firm, partnership or corporation has let any contract, or begun any construction for any addition, alteration or modification to any new or existing facility. Any contracts under this subsection shall have a beginning construction date no later than six months after the effective date of this Act to qualify for this exemption.

#### Operating Permit

Sec. 3.28. (a) If a permit to construct is issued, then within sixty days after the facility has begun operation, the person in charge of the facility shall apply for an operating permit. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and regulations and with the Texas Clean Air Act in support of the application for an operating permit. If start-up or testing requires more than sixty days, this period may be extended by the board.

(b) When all stipulations of the construction permit are met and the operation of the facility will not contravene air pollution control standards set by the board or will not contravene the intent of the Texas Clean Air Act, the board shall issue within a reasonable time the operating permit.

(c) If the board determines that the operation of such a facility will contravene the air pollution control standards set by the board or will contravene the intent of the Texas Clean Air Act it shall set out in a report to the applicant the specific objections which it finds to the facility and shall not grant the permit.

(d) The board shall refuse to accept new applications by a person for an operating permit until all the previous objections to that facility submitted by the board are rectified.

(e) A permit issued under this section may be revoked by the board if the board later determines that any of the terms of the permit are being violated or that emissions from the facility contravene air pollution control standards set by the board or contravene the intent of the Texas Clean Air Act.

(f) The board or the executive director may seek an injunction in a court of competent jurisdiction to halt the operation of any facility which is operating without a permit issued under this section or which is operating in violation of the terms of a permit issued under this section.

#### Permit and Variance Fees

Sec. 3.29. The board may adopt rules relating to charging and collecting fees for permits and variances, including schedules of fees to be charged.

The fees shall be sufficient to cover the reasonable costs of review and action by the board on a permit or variance application and of implementing and enforcing the terms and conditions of the permit or variance. Fees adopted under this section shall be not less than \$50 nor more than \$7,500.

#### A Pilot Program for Motor Vehicle Inspection and Maintenance, a Study of such Programs, Reports to the Legislature, and Development of and Preparation for a Motor Vehicle Inspection and Maintenance Program

Sec. 3.30. (a) On or before December 1, 1980, the Texas Air Control Board shall submit to the 67th Session of the Legislature a report based on the results of the pilot program and study required by Subsections (b) and (c) of this section. The report required by this subsection shall contain recommendations as to the most feasible program, if any, for controlling motor vehicle emissions in the State of Texas and reflect consideration of the following factors as they relate to the alternative programs listed in Subsection (c):

- (1) acceptance by and protection of consumers;
- (2) overall effectiveness including costs versus benefits;
- (3) resulting social and economic impacts;
- (4) appropriate geographic areas of applicability;
- (5) the operating of motor vehicle inspection and maintenance, registration, and safety inspection programs in other states; and
- (6) any additional factors deemed by the Texas Air Control Board to be appropriate.

(b) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and conduct either directly or through a private contractor a pilot program utilizing advanced computer technology for the purpose of inspecting, testing, and compiling a list of a representative sample of motor vehicles giving primary attention to vehicles operated in Harris and contiguous counties to determine:

(1) actual emissions of air contaminants from such vehicles and the cause of any excessive emissions and whether specific equipment and operating parameters identified by the Texas Air Control Board as significantly affecting vehicle emissions are installed, adjusted, and operating in accordance with manufacturers' specifications;

(2) whether required vehicle safety features as specified by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), are properly installed and operating; and

(3) the feasibility of performing any necessary registration of such vehicles at the time of inspection and testing.

(c) In conjunction with the pilot program established pursuant to Subsection (b) and using any available information, including but not limited to that generated by the program, the Texas Air Control Board with the assistance of the Department of Public Safety and the State Department of Highways and Public Transportation shall conduct a comprehensive examination and evaluation of motor vehicle inspection, maintenance, and registration programs utilizing advanced computer technology. The study required by this subsection shall include an analysis of:

(1) the effectiveness of programs requiring actual testing of motor vehicle emissions and needed maintenance or the inspection and adjustment of appropriate vehicle operating parameters which relate to emissions of air contaminants;

(2) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas in conjunction with a motor vehicle safety inspection program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(3) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas independently of a motor vehicle safety program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(4) the effectiveness and efficiency of a motor vehicle registration program operated in conjunction with one or more of the alternative programs listed in Subsection (c)(1), (c)(2), or (c)(3) above.

(d) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and make preparations for a motor vehicle inspection and maintenance program for Harris County by designing, planning, and scheduling the implementation of the necessary elements of such program. The design of such program shall be based on the results of the pilot program and study required by Subsections (a)

and (b) of this section and shall be consistent with the recommendations to be contained in the report required by Subsection (c) of this section. The schedule for such program:

(1) shall be adequate to allow and achieve full implementation of the inspection and maintenance program as it affects passenger automobiles in Harris County not later than December 31, 1982;

(2) shall not, prior to 120 calendar days after the convening of the 67th Session of the Legislature, require or include:

(A) mandatory participation in the program by the public;

(B) execution of an agreement with a private contractor to operate inspection centers; or

(C) construction or acquisition of inspection centers or acquisition of inspection equipment except as may be necessary or useful to the conduct of the pilot program required by Subsection (a) of this section;

(3) shall, to the maximum extent feasible and consistent with other requirements of this subsection, preserve and facilitate the range of choices available to the 67th Session of the Legislature as to the direction and further development of a motor vehicle inspection and maintenance program for the State of Texas.

(e) The Texas Air Control Board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying the requirements of this section.

(f) This section shall become effective upon approval by the administrator of the Environmental Protection Agency of those provisions of the plan submitted by the governor of the State of Texas in accordance with the Federal Clean Air Act Amendments of 1977,<sup>1</sup> which relate to inspection and maintenance of motor vehicles and the use of emission reductions credited to the pilot program established by this Act to allow for new source growth in affected areas.

<sup>1</sup> 42 U.S.C.A. § 7401 et seq.

#### SUBCHAPTER D. PROHIBITION AGAINST AIR POLLUTION; ENFORCEMENT

##### Unauthorized Emissions Prohibited

Sec. 4.01. (a) Except as authorized by a rule, regulation, variance or other order of the board, no person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity which causes or contributes to, or which will cause or contribute to, a condition of air pollution.

(b) No person may cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of this Act or of any rule, regulation, variance, or other order of the board.

(c) Any person who violates any provision of this Act or of any rule, regulation, variance, or other order of the board is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.

#### Enforcement by Board

Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, then the board, or the executive secretary when authorized by the board, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(b) At the request of the board, or the executive secretary when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

#### Enforcement by Local Governments

Sec. 4.03. Whenever it appears that a violation or threat of violation of any provision of Section 4.01 of this Act, or of any rule, regulation, variance or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the board, may cause to be instituted through its own attorney a suit for the injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the board is a necessary and indispensable party.

#### Venue and Procedure

Sec. 4.04. (a) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, variance or other order of the board, the court may grant the board or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

(e) All civil penalties recovered in suits instituted by the State of Texas under this Act shall be paid to the general revenue fund of the State of Texas.

(f) All civil penalties recovered in suits instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments first instituting the suit on the other, with fifty percent of the recovery to be paid to the general revenue fund of the State of Texas and the other fifty percent equally to the local government or governments first instituting the suit.

#### Act of God, War, Etc.

Sec. 4.05. The liabilities which would otherwise be imposed by this Act upon persons violating any provision of this Act or of any rule, regulation, variance, determination or order issued under this Act shall not be imposed due to any violation caused by an act of God, war, strike, riot, or other catastrophe.

### SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

#### Inspections; Power to Enter Property

Sec. 5.01. (a) A local government has the same power as the board has under Section 3.05 of this Act to inspect the air and to enter public and private property within its territorial jurisdiction to determine whether or not:

(1) the level of air contaminants in any area within its territorial jurisdiction meets the level set by the board or, in the case of a city or town, the level set by the governing body of that city or town under the authority of Section 5.05 of this Act;

(2) the emissions from any source meet the level set for that source by the board or, in the case of a city or town, by the governing body of that city or town under the authority of Section 5.05 of this Act; or

(3) a person is complying with this Act or any rule, regulation, variance or other order issued by the board.

(b) The local government in exercising the powers granted in this section is subject to the same provisions and restrictions as the board.

(c) When requested by the board, a local government shall transmit the results of its inspections to the board.

#### Recommendations to Board

Sec. 5.02. A local government may make recommendations to the board concerning any rule, regulation, determination, variance or other order of the board that affects any area within its territorial jurisdiction. The board shall give maximum consideration to the recommendations of a local government.

#### Enforcement Action

Sec. 5.03. A local government may bring an enforcement action under this Act in the manner provided in Subchapter D of this Act for local governments.

#### Cooperative Agreements

Sec. 5.04. A local government may execute cooperative agreements with the board or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid and education.

#### Authority of Cities and Towns

Sec. 5.05. (a) Subject to the provisions of Section 1.05 of this Act, an incorporated city or town has such powers and rights as are otherwise vested by law in the city or town to:

(1) abate a nuisance; and

(2) enact and enforce any ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with the provisions of this Act or the rules, regulations or orders of the board.

(b) Any ordinance enacted by an incorporated city or town shall be consistent with the provisions of this Act and the rules, regulations and orders of the board, and shall not make unlawful any condition or act approved or otherwise authorized pursuant to this Act or the rules, regulations or orders of the board.

### SUBCHAPTER F. JUDICIAL REVIEW

#### Appeal of Board Action

Sec. 6.01. (a) A person affected by any ruling, order, decision, or other act of the board may appeal

by filing a petition in a district court of Travis County.

(b) The petition must be filed within thirty days after the date of the board's action, or, in case of a ruling, order or decision, within thirty days after its effective date.

(c) Service of citation on the board must be accomplished within thirty days after the date the petition is filed. Citation may be served on the executive secretary or any member of the board.

(d) The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a board action other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance shall be tried in the same manner as appeals from the justice court to the county court.

[Acts 1967, 60th Leg., p. 1941, ch. 727, eff. Sept. 1, 1967. Amended by Acts 1969, 61st Leg., p. 817, ch. 273, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2003, ch. 619, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1275, ch. 469, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.084, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1787, ch. 726, §§ 2 to 8, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(36), eff. Aug. 31, 1981.]

Section 2 of Acts 1969, 61st Leg., p. 817, ch. 273, provided as follows:

"The six members of the Texas Air Control Board appointed or continued in office under the provisions of Section 3(A) of Chapter 727, Acts of the 60th Legislature, Regular Session, 1967 (Article 4477-5, Vernon's Texas Civil Statutes), and who are in office when this Act goes into effect, shall continue in office as six of the nine members of the Texas Air Control Board, as follows: Herbert C. McKee and Wendell H. Hamrick, the presently serving members appointed to a six-year term in July, 1968, shall serve for a period ending September 1, 1973; Clinton H. Howard and Henry J. LeBlanc, Sr., the presently serving members appointed to a six-year term in February, 1966, shall serve for a period ending September 1, 1971; Herbert W. Whitney, the presently serving member appointed to a four-year term in February, 1966, shall serve until September 1, 1969; and the person appointed to fill the vacancy in the position previously held by D.O. Tomlin, who was appointed in January, 1968, to serve the balance of a four-year term which began in August, 1965, shall serve until September 1, 1969. A person appointed as a member following the expiration of the term of office of a member named in the preceding sentence shall serve during a six-year term as provided in Section 2.03 of this Act. The governor shall also appoint the other three members of the board, as provided in Section 2.02 of this Act. The terms of these three members shall begin on September 1, 1969, and one shall be appointed for a two-year term, one for a four-year term, and one for a six-year term. A person appointed as a member following the expiration of the term of office of each of these three members shall serve during a six-year term as provided in Section 2.03 of this Act."

Section 4 of the 1971 act provided:

"Upon the failure of the board to take action within 120 days after receipt in proper form of an application for a permit under

Sections 3.27 or 3.28, the petitioner shall be entitled to assume that his petition has been denied, and he may perfect an appeal on this basis in the manner provided in Section 6.01 of this Act. However, until such time as the petitioner files his appeal in the manner provided in Section 6.01 of this Act, the board shall continue to have jurisdiction to act on the petition."

Sections 1 and 9 of the 1979 amendatory act provided:

"Sec. 1. Purpose and policy. The Texas Legislature recognizes both the importance and historical effectiveness of this state's efforts to control air pollution in order to protect the public health and improve air quality. It further recognizes the impact of the 1970 Federal Clean Air Act and subsequent amendments on the State of Texas. The Texas Legislature believes that in passing the Clean Air Act, the United States Congress intended that the national air quality standards promulgated thereunder by the Environmental Protection Agency be both reasonable and attainable.

"It is hereby declared the public policy of the State of Texas that the state in cooperation with the federal government should determine the appropriate environmental controls to be applied within its boundaries necessary to protect the public health and improve air quality. The State of Texas should continue to question and challenge federal air quality regulations and programs which establish unreasonable and unattainable standards; particularly when the programs are of doubtful scientific benefit and are established with no consideration of regional differences among the states. The Texas Legislature should undertake to conduct studies and pilot projects necessary to prove the need for air quality programs and control measures which will have major impact on the State of Texas."

"Sec. 9. The provisions of this Act which give the Texas Air Control Board authority to regulate radioactive air contaminants shall become effective only upon an affirmative determination relating to such contaminants by the administrator of the Environmental Protection Agency pursuant to Section 122 of the Federal Clean Air Act Amendments of 1977."

#### Art. 4477-5a. Clean Air Financing Act

##### Short Title

Sec. 1. This Act may be cited as the Clean Air Financing Act.

##### Policy and Purpose

Sec. 2. (a) It is the policy of this state and the purpose of this Act to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of health, general welfare, and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility. The accomplishment of the purposes stated in this Act will implement such policy, and is for the health and welfare of the people of this state and for the improvement and protection of their properties. The issuer in carrying out the purposes of this Act will be performing an essential public function under the constitution. The issuer shall not be required to pay any tax or assessment on the control facilities or any part thereof, and the bonds issued hereunder and their transfer and the income therefrom shall at all times be free from taxation within this state. This section shall not be construed as affecting the laws of this state relating to ad valorem taxes imposed on persons or leaseholds or other interests of persons which are not public agencies or political subdivisions. Any control facilities that are the subject of any contract for pur-

chase or use under this Act shall be construed to be subject to ad valorem taxation payable by the person contracting with the issuer as if such contract created a leasehold.

(b) It is hereby determined by the legislature and also declared to be the policy of this state that the control of air pollution is essential to the well-being and survival of its inhabitants and the protection of the environment, and that specifically the control, prevention, and abatement of air pollution are and will be for the specific purpose of the conservation and development of the natural resources of the state, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, through the prevention of further damage to or destruction of the environment, resulting in further conservation and development of such natural resources.

##### Definitions

Sec. 3. As used in this Act, unless the context requires a different definition:

(1) "Air contaminant," "air pollution," "person," and "Texas Air Control Board" shall have the same meanings as the terms are now defined in the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes).

(2) "Control facilities" means facilities designed to reduce or eliminate air pollution which have been so certified by the Texas Air Control Board or by its executive secretary as may be authorized by the Texas Air Control Board.

(3) "Cost" as applied to the acquisition, construction, or improvement of control facilities, including real property acquired therefor, shall include financing charges, interest prior to and during construction and for a period found to be reasonable by the issuer after completion of construction, expenses incurred for architectural and engineering services, legal services, plans, specifications, surveys, estimates, placing the control facilities in operation, administration, and such other expenses as may be necessary or incident to such acquisition, construction, and improvement.

(4) "Coastal basin" and "river basin" mean the coastal basins and river basins now defined and designated by the Texas Water Development Board as separate units for the purpose of water development and interwatershed transfers, and as they are made certain by contour maps on file in the office of the Texas Water Development Board, including, but not limited to, rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

(5) "Disposal system" and "river authority" shall have the same meanings as the terms are now defined in Chapter 25 of the Texas Water Code, and "district" means any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, provid-

ed "district" shall not mean any district or authority located entirely within a river authority unless such district or authority includes within its boundaries all or part of at least two incorporated cities, towns or villages or is governed by any one or more of Chapters 56, 60, 61, 62, or 63 of the Texas Water Code, or was created for the primary purpose of the navigation of its coastal and inland waters.

(6) "Governing body" means, with reference to an issuer, the council, commission, commissioners court, board of directors, trustees, or similar body charged by law with the governance of an issuer.

(7) "Issuer" means and includes each of the following, respectively, each city, town, village, county, and district now or hereafter existing in this state.

(8) "Real property" means lands, structures, franchises and interests in land, water, land under water, riparian rights, and air rights and any thing and right pertaining thereto, including, but not limited to, easements, rights-of-way, uses, leases, licenses, and other incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

(9) "Resolution" means the resolution, order, ordinance, or such other action, as the case may be, of the governing body authorizing the bonds.

**Control Facilities; Acquisition and Construction;  
Lease and Sale; Location**

Sec. 4. (a) Each issuer is authorized to acquire, construct, and improve, or cause to be acquired, constructed, and improved, control facilities. The issuer is also authorized to acquire real property as deemed appropriate by the issuer for the control facilities. Such control facilities may be located upon property owned by the issuer or upon property of another person or persons. The issuer is authorized to enter into leases or other contracts with persons whereby such persons shall use or acquire control facilities of the issuer. The issuer is authorized to sell such facilities to any person or persons including a person or persons using such facilities, such sale to be by installment payments or otherwise and upon such conditions as the issuer deems desirable.

(b) As to a river authority such control facilities may be situated outside its boundaries if they are located wholly or partially within its river basin or a coastal basin adjoining its boundaries, and may be located anywhere in the state if such control facilities are financed at the same time and with the same issue of bonds also financing control facilities located within its boundaries or wholly or partially within its river basin or a coastal basin adjoining its boundaries.

(c) As to a city, town, or village such control facilities must be located wholly or partially within its corporate limits or wholly or partially within its extraterritorial jurisdiction as the term is used in

the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

(d) As to a district other than a river authority and as to a county such control facilities must be located wholly or partially within its boundaries.

**Bonds and Notes; Issuance; Security;  
Payments; Election**

Sec. 5. (a) Each issuer is empowered to issue its negotiable bonds or notes payable from revenues of the issuer for the purpose of paying the cost of acquiring, constructing, or improving or causing to be acquired, constructed, or improved, control facilities, including real property required for the control facilities. Pending the issuance of definitive bonds or notes the issuer may authorize the delivery of negotiable interim bonds or notes eligible for exchange or substitution by use of the definitive bonds or notes. Bonds or notes shall not be issued to acquire existing control facilities solely for the purpose of again leasing or selling the same to the same person or one controlled by such person, but bonds may be issued to acquire existing control facilities which are to be substantially improved and then leased or sold to the same person or one controlled by the same person.

(b) Such bonds or notes shall be authorized by resolution of the governing body and shall have characteristics and bear such designation as may be determined by the governing body provided that the designation of the bonds or notes shall include the name or names of the person or persons using or purchasing the control facilities being financed with the bonds or notes or in the alternative the name or names of the person or persons guaranteeing the contractual obligations of the person or persons using or purchasing such control facilities, or if the control facilities are to be used or purchased by a group of persons the designation may state that a group of persons will be using or purchasing such control facilities as therein provided. The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the governing body, shall be attested by its secretary, and shall bear the seal of the issuer of the governing body. It is provided, however, that such signatures may be printed or lithographed on the bonds of authorized by the governing body, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The issuer may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 40 years, may bear interest at a rate or rates, may be sold at a price or under terms determined by the governing body to be the most advantageous reasonably obtainable, within the discretion of the governing body, may be made callable prior to maturity at such times and prices as may be prescribed in the

resolution authorizing the bonds or notes, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(c) Such bonds or notes may be issued in more than one series and from time to time as required for carrying out the purposes of this Act.

(d)(1) The bonds or notes of any issuer may be secured by a pledge of all or any part of the revenues of the issuer derived from the use and/or sale of control facilities and the use and/or sale of, or services rendered by, disposal systems as specified by resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(2) In the alternative, the bonds or notes of a city, town, village or county may be secured by a pledge of said revenues and also by other utility revenues of the city, town, village or county specified by resolution of the governing body or in the trust indenture or other instrument securing the bonds or notes.

(3) Any such pledge under Subsection (1) or (2) of this paragraph may reserve the right, under conditions therein specified, to issue additional bonds or notes which will be on a parity with or subordinate to the bonds or notes then being issued. Bonds or notes issued for the purposes set out in this Act may be combined in the same issue with bonds or notes issued for other purposes authorized by law.

(e) It shall be the duty of the governing body to fix and from time to time revise payments under leases and other contracts for the use or sale of the control facilities of the governing body in order that such payments together with any other pledged revenues will be sufficient to pay such bonds or notes and the interest thereon as the same mature and become due and to maintain the reserve or other funds as provided in the resolutions authorizing such bonds or notes or the trust indenture or other instruments securing such bonds or notes. The governing body shall have the power to direct the investment of moneys in the funds created by such resolutions, trust indentures, or other instruments securing the bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into the interest and sinking fund and reserve funds, and provisions for such may be made in the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes. Proceeds from the sale of the bonds or notes shall be used for the payment of all expenses of issuing and selling the bonds or notes. The proceeds from the sale of the bonds or notes may be invested: (1) in direct or indirect obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes; or (2) in certificates of deposit of

any bank or trust company which deposits are secured by such obligations. Any bank or trust company with trust powers may be designated to act as depository of the proceeds of bonds, notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) The resolution authorizing the issuance of the bonds or notes or the trust indenture or other instrument securing them may provide that in the event of a default or under the conditions therein stated, a threatened default, in the payment of principal or of interest on bonds or notes, any court of competent jurisdiction may, upon petition of the holders of outstanding bonds or notes, appoint a receiver with authority to collect and receive pledged income, and such instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds or notes payable from the same source to institute or prosecute any litigation affecting the issuer's property or income.

(h) All such bonds or notes shall be special obligations payable solely from the revenues pledged to their payment and shall not be considered general obligations of the governing body, an issuer, or the State of Texas. The holder of the bonds or notes shall never have the right to demand payment from moneys derived by taxation or any other revenues of the issuer except those revenues pledged to the payment of the bonds or notes.

(i)(1) Before any city, town, village, or county issues any bonds or notes secured by the revenues described in Section 5(d)(1) of this Act, such city, town, village, or county must publish notice of its intention to issue the bonds or notes at least one time in a newspaper of general circulation within the boundaries of such city, town, village, or county. Within 30 days after the date of such publication not less than 10 percent of the qualified electors of the city, town, village, or county issuing such bonds or notes, may file a petition with the clerk or secretary, as the case may be, of the governing body, praying the governing body to order an election for the purpose of submitting the proposition to issue such bonds or notes to a vote of the qualified electors of such city, town, village, or county, as the case may be. Upon the filing of such petition, such governing body shall order an election to be held in such city, town, village, or county to determine whether or not such bonds or notes shall be issued as indicated in such notice. The governing body shall determine the time and the place or places of holding said election; and the manner of holding same shall be governed by the Texas Election Code. If the proposition for the issuance of such bonds or notes be sustained by a majority of the qualified electors voting at such election on such proposition, then such bonds or notes shall be authorized and may be issued by the governing body. In the event no such petition is presented to the governing body within the time hereinabove prescribed, no election



on the proposition shall be required, and such governing body shall then have the power to proceed with the issuance of the bonds or notes, as the case may be.

(2) Before any city, town, village, or county issues any bonds or notes secured by the revenues described in Section 5(d)(2) of this Act, the governing body of such city, town, village, or county must order an election to be held in that city, town, village, or county to determine the time and the place or places of holding the election; and the manner of holding it shall be governed by Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup> If the issuance of bonds or notes be favored by a majority vote of the qualified electors voting at such election, then the bonds or notes shall be authorized and may be issued by the governing body.

<sup>1</sup> Article 701 et seq.

#### Refunding Bonds and Notes

Sec. 6. The governing body is authorized to issue refunding bonds or notes for the purpose of refunding the principal, interest and redemption premium, if any, on outstanding bonds authorized by this Act. Such refunding bonds or notes may be issued to refund more than one series of outstanding bonds or notes and combine the revenues pledged to the outstanding bonds or notes for the security of the refunding bonds or notes, and may be secured by other or additional revenues and deed of trust liens. The provisions of this law with reference to the issuance by the governing body of bonds or notes, their security, and their approval by the attorney general and the remedies of the holders shall be applicable to refunding bonds or notes. Refunding bonds or notes shall be registered by the comptroller upon surrender and cancellation of the bonds or notes to be refunded, but in lieu thereof, the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the bank where the original bonds or notes are payable, in which case the refunding bonds or notes may be issued in an amount sufficient to pay the principal of, any redemption premium, and the interest on the original bonds or notes to their option date or maturity date, and the comptroller shall register them without concurrent surrender and cancellation of the original bonds or notes.

#### Additional Security for Bonds and Notes; Trust Indenture

Sec. 7. Any bonds or notes (including refunding bonds or notes) authorized by this law may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or outside the State of Texas. Such bonds or notes, within the discretion of the governing body, may be additionally secured by a mortgage or a deed of trust lien or security interest upon designated control facilities of the

governing body and all property, franchises, easements, leases, and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell such control facilities for the payment of the indebtedness, power to operate such control facilities and all other powers and authority for the further security of the bonds or notes. Such trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties may contain any provisions prescribed by the governing body for the security of the bonds or notes and the preservation of the trust estate, and may make provision for amendment or modification thereof, may condition the right to expend the issuer's money or sell the issuer's control facilities upon approval of a registered professional engineer selected as provided therein, and may make such other provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable and proper and not in violation of law. Any purchaser at a sale made under the mortgage or the deed of trust lien, where one is given, shall be the absolute owner of the control facilities and rights so purchased. The trust indenture may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes.

#### Submission of Bonds, Notes and Contracts to Attorney General; Approval; Registration; Incontestability

Sec. 8. After any bonds and notes, including refunding bonds and notes, are authorized by the governing body, such bonds and notes and the record relating to their issuance shall be submitted to the attorney general for his examination as to the validity thereof. Where such bonds and notes recite that they are secured by a pledge of the proceeds of a lease or leases or other contract or contracts theretofore made between the issuer and any person, such contracts may also be submitted to the attorney general. If such bonds or notes have been authorized and if such contracts have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts, and the bonds or notes then shall be registered by the comptroller of public accounts. After the bonds or notes, and the leases or other contracts, if any, have been approved by the attorney general and the bonds or notes registered by the comptroller of public accounts, such bonds or notes and any such leases or contracts shall be incontestable for any cause.

#### Term of Lease or Contract

Sec. 9. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein or refunding bonds or notes issued in lieu of such bonds or notes are fully paid.

**Bonds and Notes as Legal Investments and  
Security for Deposits**

Sec. 10. All bonds or notes issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking fund of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value, when accompanied by all unmatured coupons appurtenant thereto.

**Construction Contracts; Performance Bonds and Bids**

Sec. 11. The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts let by the issuer; however, there shall be no obligation for an issuer to receive construction bids on any project and Chapter 163, Acts of the 42nd Legislature, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), or any other law requiring competitive bids, shall not apply to construction contracts for projects authorized by this Act.

**Relocation Expenses**

Sec. 12. In the event any issuer, in the exercise of the power of relocation, or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer, and such expense shall be paid from the proceeds of any bonds or notes issued to finance control facilities, the installation of which results in such expense. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

**Applicability to Air Control Act and Board, Districts  
and Local Governments; Remedies of  
Private Persons**

Sec. 13. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the Texas Air Control Board, districts, or local governments in performing any of the powers, functions, and duties vested in such entities by other

laws. The Texas Clean Air Act, as amended, shall be enforced without regard to ownership of any control facilities financed under this Act. The Act shall be wholly sufficient authority within itself for the issuance of the bonds or notes and the performance of the other acts and procedures authorized hereby, without reference to any other laws, or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds or notes are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of the Act and any provisions of any other law, the provisions of the Act shall prevail and control; provided, however, that any issuer shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. Nothing in this Act affects the right of any private person to pursue against a person contracting with an issuer pursuant to this Act all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor, or both. No person contracting with an issuer for the purchase or use of control facilities shall ever be entitled to urge the defense of sovereign immunity by reason of the ownership of such control facilities by an issuer. Notwithstanding the provisions of this section, it is further provided that nothing in this Act shall in any way limit or diminish the power and authority of the Texas Air Control Board or of a local government to enact and enforce rules and regulations and to carry out other duties authorized by the Texas Clean Air Act, as amended (Article 4477-5, Vernon's Texas Civil Statutes).

**Certification of Control Facilities**

Sec. 14. In certifying facilities as control facilities the Texas Air Control Board may prescribe necessary criteria and procedures for such certification and can limit such certification to confirming that the proposed facility is intended for the purpose of controlling air pollution. No certification as to the adequacy of the facility or its expected performance or other specifications shall be necessary.

**Conformance with Constitutions**

Sec. 15. Nothing in this Act shall be construed to violate any provision of the United States or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions.

**Severability**

Sec. 16. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance

shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that the Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1973, 63rd Leg., p. 96, ch. 55, eff. April 26, 1973.]

#### Art. 4477-5b. Air Pollution

##### Definitions

Sec. 1. In this article:

(1) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or odor, or any combination thereof, produced by processes other than natural.

(2) "Person" means an individual or a private corporation.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or adversely affect humans, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property.

(4) "Source" means any point of origin of an air contaminant, whether privately or publicly owned or operated.

##### Emission of Air Contaminants

Sec. 2. No person may cause or permit the emission of any air contaminant which causes or which will cause air pollution unless the emission is made in compliance with a variance or other order issued by the Texas Air Control Board.

##### Violation of Variance Order

Sec. 3. No person to whom the Texas Air Control Board has issued a variance or other order authorizing the emission of any air contaminant from a source may cause or permit the emission of the air contaminant in violation of the requirements of the variance or order.

##### Punishment

Sec. 4. Any person who violates any of the provisions of Sections 2 or 3 of this article is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

##### Exceptions

Sec. 5. The emission of any air contaminant otherwise punishable under this article which is caused by an act of God, war, riot, or other catastrophe, is not a violation of this article.

##### Venue

Sec. 6. Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

Secs. 7 to 12. Repealed by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974.

##### Partial Repealer

Sec. 13. To the extent that any other general or special law, including Article 695, Penal Code of Texas, 1925,<sup>1</sup> makes an act or omission a criminal offense, which act or omission also constitutes a criminal offense under this article, such other general or special law is repealed, but only to that extent.

<sup>1</sup> Repealed by § 3(a) of Acts 1973, 63rd Leg., p. 991, ch. 399, enacting the new Texas Penal Code.

##### Cumulative Effect; Clean Air Act

Sec. 14. Nothing in this article repeals or amends nor shall be construed to repeal or amend, either expressly or impliedly, any of the provisions of the Clean Air Act of Texas, 1967 (Article 4477-5, Vernon's Texas Civil Statutes), but this article is cumulative of that Act, which remains in full force and effect.

[Acts 1969, 61st Leg., p. 480, ch. 153, § 1, eff. Sept. 1, 1969. Amended by Acts 1973, 63rd Leg., p. 991, ch. 399, § 3(a), eff. Jan. 1, 1974.]

#### Art. 4477-6. Renderers' Licensing Act

##### Short Title

Sec. 1. This Act may be cited as the "Texas Renderers' Licensing Act."

##### Definitions

Sec. 2. As used in this Act, unless a different meaning is required by the context and/or may be necessary to effectuate the purpose of this Act, the following definitions shall apply:

(a) "Health Authority" means the Department of Health of the State of Texas, or a duly authorized representative of such.

(b) "Commissioner of Health" means the Commissioner of Health of the State of Texas.

(c) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic or domesticated wild animal which was not slaughtered for human consumption.

(d) "Rendering raw material" means any material of animal origin, other than a "dead animal" as defined above, that is processed by rendering establishments, whether in unprocessed or partially processed form, and includes (but is not limited to) animals, poultry, and/or fish which were slaughtered or processed for human consumption but which became or were unsuitable for such use, all inedible products and by-products of animals, poul-

try, and/or fish slaughtered or processed for human consumption, any and all parts of dead animals, dead poultry and fish (in whole or in part), and waste cooking greases.

(e) "Rendering business" means the collection, transportation, disposal (whether by burying, burning, cooking, processing, or rendering) or storage of dead animals and/or rendering raw materials for commercial purposes, either as a separate business or in connection with any other established business.

(f) "Rendering establishment" means any establishment or part of an establishment, any plant, or any premises at or within which dead animals and/or rendering raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition other than as food for human consumption, and includes all other operations and facilities necessary, useful, or incidental to said rendering establishment except a "related station" as defined herein.

(g) "Related station" means any operation and/or facility necessary, useful, or incidental to the operation of a rendering establishment, but which is operated or maintained separately and apart from the rendering establishment or establishments served thereby, and includes (but is not limited to) a transfer station (where dead animals and/or rendering raw materials may be transferred from one conveyance to another) operated or maintained separately and apart from the rendering establishment or establishments served thereby.

(h) "Dead animal hauler" means any person who collects and disposes of dead animals for commercial purposes.

(i) "Rendering raw material hauler" means any person who collects and disposes of rendering raw materials for commercial purposes.

(j) "Processing" means any operation or combination of operations whereby materials derived from dead animal and/or rendering raw material sources are prepared for disposal at a rendering establishment, stored, or in any way treated for commercial use or disposition other than as food for human consumption.

(k) "Processing area" means any area in which processing is conducted.

(l) "Bactericidal agent" means any agent which will destroy bacteria and which is determined by the Health Authority to be safe for use in or about the rendering establishment.

(m) "Person" means any individual natural person, firm, partnership, association, corporation, trust, company, or organization, and every agent, officer, or employee of any thereof.

(n) "Employee" means any person who is employed in or by a rendering establishment, and who handles rendering equipment, utensils, containers, or packaging materials.

(o) "Nuisance" means any situation or condition within the provisions of Section 1(g) and Section 2, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Civil Statutes).

#### Scope and Application

Sec. 3. (a) On and after 90 days from the effective date of this Act, no person shall, without first obtaining an appropriate operating license from the Health Authority, engage in or operate a rendering business, or any adjunct thereof. During such 90-day period, any person who has applied for an operating license, or filed with the Health Authority written notice of an intention to apply for such license, and who has not been denied such, shall be subject to all the provisions of this Act and may operate as if he were a licensee. Immediately upon the effective date of this Act, no person shall, without complying with this Act and, when and as required by this Act, first obtaining a construction permit from the Health Authority, construct a new rendering establishment or enter into any new construction involving the addition to or replacement in an existing rendering establishment of one or more of the component parts set forth in Section 8(b) below.

(b) This Act shall not apply to any person slaughtering, butchering, manufacturing, or selling animal flesh and products solely as food for human consumption, or to persons transporting and/or disposing of the bodies of animals so killed or products thereof to any person solely for such purpose and use; provided, however, that if any such persons engage in rendering operations and/or processes, either in connection with the activities above exempted or wholly unrelated to and separate from such activities, then this Act shall have full application to all such rendering operations and/or processes, irrespective of the exemption granted in this Subsection (b). No person shall receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in the building or compartmented area of a building used as a rendering establishment or related station.

(c) This Act shall not apply to any governmental agency collecting, transporting, or disposing of dead animals and/or rendering raw materials in any way.

#### Operating Procedure

Sec. 4. (a) Operating procedures of rendering establishments shall provide for the conduct of rendering operations and processes in a sanitary manner, prevent the spread of infectious or noxious materials, and assure finished products which are free from disease-producing organisms. Rendering Establishment Operating Licenses shall be granted by the Health Authority only to those persons who demonstrate their compliance with this subsection.

(b) All operating licensees shall abide by and comply with the following specific requirements, upon

which they shall be deemed to be in compliance with Subsection (a) above:

(1) All vehicles used in transporting dead animals and/or rendering raw materials to, or from, rendering establishments shall be leak-proof and shall be maintained at all times so that no nuisance is created by them.

(2) Collection vehicles shall be held to a minimum of brief stops while enroute to the establishment with dead animals and/or rendering raw materials.

(3) Collection vehicles shall be washed and sanitized at the end of each day's operations.

(4) Any truck bed that has been used for the transport of any dead animals and/or rendering raw materials shall be thoroughly washed and sanitized before use for transport of finished products.

(5) Any truck bed that has been used for the transport of any dead animals and/or rendering raw materials to a rendering establishment or of finished products from a rendering establishment shall be thoroughly sanitized with a bactericidal agent before use for transport of any product intended for human consumption. No truck bed shall ever be used for the transport of dead animals and/or rendering raw materials at the same time said truck bed or any part thereof (no matter how such part is sealed or separated from other portions of said truck bed) is being used to transport any product intended for human consumption.

(6) All dead animals and/or rendering raw materials received on the rendering establishment premises shall be placed in the rendering process immediately or shall be stored for a period not exceeding 48 hours in such a manner as to prevent a nuisance and/or malodorous condition.

(7) All cooking or other dehydration operations shall be accomplished in such a manner as will prevent survival of disease-producing organisms in the material processed.

(8) No raw or uncooked dead animals or rendering raw materials containing disease-producing organisms shall be sold or offered for sale to any person not licensed under this Act; nor shall any person licensed hereunder purchase a dead animal or animals from a dead animal hauler not licensed hereunder.

(9) Adequate and suitable means for treatment of cooking vapors shall be provided and operated in such a manner as to control odors.

(10) During operations the floors in processing areas shall be kept reasonably free from processing wastes, including blood, manure, scraps, grease, water, dirt, and litter. Such floors shall be thoroughly cleaned at the end of each day's operations.

(11) All cooked and/or finished materials shall be kept separate from all dead animals and/or rendering raw materials areas in such a manner as to prevent contamination.

(12) Hide storage facilities shall be closed and separate from all other areas.

(13) Such equipment and utensils shall be provided as are necessary for the rendering establishment to conduct its operations in a sanitary manner.

(14) All wastes shall be handled and disposed of in a manner which will prevent contamination of the water supply, processing equipment, packaging materials, and finished products. All liquid wastes shall receive such treatment as may be required by the Health Authority and shall be disposed of in a manner approved by such Authority.

(15) Adequate and conveniently located toilet facilities for employees shall be provided within the establishment. An adequate number of lavatory facilities, supplied with warm water under pressure and with soap or other detergent, shall be conveniently located within the establishment for the washing of hands by employees.

(16) A drinking water supply, approved by the Health Authority, shall be provided at convenient locations within the establishment for the use of employees.

(17) Persons who engage in rendering processes and operations shall wear washable garments and accessories, and shall conform to hygienic practices during all periods of such duties.

(18) The immediate premises of rendering establishments shall be kept in a clean, neat condition and shall be reasonably free from undue collection of refuse, waste materials, rodent infestation, insect-breeding places, standing pools of water, and other objectionable conditions.

(19) Rendering establishments shall be kept in good repair.

(20) Rodents, roaches, and other vermin shall be controlled.

(21) All steel drums or other containers in which dead animals and/or rendering raw materials are accumulated by the producer thereof at various collecting points for pick-up by dead animal haulers or rendering raw materials collectors shall remain on the premises at each such collecting point and shall not be replaced, exchanged, or returned to a rendering establishment. The producer of such materials shall maintain such drums and containers in a clean and sanitary condition, and shall replace such drums and containers when necessary. Provided, however, that this Subparagraph (21) shall not apply where the producer of dead animals and/or rendering raw materials collects and accumulates such materials solely in rooms or areas which are separate and apart from all rooms and areas in which such producer receives, holds, slaughters, butchers, or otherwise processes or prepares any animal or animal part as food for human consumption.

(22) Every dead animal hauler shall keep the record of activities set forth in Section 16 below.

#### Related Stations

Sec. 5. Any person or persons who operate or maintain a related station not as a part or subsidiary of the rendering establishment or establishments served thereby, and who are not employees of any such establishment, shall nevertheless be subject to the provisions and requirements of Section 4, and shall obtain from the Health Authority a Related Station Operating License.

#### Dead Animal and Rendering Raw Material Haulers

Sec. 6. A dead animal and/or rendering raw material hauler, who operates separately and apart from and not as a part or subsidiary of the rendering establishment or establishments and/or the related station or stations served by him and who is not an employee of any such establishment or station, shall nevertheless be subject to the provisions and requirements of Section 4, and shall obtain from the Health Authority a Dead Animal Hauler Operating License and/or Rendering Raw Material Hauler Operating License.

#### Operating Licenses

Sec. 7. (a) Application for an operating license shall be under oath, shall state what type of operations are contemplated (whether rendering establishment, related station, or dead animal and/or rendering raw material hauler), shall give the location from which the business is to be conducted, and shall include such relevant information as the Health Authority may require to determine the applicant's compliance with Section 4 of the Act.

(b) Upon filing of an application and payment of the fee required by this Act, the Health Authority shall investigate the facts, and if it shall find that the applicant's operations or proposed operations are within the requirements of Section 4, it shall grant such application and issue to the applicant an operating license which shall be his license and authority to carry on a rendering business or a related station or to move dead animals or rendering raw materials, as the case may be, under the provisions of this Act.

(c) If the Health Authority shall not so find, it shall deny the application and notify the applicant in writing of the particular or particulars in which he fails to meet the requirements of Section 4. The applicant shall have 90 days in which to correct or remedy such shortcomings, after which the Health Authority shall again investigate the facts. If the Health Authority shall then determine that the applicant's operations do not meet the requirements of Section 4, it shall again deny the application and shall promptly notify the applicant in writing of the particular or particulars in which he fails to meet said requirements.

(d) An application twice denied by the Health Authority under Section 7(c) next above shall be deemed cancelled, and no license shall issue thereon; provided, however, that an applicant shall, upon

request within 30 days after the second denial, be entitled to a hearing on such application before the Commissioner of Health within 30 days after the date of such request.

(e) The Health Authority shall grant or deny each application within 30 days from its filing with the required fees, or from the expiration of the period in which to correct any shortcomings, if any, or from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and a Health Authority.

#### Construction and General Layout Requirements

Sec. 8. (a) All construction of or within rendering establishments which is subject to this Act shall be such as will provide for sanitary operations and environmental conditions, prevent the spread of disease-producing organisms and infectious or noxious materials, and prevent the development of malodorous conditions or a nuisance. Rendering Establishment Construction Permits (when and as required by this Act) shall be granted by the Health Authority only to those persons who demonstrate their compliance with this subsection.

(b) Any new construction of a rendering establishment or involving the addition to or replacement in an existing rendering establishment of one or more of the component parts set forth below, shall be in compliance as to such new construction with the following specific requirements (or so many thereof as may apply), and compliance therewith shall be deemed to be compliance with Subsection (a) above:

(1) Rendering establishments shall provide sufficient space for the conduct in a sanitary manner of rendering operations and processes carried on therein; for the installation of necessary utility equipment; and for the installation of processing equipment in such a manner that such equipment is easily accessible for cleaning.

(2) Rendering establishments shall be constructed so as to be easily maintained in a sanitary condition and to prevent harborage areas for rodents, roaches, and other vermin.

(3) All floors in rendering establishments shall be constructed of good quality concrete, metal, or other equally impervious and easily cleanable material, and shall be smooth, graded to drain, and provided with an adequate number of trapped drains or other waste-disposal facilities approved by the Health Authority. Gutters, if used to conduct such drainage, shall be so constructed and located as to be easily cleaned and maintained in a sanitary condition.

(4) Walls, partitions, and posts in all rooms and areas of rendering establishments shall be finished with smooth, washable surfaces of concrete, metal, or other equally impervious and easily cleanable material.

(5) Ceilings, or the underside of the roof if used as a ceiling, and exposed overhead structures in all

rooms or areas of rendering establishments shall have easily cleanable surfaces.

(6) All outer walls and roofs and openings therein shall be protected against the entrance of insects, rodents, and other vermin; and interior walls, partitions, posts, ceilings, and other overhead structures shall contain no crevices or openings which may provide harborage for rodents or insects.

(7) Sufficient ventilation shall be provided in rendering establishments to dispel disagreeable odors, condensate, and vapor. For this purpose, ventilating equipment such as individual fans, vents, and hoods shall be provided where necessary. Any mechanical ventilating equipment shall be so located and controlled as to prevent finished products or processing equipment from being contaminated from nearby or preceding operations or from other sources.

(8) Employee toilet rooms and dressing rooms shall be adequately vented to the outside air; and all space heaters, gas stoves, water heaters, and any other equipment giving off noxious odors, fumes, or vapors shall be vented to the outside air.

(9) All exhaust outlets from mechanical ventilation devices shall be conducted to the outside air and shall be so arranged, placed, and extended as to avoid creating a nuisance to adjacent areas.

(10) The water supply of each rendering establishment shall be from a public water supply acceptable to the Health Authority; or shall be from a private source complying with the requirements of the Health Authority, located, constructed, and, if necessary, treated so as to provide water of a safe, sanitary quality.

(11) There shall be no physical connection between the plant's water supply and any unsafe or questionable supply. The use of water from any such unsafe or questionable supply shall be permitted only for limited purposes such as fire control or ammonia condensers. In all cases supply lines for unsafe or questionable water shall be clearly identified.

(12) Hot and cold water shall be conveniently accessible to all parts of the establishment. Such water shall be under ample pressure and shall be available through such outlets and in such quantities as may be necessary to meet effectively the needs of the establishment at all times. The hot water system shall have sufficient capacity to furnish ample water with a temperature of at least 180 degrees F. during all periods of processing and cleanup operations.

(13) The plumbing system in each rendering establishment shall be installed in compliance with the state law and applicable local plumbing ordinances; and shall be so designed, installed, and maintained as to protect the plant's water supply from contamination through cross-connections, back siphonage, back-flow leakage, or condensation. The plumbing system shall readily carry away all liquid wastes.

(14) Where necessary to prevent discharge into the drainage system of solid wastes likely to clog the drainage system, the liquid wastes containing such solid materials shall be passed through a separator or indirect-waste receptor which shall effectively retain such solids prior to discharge into the drainage system.

(15) Rendering establishments shall provide toilet and dressing room facilities for employees of each sex. The design, construction, and equipment of such rooms shall require approval of the Health Authority. Provided, however, that this requirement shall have no application to toilet and/or dressing facilities contained in the managerial office area of a rendering establishment.

(16) A paved area, adequate in size and provided with adequate drains leading to a sanitary sewer system, shall be provided for the washing and sanitizing of trucks.

(c) The provisions of this section shall not apply to rendering establishments in existence and doing business as of the effective date of this Act; provided, however, that should an existing rendering establishment enter upon a program whereby its existing facilities are improved through new construction by the addition thereto or replacement of one or more of the component parts set forth in Subsection (b) above, then such new construction involving an addition or replacement of a Subsection (b) component (but only such new construction and not any other new construction or any already existing Subsection (b) component) shall be in compliance with this section, and a construction permit shall be obtained from the Health Authority (when and as required by this Act).

(d) Nothing contained herein shall require a construction permit from the Health Authority for construction of a new rendering establishment or new construction involving the addition or replacement in an existing rendering establishment of one or more Section 8(b) components where the cost to the rendering establishment of all Section 8(b) components involved and included in the new rendering establishment or the new construction to an existing rendering establishment is less than \$5,000; provided, however, that any and all such construction, notwithstanding the fact that no construction permit is required therefor, shall be undertaken and carried out in compliance with the requirements of Section 8.

#### Related Station Construction

Sec. 9. The construction of a new related station, or any new construction involving the addition to or replacement in an existing related station of one or more of the component parts set forth in Section 8(b) above, not undertaken in connection with and as a part of the construction of or new construction involving an addition of a Section 8(b) component or components to a rendering establishment for which a Rendering Establishment Con-

struction Permit including the related station has been obtained, shall be subject to the provisions and requirements of Section 8, and shall be undertaken and carried out only in compliance with the requirements of Section 8 and after obtaining from the Health Authority (when and as required by this Act) a Related Station Construction Permit.

#### Construction Permits

Sec. 10. (a) Application for a construction permit shall be under oath, shall state what type of construction is contemplated (whether new rendering establishment or new construction involving the addition or replacement of a Section 8(b) component or components; rendering establishment or related station) shall specify when the proposed construction is to take place, and shall include such relevant information as the Health Authority may require to determine the applicant's compliance with Section 8 of this Act.

(b) Upon filing of an application and payment of the fees required by this Act, the Health Authority shall investigate the facts, and if it shall find that the applicant's proposed construction is within the requirements of Section 8, it shall grant such application and issue to the applicant a construction permit which shall be his permit and authority to carry forward with and complete the proposed construction.

(c) If the Health Authority shall not so find, it shall deny the application and notify the applicant in writing of the particular or particulars in which he fails to meet the requirements of Section 8. The applicant shall have 90 days in which to correct or remedy such shortcomings, at the end of which the Health Authority shall again investigate the facts. If the Health Authority shall then determine that the applicant's operations do not meet the requirements of Section 8, it shall again deny the application and shall promptly notify the applicant in writing of the particulars in which he fails to meet said requirements.

(d) An application twice denied by the Health Authority under Section 10(c) next above shall be deemed cancelled, and no license shall issue thereon; provided, however, that an applicant shall, upon request within 30 days after the second denial, be entitled to a hearing on such application before the Commissioner of Health within 30 days after the date of such request.

(e) The Health Authority shall grant or deny each application within 30 days from its filing with the required fees, or from the expiration of the period in which to correct any shortcomings, if any, or from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Health Authority.

#### Contents and Location of Licenses and Permits

Sec. 11. Each operating license and construction permit shall state the address of the rendering

establishment, related station, or in the case of a Dead Animal and/or Rendering Raw Material Hauler Operating License, the dead animal and/or rendering raw material hauler, and the name of the licensee or permittee. The license or permit shall be displayed at the place of business named in the license or the place of construction named in the permit. The license or permit shall not be transferable or assignable except upon approval by the Health Authority.

#### License and Permit Fees

Sec. 12. The following fees shall accompany each application for an operating license or a construction permit:

##### (a) Operating Licenses:

- (1) Rendering Establishment Operating License: \$300;
- (2) Related Station Operating License: \$200;
- (3) Dead Animal Hauler Operating License: \$150;
- (4) Rendering Raw Material Hauler Operating License: \$150;
- (5) Dead Animal Hauler Operating License and Rendering Raw Material Hauler Operating License combined: \$150.

(b) Construction permits: Rendering Establishment and Related Station Construction Permit fees, both for construction of new rendering establishments or new related stations and for new construction involving an addition or replacement of a Section 8(b) component in an existing rendering establishment or related station, shall be based upon the dollar value (at the cost to the rendering establishment or related station) of the Section 8(b) components included in the new rendering establishment or new related station or the new construction to an existing rendering establishment or related station, according to the following schedule:

Cost of Section 8(b) components	Fee
(1) Less than \$10,000	No Permit Required
(2) \$10,000-\$49,999	\$ 100
(3) \$50,000-\$99,999	200
(4) \$100,000-\$249,999	500
(5) \$250,000 and over	1,000

(c) All fees required hereunder shall be payable to the Department of Health of the State of Texas, and shall be deposited in the State Treasury in a special account to the credit of that department and used for the purpose of the processing and investigation of applications hereunder and the administration of this Act; provided, however, that if an application is withdrawn within five calendar days from the day of its receipt by the Health Authority, that authority shall refund in full the application fee which accompanied it.



**Annual Renewal**

Sec. 13. Each license and permit shall remain in full force and effect until relinquished, suspended, revoked, or expired. All operating licenses shall be issued and granted for one year only, and shall be renewed annually, if desired, by the licensee. The annual renewal fee shall be the same as the original application fee set forth in Section 12 above. Every licensee desiring to renew his operating license shall, on or before each January 1st, pay the Health Authority the required fee. Upon receipt of said fee, the license shall be automatically renewed for the ensuing calendar year. If the annual renewal fee remains unpaid 15 days after written notice of delinquency has been given to the licensee by the Health Authority, the license shall, unless good cause for such failure to renew is shown, thereupon expire, and thereafter shall be renewed only upon a new application pursuant to the provisions of this Act.

**Revocation of Operating Licenses or Construction Permits**

Sec. 14. (a) The Commissioner of Health may, after notice and hearing, suspend or revoke any operating license or construction permit if it finds:

(1) that the licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or

(2) that any fact or condition exists which, had it existed or been known to exist at the time of the original application for such license or permit, would have justified the Health Authority in refusing to issue such license or permit.

Upon observing any such violation of this Act, the Commissioner of Health shall call the violation to the attention of the licensee or permittee and allow him a reasonable time to correct the violation; upon the failure of the licensee or permittee to do so, the Health Authority shall give notice of a hearing to suspend or revoke the license or permit, as hereinafter provided.

(b) The hearing shall be held upon 30 days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the suspension or revocation. The hearing shall be full, fair, and public. Such suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact, and a copy thereof shall be forthwith delivered to the licensee, or permittee. Such order, findings, and the evidence considered by the Commissioner of Health shall be filed with the public records of the Health Authority.

(c) The Commissioner of Health may reinstate a suspended license or permit or issue a new license or permit to a person whose license or permit has

been revoked if no fact or condition exists which would have justified the Health Authority in refusing originally to issue such license or permit under this Act.

**Inspection Required**

Sec. 15. At least once each year and at such other times as the Health Authority shall deem necessary, the Health Authority shall make an examination of the place of business of each operating licensee and the place of construction, so long as it is continuing, of each construction permittee, and shall inquire into and examine the premises, equipment, and operations of such licensee or permittee insofar as they pertain to the matters regulated by this Act. In the course of such examination, the Health Authority shall have free access to the place of business of each operating licensee and the place of construction of each construction permittee. Any licensee or permittee who shall unreasonably fail or refuse to cooperate with and assist the Health Authority in its examination of the licensee or permittee shall thereby be deemed in violation of this Act, and such failure or refusal shall constitute grounds for the suspension or revocation of such license or permit.

**Dead Animal Records**

Sec. 16. (a) Each licensed rendering establishment, related station (under Section 5 above), and dead animal hauler (under Section 6 above) shall provide itself with a Dead Animal Log of a type and size prescribed by the Health Authority. Each such log shall contain in the front thereof the name of the licensed rendering establishment, related station, or dead animal hauler who will use the log. When a licensed rendering establishment, related station, or dead animal hauler receives a dead animal or animals, it shall for each such animal immediately enter upon the Dead Animal Log the following information:

- (1) date and time of pick-up of animal;
- (2) name of driver of collection vehicle;
- (3) description of the dead animal;
- (4) location of the dead animal, including county; and
- (5) the owner of the dead animal, if known.

A record of the general route followed in making such collection shall likewise be kept, either in the log or in an appendix thereto.

(b) The Dead Animal Log maintained by each licensed rendering establishment, related station, or dead animal hauler shall be open for inspection by the Health Authority, or by persons with written authorization from the Health Authority, at all reasonable times. Repeated or willful failure or refusal to produce such log for, or to permit inspection thereof by, persons properly authorized to inspect such log shall constitute grounds for the revocation of such person's operating license.

#### Regulations

Sec. 17. (a) The Commissioner of Health may make regulations necessary for the enforcement of this Act and consistent with all its provisions. Each such regulation shall include reference only to the section or subsection to which it applies. Before making a regulation, the Commissioner of Health shall give every licensee and current permittee at least 30 days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or current permittee may be heard and may introduce evidence, data, or arguments or place the same on file. No regulation shall be promulgated except after consideration of all relevant matter presented, and every such regulation shall be in written form, stating its effective date and the date of promulgation. Each regulation shall be entered in a permanent book which shall be a public record and be kept in the office of the Health Authority. A copy of every regulation shall be mailed to each licensee and current permittee and no regulation shall become effective until the expiration of at least 30 days after such mailing.

(b) On application of any person and payment of the cost thereof, the Health Authority shall furnish, under its seal and signed by an authorized representative, a certificate of good standing, and a certified copy of any license, permit, regulation, or order.

(c) Any transcript of any hearing held by the Commissioner of Health or findings by the Commissioner of Health or the Health Authority under this Act shall be a public record and open to inspection at all reasonable times.

#### Hearings and Review

Sec. 18. (a) At all hearings before the Commissioner of Health under the provisions of this Act, parties in interest shall have the right to appear in person and by counsel, and to present oral and written evidence. If requested by a party in interest, a record shall be made of all evidence offered by such party and all other evidence considered by the Commissioner of Health.

(b) Any party in interest aggrieved by any order, ruling, or decision of the Commissioner of Health may, within 30 days after the date of entry, file in the District Court of Travis County, Texas, a petition against the Health Authority officially as defendant, alleging therein in brief detail the order, ruling, or decision complained of and praying for a reversal or modification thereof. The Health Authority shall within 30 days after the service upon it of such petition, certify to said district court the record of the proceedings to which the petition refers, or such portion thereof as may be required by the petitioner. The cost of preparing and certifying such record shall be paid to the Health

Authority by the petitioner and taxed as a part of the costs of the case. Upon the filing of an answer by the Health Authority, the case before the district court shall be at issue, without further pleadings, and upon application of either party shall be advanced and heard without further delay upon a trial de novo as that term is used in appealing from justice of the peace court to county courts.

(c) Upon a showing of cause therefor by any party in interest, the Commissioner of Health or the court may enter an order staying, pending appeal, the effect of an order of the Commissioner of Health from which the party in interest desires to appeal.

#### Penalty for Violations

Sec. 19. (a) Any person who continues operations or construction which is subject to regulation under this Act without obtaining and keeping in force a valid operating license or construction permit, or who willfully falsifies any of the records required by this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for a period of not more than 30 days, or by both such fine and imprisonment. Each day of such violation shall be a separate offense.

(b) In addition to all actions provided for in this Act and without prejudice thereto, the Health Authority may bring an injunction suit in any district court of this state having jurisdiction and venue to compel compliance with any provision of this Act or restrain any actual or threatened violation thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

#### Powers of Municipalities, Texas Commercial Feed Control Act of 1957, Pollution Control Laws and Regulations; Unaffected

Sec. 20. Nothing in this Act shall be construed as precluding any municipality from passing any ordinance regulating the rendering business within its boundaries, or as affecting or nullifying any existing municipal law or ordinance regulating such; provided, however, that all rendering establishments, related stations, and dead animal and/or rendering raw material haulers subject to regulation under this Act shall at all times comply with and adhere to the provisions of this Act, whether so required by municipal ordinance or not. Likewise, nothing in this Act shall be construed as affecting, amending or repealing the "Texas Commercial Feed Control Act of 1957," Chapter 23, Acts of the 55th Legislature, Regular Session, 1957,<sup>1</sup> or as repealing or affecting any law of this state or rule or regulation of any public regulatory body having as its subject the control of water or air pollution.

<sup>1</sup> Article 3881e (repealed; see now, Agriculture Code, § 141.001 et seq.)

[Acts 1969, 61st Leg., p. 184, ch. 78, eff. Sept. 1, 1969. Amended by Acts 1983, 68th Leg., p. 384, ch. 81, § 12(j), eff. Sept. 1, 1983.]

**Art. 4477-6a. Rabies Control Act of 1981****SUBCHAPTER A. GENERAL PROVISIONS****Short Title**

Sec. 1.01. This Act is known and may be cited as the "Rabies Control Act of 1981."

**Purpose of Act**

Sec. 1.02. The purpose of this Act is to establish a minimum statewide program to control and eradicate rabies in the State of Texas. This program shall be administered by the Texas Board of Health with the cooperation of the governing bodies of the counties and incorporated municipalities within the state.

**Definitions**

Sec. 1.03. In this Act the following terms have the meanings indicated.

- (1) "Animal" means a warm-blooded animal.
- (2) "Board" means the Texas Board of Health.
- (3) "Cat" means felis catus.
- (4) "Commissioner" means the Commissioner of Health.
- (5) "Department" means the Texas Department of Health.
- (6) "Dog" means canis familiaris.
- (7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.
- (8) "Person" means an individual, corporation, government or governmental subdivision, or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (9) "Quarantine" means strict confinement under restraint by closed cage or paddock or in any other manner approved in a rule of the board of animals specified in an order of the board or its designee on the private premises of the owner or at a facility approved by the board or its designee.
- (10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.
- (11) "Stray" means any animal running free with no physical restraint beyond the premises of owner and/or keeper.
- (12) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

**SUBCHAPTER B. GENERAL POWERS AND DUTIES OF THE BOARD; GENERAL POWERS AND DUTIES OF MUNICIPAL AND COUNTY GOVERNMENTS****General Powers and Duties of the Board**

Sec. 2.01. (a) The board or its designee shall administer the control program established by this Act.

(b) The board or its designee may enter into contracts and/or agreements with other entities, governmental or private, to carry out the provisions of this Act. The contracts and/or agreements may provide for payment by the state for materials, equipment, and services.

(c) The board or its designee may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of the control program established by this Act subject to any limitations or conditions prescribed by the legislature.

(d) The board or its designee may impose an area quarantine to prevent or contain a rabies epizootic in accordance with procedures established in Section 3.09 of this Act.

(e) The board or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the general public.

(f) The board shall adopt the rules necessary for the effective administration of the provisions of this Act.

**General Powers and Duties of Municipal and County Governments**

Sec. 2.02. (a) The governing body of an incorporated municipality or the commissioners court of a county may adopt the provisions of this Act and the standards established by the board; or

(b) As provided in Section 3.01 of this Act the governing body of an incorporated municipality or the commissioners court of a county may adopt ordinances and/or rules which establish local control programs and set local standards which are compatible with and equal to or more stringent than the program established by this Act and the rules adopted by the board, including but not limited to ordinances and rules which require the registration and/or restraint of each dog or cat found within the respective jurisdictions.

(c) The governing body of each incorporated municipality and the commissioners court of each county shall designate an officer to act as a local health authority for the purposes of this Act as provided in Section 3.02 of this Act.

(d) The governing body of each incorporated municipality and the commissioners court of each county may enter into contracts and/or agreements with other entities, governmental and private, to carry out the activities required of them or permitted by them under the provisions of this Act.

**SUBCHAPTER C. IMPLEMENTATIONS OF RABIES CONTROL****Development and Application of Control Provisions and Standards**

Sec. 3.01. Except as specifically provided for in Section 3.09 of this Act:

(a) The provisions of this Act and/or the rules adopted by the board under the authority of this Act are the minimum standards for rabies control in this state.

(b) The provisions of this Act and/or the rules adopted by the board do not prohibit the adoption by the commissioners court of a county of ordinances and/or rules establishing requirements for rabies control in the county which are compatible with and equal to or more stringent than the provisions of this Act and the rules adopted by the board. Such county ordinances and/or rules shall supersede the provisions of this Act and the rules of the board within the county of their adoption so that dual enforcement will not occur.

(c) The provisions of this Act, the rules adopted by the board, and the ordinances and/or rules adopted by the commissioners court of a county do not prohibit the adoption by the governing body of an incorporated municipality located within the county of ordinances and/or rules which are compatible with and equal to or more stringent than the ordinances and rules adopted by the county and the provisions of this Act and the rules adopted by the board. Such municipal ordinances and/or rules shall supersede those of the county and the provisions of this Act and the rules of the board within the corporate limits of the municipality so that multiple enforcement will not occur.

#### Designation of Local Health Authorities

Sec. 3.02. The commissioners court of each county and the governing body of each city or town shall designate one officer to act as the local health authority for the purposes of this Act. The officer designated may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate, except as restricted by rule of the board. The duties of the local health authority shall include but are not limited to the enforcement of:

(1) the provisions of this Act and the rules of the board which comprise the minimum standards for rabies control;

(2) the ordinances and/or rules of the local jurisdiction (municipality or county) in which he serves; or

(3) the rules adopted by the board under the area quarantine provisions of Section 3.09 of this Act.

#### Reports of Exposure to Rabies

Sec. 3.03. (a) A person having knowledge of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies or of an animal that the person suspects is rabid shall report the incident or animal to a local health authority of the county or the city or town in which the person lives, in which the animal is located, or in which the exposure occurs. The report shall include the name and address of

any victim and of the owner of the animal, if known, and any other data which may aid in the locating of the victim or the animal.

(b) The owner of an animal that is reported to be rabid or to have exposed an individual or that the owner knows or suspects to be rabid or to have exposed an individual shall submit the animal for quarantine to the local health authority of the county or the city or town in which the exposure occurred.

(c) The local health authority shall investigate all reports filed under this section.

#### Quarantine of Animals

Sec. 3.04. (a) The local health authority shall quarantine for at least 10 days any animal that the authority has probable cause to believe is rabid or has exposed an individual.

(b) The board shall adopt rules governing the testing of quarantined animals, the procedure for and method of quarantine, and the types of facilities that may be used for quarantine.

(c) In accordance with the rules of the board, a local health authority may contract with one or more public or private entities for the purpose of providing and operating a quarantine facility.

(d) If it is determined by a veterinarian that a quarantined animal shows the clinical signs of the disease of rabies, the local health authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the local health authority shall remove the head or brain of the animal and submit it to the nearest Texas Department of Health laboratory for testing.

(e) If a veterinarian determines that a quarantined animal does not show the clinical signs of a rabies, the local health authority shall release it to the owner following the quarantine period if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(f) The owner of an animal that is quarantined under this Act shall pay to the local health authority the reasonable costs of the quarantine and disposition of the animal, and the local health authority may bring suit to collect those costs. The local health authority may sell and retain the proceeds or keep, grant, or destroy an animal that the owner or custodian does not take possession of on or before the third day following the final day of the quarantine.

#### Vaccination of Dogs and Cats Required

Sec. 3.05. (a) Except as otherwise provided by rule of the board, the owner of each dog or cat shall have the dog or cat vaccinated against rabies by the time the dog or cat is four months of age and at

regular intervals thereafter as prescribed by rule of the board.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of the animal a vaccination certificate in a form which meets the minimum standards approved by the board.

(c) No county, city, or town may register or license an animal that has not been vaccinated in accordance with this section.

**Use of Modified Live Virus Rabies Vaccine for Animals Restricted**

Sec. 3.06. To prevent improper vaccination of animals against and the accidental exposure of humans to rabies, modified live virus rabies vaccine for animals shall be administered only by or under the direct supervision of a veterinarian who is licensed to practice in this state.

**Registration of Dogs and Cats by Municipal and County Governments**

Sec. 3.07. Fees for Registration. (a) Subject to the limitation contained in Subsection (b) of this section, the governing body of an incorporated municipality and the commissioners court of a county may enact ordinances and/or adopt rules to require the registration of each dog and cat within the respective jurisdiction of the municipality or the county.

(b) No dog or cat shall be subject to dual registration and the priority of registration enforcement shall be governed by the provisions of Section 3.01 of this Act.

(c) The enforcement agency may collect a fee set by ordinance for the registration of each dog and/or cat and such fees shall be retained by the enforcement agency to be used only to help defray the expense of the administration of the provisions of this Act or the ordinances and/or rules of the enforcement agency within the area of its jurisdiction.

**Restraint of Dogs and Cats of Municipal and County Governments: Impoundment Charges: Disposition of Stray Animals**

Sec. 3.08. (a) Subject to the limitation contained in Subsection (b) of this section, the governing body of an incorporated municipality and the commissioners court of a county may enact ordinances and adopt rules including but not limited to ordinances and rules to require that within the respective jurisdiction of the municipality or the county

(1) each dog or cat be restrained by its owner;

(2) each stray dog or cat be declared a public nuisance;

(3) each unrestrained dog or cat be detained or impounded by the local health authority or that officer's designee;

(4) that each stray dog or cat be impounded for a period to be set by ordinance or rule;

(5) that a humane disposition be made of each unclaimed stray dog or cat upon the expiration of the required impoundment period.

(b) No jurisdiction shall be subject to dual restraint ordinances and rules, and in the extent of dual provisions the priority of enforcement shall be governed by the provision of Section 3.01 of this Act.

(c) The enforcing agency may adopt an ordinance setting charges for the impoundment and board provided to any dog or cat during the retention period to be paid by the owner before release of the animal. Such charges shall be deposited in the treasury of the enforcing agency and shall be used only to help defray the expense of the administration of this Act or the ordinances and rules of the enforcement agency within the area of jurisdiction.

(d) The board shall adopt rules establishing the minimum acceptable standards for impoundment facilities and for the care of impounded animals.

**Declaration of Area Quarantine**

Sec. 3.09. (a) If rabies is known to exist within an area, the board or its designee may declare an area rabies quarantine.

(b) Upon the declaration that a quarantine exists, the board shall:

(1) define the borders of the area quarantined;

(2) adopt permanent or emergency rules in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). These rules may include but are not limited to rules setting forth conditions for the restraint of carnivorous animals and the transporting of carnivorous animals into and out of the quarantine area.

(c) The area quarantine shall remain in effect for 180 days following the last case of rabies diagnosed in a dog or cat, or other animal species responsible for declaration of the area quarantine, unless removed prior to that date by declaration by the board or its designee.

(d) When the board employs the area quarantine procedures, the rules adopted by the board shall supersede all other applicable ordinances and/or rules applying to the quarantine area until the quarantine is removed by declaration of the board or its designee or until such time as the rules expire or are revoked by the board.

**Provision of Vaccines and Sera by Department**

Sec. 3.10. Depending upon resources available, the department is authorized to provide vaccines and hyper-immune sera for the use and benefit of persons exposed, or suspected of exposure, to rabies, in accordance with policies or procedures established by the board. The department shall have the right to be reimbursed for actual costs incurred

in the providing of such vaccines and sera by or on behalf of the persons receiving same, in accordance with rules, regulations, and eligibility standards established by the board. Upon the written request of the department, such claim for reimbursement may be collected by suit or other proceedings in the name of the State of Texas by the county or district attorney, or the attorney general, in the county of the residence of the recipient, against the recipient or the parent, guardian, or other person or persons legally responsible for the support of the recipient, or against responsible third-parties.

#### SUBCHAPTER D. PROCEDURAL REQUIREMENTS

##### Inspections

Sec. 4.01. Employees of the department, upon the presentation of appropriate credentials to the local health authority or his designee, may make a reasonable inspection at a reasonable hour of any quarantine facility or impoundment facility to determine if such facilities comply with the minimum standards for such facilities adopted by the board.

##### Hearings

Sec. 4.02. A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required by this Act may request a hearing before the department. Any hearing held under this section shall be conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and the department's formal hearing rules.

##### State Compliance Procedures

Sec. 4.03. At the request of the commissioner, the attorney general may bring an action in the name of the State of Texas to enjoin the operation of any quarantine or impoundment facility which fails to meet the minimum standards established by this Act and the rules of the board adopted under the authority of this Act. Upon the court's issuing of an order to the facility to cease operation, the local health authority shall remove all animals housed therein to a shelter approved by the department. The expense of relocation shall be borne by the county or incorporated municipality within whose jurisdiction the deficient facility lies. Any suit filed under this subsection shall be filed in a district court of the county in which the facility is located.

#### SUBCHAPTER E. PENALTIES

##### Violation of Animal Quarantine Requirement

Sec. 5.01. (a) A person commits an offense if he fails or refuses to quarantine or present for quarantine any animal which

(1) is required to be placed in quarantine under the provisions of Section 3.04 of this Act and the

rules adopted by the department under the authority of this Act;

(2) is required to be placed in quarantine under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs; or

(3) is required to be placed in quarantine under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

##### Violation of Area Quarantine

Sec. 5.02. (a) A person commits an offense if he violates or attempts to violate a rule of the board which governs an area quarantine adopted under the authority of Section 3.09 of this Act.

(b) An offense under this subsection is a Class C misdemeanor.

##### Violation of Dog and Cat Registration Requirements

Sec. 5.03. (a) A person commits an offense if he fails or refuses to register or present for registration any dog or cat of which he is the owner and such animal

(1) is required to be registered under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02, 3.01, and 3.07 of this Act and within whose jurisdiction the act occurs; or

(2) is required to be registered under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02, 3.01, and 3.07 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

##### Violation of Dog and Cat Restraint Requirements

Sec. 5.04. (a) A person commits an offense if he fails or refuses to restrain any dog or cat of which he is the owner and such animal

(1) is required to be registered under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02, 3.01, and 3.08 of this Act and within whose jurisdiction the act occurs; or

(2) is required to be registered under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02, 3.01 and 3.08 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

**Violation of Requirement to Vaccinate Dog or Cat**

Sec. 5.05. (a) A person commits an offense if he fails or refuses to have each dog or cat of which he is the owner vaccinated against rabies and such animal

(1) is required to be vaccinated under the provisions of Section 3.05 of this Act and the rules adopted by the board under the authority of this Act;

(2) is required to be vaccinated under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs; or

(3) is required to be vaccinated under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

**Violation of Jurisdictional Standards Governing the Operation of a Quarantine or Impoundment Facility**

Sec. 5.06. (a) A person commits an offense if he operates a facility for quarantining or impounding animals and the facility

(1) fails to meet the standards for approval established by the rules adopted by the board;

(2) fails to meet the standards for approval established under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02 and 3.01 of this Act; or

(3) fails to meet the standards for approval established under the ordinances and/or rules of an incorporated municipality exercising the authority granted in Sections 2.02 and 3.01 of this Act.

(b) An offense under this subsection is a Class C misdemeanor.

**Violation of the Restrictions Upon the Use of Modified Live Virus Rabies Vaccine**

Sec. 5.07. (a) A person commits an offense

(1) if he administers or attempts to administer modified live virus rabies vaccine in a manner not authorized by Section 3.06 of this Act; or

(2) if he dispenses or attempts to dispense modified live virus rabies vaccine in a manner not authorized by Section 3.01 of this Act.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1979, 66th Leg., p. 1852, ch. 752, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 476, ch. 204, § 1, eff. Jan. 1, 1982.]

Acts 1983, 68th Leg., p. 1141, ch. 255, adopted the Communicable Disease Prevention and Control Act (art. 4419b-1) and repealed certain provisions relating to quarantine and disinfection and to

powers and duties of the State Board of Health. Section 3 of said Act provides:

"The following statutes are not affected by this Act: Article 4445, Revised Statutes; Chapter 548, Acts of the 51st Legislature, Regular Session, 1949 (Article 4445a, Vernon's Texas Civil Statutes); Chapter 537, Acts of the 61st Legislature, Regular Session, 1969 (Article 4445c, Vernon's Texas Civil Statutes); the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes); the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes); and Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes)."

**Art. 4477-6b. Animal Shelters****Definitions**

Sec. 1. In this Act:

(1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of the Texas Department of Health.

(4) "Department" means the Texas Department of Health.

(5) "Person" means an individual, corporation, or association and includes a political subdivision of the state but does not include veterinary medicine clinics or livestock commission facilities.

**Standards for Animal Shelters**

Sec. 2. (a) Every animal shelter operated in this state must comply with the standards for housing and sanitation existing on the effective date of this Act which implement Chapter 752, Acts of the 66th Legislature, Regular Session, 1979 (Article 4477-6a, Vernon's Texas Civil Statutes.)

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) The animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Every person who operates an animal shelter shall, at least once per year, employ a veterinarian to inspect such shelter to determine whether it complies with the requirements of this Act. The veterinarian shall file copies of his report with the person operating the shelter and with the department on forms prescribed by the department.

(e) The board may require every person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A substantial violation of the requirements of this section is a Class C misdemeanor.

**Personnel Training**

Sec. 3. The board shall prescribe standards and charge reasonable fees for the training of animal shelter personnel as to animal health and disease control, humane care and treatment, control of animals in an animal shelter, and the transportation of animals.

**Advisory Committee**

Sec. 4. The governing body of every county, city, town, or village in which an animal shelter is situated shall appoint an advisory committee to assist in complying with the requirements of this Act.

(b) The advisory committee shall be composed of at least one licensed veterinarian, one county or city official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

**Euthanasia**

Sec. 5. (a) No person may put to death a dog, cat, or other small animal in the custody of an animal shelter by shooting, except in emergency field conditions, by clubbing, or by administering any of the following substances:

- (1) unfiltered or uncooled carbon monoxide;
- (2) curariform drugs, including curare, succinylcholine, pancuronium, glyceryl fenesin, used alone;
- (3) magnesium salts, used alone;
- (4) chloral hydrate;
- (5) nicotine; or
- (6) strychnine.

(b) A violation of this section is a Class C misdemeanor.

**Remedy**

Sec. 6. Any person may, upon proof of a substantial violation of the requirements of this Act, obtain a mandatory injunction in a court of competent jurisdiction to enjoin such violation.

**Fees**

Sec. 7. The fees collected under this Act shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

**Exception**

Sec. 8. This Act does not apply in any county having a population of less than 75,000 or to any animal shelter within the city limits of a city having a population of less than 75,000, according to the last preceding federal census.

[Acts 1981, 67th Leg., p. 2544, ch. 677, eff. Sept. 1, 1982.]

**Art. 4477-7. Solid Waste Disposal Act****Short Title; Policy**

Sec. 1. This Act may be cited as the Solid Waste Disposal Act. It is the policy of the state and the purpose of this Act to safeguard the health, welfare, and physical property of the people, and to protect the environment, through controlling the management of solid wastes, including the accounting for hazardous wastes generated.

**Definitions**

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "Board" means the Texas Water Development Board.

(2) "Board of health" means the Texas Board of Health.

(3) "Class I industrial solid waste" means any industrial solid waste designated as Class I by the Executive Director of the Texas Department of Water Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.

(4) "Commission" means the Texas Water Commission.

(5) "Commissioner" means the Commissioner of Health.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Department" means the Texas Department of Health.

(8) "Department of water resources" means the Texas Department of Water Resources.

(9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(10) "Executive director" means the Executive Director of the Texas Department of Water Resources.

(11) "Garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials



from markets, storage facilities, handling, and sale of produce and other food products.

(12) "Hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(13) "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(14) "Local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act.

(15) "Management" means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(16) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(17) "Person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(18) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(19) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal; including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the Administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(20) "Radioactive waste" means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(21) "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F).

(22) "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the board.

(23) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(24) "Solid waste" means any garbage, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission.

(25) "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e. g., one or more landfills, surface impoundments, or combinations of them.

(26) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility

in accordance with standards, rules, or orders established by the board or board of health.

(27) "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

#### State Solid Waste Agency; Designations; Duties

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the management of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the board of health in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste management by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The department of water resources is hereby designated the state solid waste agency with respect to the management of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste under the jurisdiction of the department of water resources may be accepted in a municipal solid waste facility if authoriz-

ed in writing by the department with the written concurrence of the department of water resources. Solid waste, including hazardous waste, under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the department of water resources with the written concurrence of the department.

(d) The department is designated under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The department has all powers under the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), necessary or convenient to carry out responsibilities concerning the regulation of the management of solid waste components of any radioactive wastes under its jurisdiction.

#### State Agencies; Authority and Powers; Permits

Sec. 4. (a) As used in this section, the term "state agency" refers to either the department or the department of water resources and "state agencies" means both the department and the department of water resources.

(b) The department is authorized to develop a state municipal solid waste plan, and the department of water resources is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. In developing rules relating to hazardous waste, each state agency shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources. Within one year after the effective date of this Act, each state agency shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) define the characteristics that make an area unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

- (A) flood hazards;
- (B) discharge from or recharge to a groundwater aquifer; or
- (C) soil conditions;

(3) prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the agency unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics; and

(4) require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

In adopting rules under Paragraphs (1)–(3) of this section, the state agencies may distinguish between solid waste facilities based on type or hazard of hazardous wastes managed and the type of waste management method used.

(d) Each state agency is authorized to inspect and approve solid waste facilities used or proposed to be used for the storage, processing, or disposal of the solid waste over which it has jurisdiction.

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection.

(1) The state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and health authorities of the county in which the facility is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations

on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each solid waste facility. The permit shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the permit is issued, including the duration of the permit. The state agency in its discretion shall have the power to process a permit application for purpose of determining land use compatibility alone, and at another time, if the site location is acceptable, consider technical matters related to the application. Where this power is exercised, a public hearing may be held for each determination in accordance with Paragraph (4) of this Subsection (e).

(3) The state agency may amend, extend, or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of this Subsection (e) for permit applications apply also to applications to amend, extend, or renew a permit.

(4) Before a permit is issued, amended, extended, or renewed, the state agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected; the state agency may also hold such a hearing upon its own motion. The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. A hearing on a permit involving a solid waste facility for hazardous industrial solid waste must include one session held in the county in which the solid waste facility is located. Hearings under this paragraph shall be conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) Before a permit is issued, amended, extended, or renewed, the state agency to which the application is submitted may require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility. The state agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste. Financial requirements established by the state agency shall at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et seq., as amended.

(6) If a permit is issued, amended, renewed, or extended by a state agency in accordance with this

Subsection (e), the owner or operator of the solid waste facility does not need to obtain a license for the same facility from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act.

(7) A permit issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A permit may not be transferred without prior written notice to and prior written approval by the state agency which issued it.

(8) The state agency has the authority, for good cause, to revoke or amend any permit it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the management of solid waste. The state agency using this authority shall notify the governmental entities named in Paragraph (1) of this Subsection (e) and provide an opportunity for a hearing to the permittee and persons affected. The state agency may hold such a hearing upon its own motion. The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. Hearings under this paragraph shall be conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials originating from animals, poultry, and fish (all hereinafter referred to as "animals") and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under Chapter 26, Water Code. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production on or before August 27, 1973.

(10) Each state agency may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the state agency determines that the activity is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other proce-

dures available to the state agency to remedy or prevent the occurrence of the situation will result in unreasonable delay. The order may be issued without notice and hearing, or with such notice and hearing as the state agency deems practicable under the circumstances.

(i) If an emergency order is issued under this authority without a hearing, the issuing agency shall fix a time and place for a hearing to be held in accordance with the departmental rules by the state agency, so as to affirm, modify, or set aside the emergency order.

(ii) The requirements of Paragraph (4) of this subsection relating to public notice do not apply to such a hearing, but such general notice of the hearing shall be given in accordance with the departmental rules of the state agency.

(f)(1) This subsection applies to the collection, handling, storage, processing, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, processed, or disposed of with solid waste from any other source or sources or if the waste, which is collected, handled, stored, processed, or disposed of is hazardous waste. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code. However, the department of water resources may adopt rules as provided under Subsection (c) of this section to govern and control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies.

(2) No person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing,

storing, or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the board may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application. Upon its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

(g) Each state agency is authorized to develop a program for the training of solid waste technicians to improve the competency of those technicians. Each state agency is authorized to issue letters of competency. The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate state agency. If a state agency develops a program for training solid waste technicians under this subsection, the state agency may:

- (1) prescribe standards of training required for the program;
- (2) determine the duration of the letter of competency;
- (3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;
- (4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the state agency, to be paid by participants, deposited in the general revenue fund, and used for administering the program;
- (5) extend or renew letters of competency issued by the state agency; and
- (6) withdraw a letter of competency for good cause, which may include a violation of this Act or rules of the agency relating to the technician's duties and responsibilities.

(h) The state agencies may, either individually or jointly:

- (1) provide educational, advisory, and technical services to other agencies of the state, regional planning agencies, local governments, special districts, institutions, and individuals with respect to solid waste management;
- (2) assist other agencies of the state, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for the development of solid waste facilities and management programs, and for research to improve the state of the art; and

(3) accept funds from the federal government for purposes relating to solid waste management, and to expend money received from the federal government for those purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and each state agency.

If a state agency engages in any of the programs and activities named in this subsection on an individual basis, it may do so only as the participation by that state agency is related to the management and control of the solid waste over which it has jurisdiction. When the state agencies do not participate jointly, they shall coordinate on any efforts undertaken by either one individually so that similar programs and activities of the state agencies will be compatible.

(i) The state agencies are authorized to administer and expend state funds provided to them by legislative appropriations, or otherwise, for the purpose of making grants to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs. The grants made under the terms of this Act shall be distributed in a manner determined by the state agency to whom the appropriation is made. Any financial assistance granted by the state through either of the state agencies to any local government under the terms of this Act must, at a minimum, be equally matched by local government funds.

(j) Each state agency may require a permit for extracting materials for energy and material recovery and for gas recovery from closed or inactive portions of solid waste facilities that have been used for disposal of municipal or industrial solid waste. The state agency shall issue a permit under this subsection in the same manner as provided by Subsection (e) of this section for issuance of a permit for operating and maintaining a solid waste facility. The state agency shall adopt standards necessary to ensure the integrity of a solid waste facility is maintained.

#### County Powers

Sec. 5. (a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the construction, operation, and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes) may not be exercised by a county

with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(b) A county is authorized to appropriate and expend money from its general revenues for the management of solid waste and for administering a solid waste program; and to charge reasonable fees for the services.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the department of water resources.

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the processing, storage, or disposal of solid waste, excluding hazardous waste, in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county elects to exercise licensing authority, it must adopt, promulgate, and enforce rules for the management of solid waste. The rules shall be compatible with and not less stringent than those of the department or the department of water resources, as appropriate, and must be approved by, the department or the department of water resources as appropriate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the department of water resources, and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have no less than 60 days to submit comments and recommendations on the license application before the county acts on the application unless waived by the commenting agency.

(2) A separate license shall be issued for each solid waste facility. The license shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed \$100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may amend, extend, or renew any license it issues in accordance with rules prescribed by the county. The procedures prescribed in Para-

graph (1) of this Subsection (d) apply also to applications to amend, extend, or renew a license.

(4) No license for the use of a facility for the processing, storage, or disposal of solid waste may be issued, amended, renewed, or extended without the prior approval, as appropriate, of the department or the department of water resources. If a license is issued, amended, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the facility does not need to obtain a permit from the department or the department of water resources for the same facility.

(5) A license issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the processing, storage, or disposal of solid waste. For like reasons, the department and the department of water resources each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those facilities which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(e) Subject to the limitation specified in Subsection (a) of this section, a county may designate land areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns as suitable for use as solid waste facilities. The county shall base these designations on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and any other pertinent considerations.

(f) A county is authorized to enforce the requirements of this Act and the rules promulgated by the board of health and the board as related to the management of solid waste.

(g) Repealed by Acts 1971, 62nd Leg., p. 1763, ch. 516, § 20, eff. Aug. 30, 1971.

(h) A county may enter into cooperative agreements with local governments and other governmental entities for the purpose of the joint operation of solid waste management activities and to charge reasonable fees for the services.

#### Political Subdivisions With Jurisdiction in Two or More Counties

Sec. 6. This section applies to a political subdivision of the state which has jurisdiction over two or

more counties or parts of two or more counties, and which has been granted the power by the Legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction. The governing body of such a political subdivision may, by formal resolution, assume for the political subdivision the exclusive authority to exercise, within the area subject to its jurisdiction, the powers granted in this Act to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area. In the exercise of these powers the political subdivision is subject to the same duties, limitations and restrictions applicable to counties under this Act. When a political subdivision assumes this authority, it shall also serve as the coordinator of all solid waste management practices and activities for all cities, counties and other governmental entities within its jurisdiction which have solid waste management regulatory powers or engage in solid waste management practices or activities. Once a political subdivision assumes the authority granted in this section, it is empowered to and shall exercise the authority so long as the resolution of the political subdivision remains in effect.

#### Restrictions on Use of Facility

Sec. 6a. (a) No incorporated city or town may abolish or restrict the use or operation of a solid waste facility within its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence at the time the city or town was incorporated or was in existence at the time the city or town annexed the area where it is located; and

(2) is operated in substantial compliance with all applicable state and county regulations.

(b) An incorporated city or town or a political subdivision operating a solid waste facility shall not be prevented from operating the solid waste facility on the ground that it is located within the limits or extraterritorial jurisdiction of another city or town.

#### Right of Entry; Inspections; Access to Hazardous Waste Records

Sec. 7. (a) The authorized agents or employees of the department, the department of water resources, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the department of water resources may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the department of water resources shall consider such copied records as confidential. Nothing in this subsection shall require the department of water resources or the department to consider the composition or characteristics of solid waste being processed, stored, disposed, or otherwise handled to be held confidential.

#### Prohibited Acts; Violations; Penalties; Injunction

Sec. 8. (a) Civil Penalties; Injunction. (1) No person may cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility for the storage, processing, or disposal of solid waste or for the extraction of materials under Subsection (j) of Section 4 of this Act, in violation of this Act or of the rules, permits, licenses or other orders of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, which is not a requirement applicable to hazardous waste, is subject to a civil penalty of not less than \$100.00 nor more than \$2,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than \$100.00 nor more than \$25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).

(3) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, permit, or other order of the department or the department of water resources, then the department or the department of water resources may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty as provided by this subsection, as the court may deem proper, or for both injunctive

relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the department or the department of water resources, the district court shall grant appropriate injunctive relief. At the request of the commissioner or the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(4) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(5) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the department of water resources, a county, or political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(7) In a suit brought by a local government under Subsection (4) or (5) of this section, the department of water resources and the department are necessary and indispensable parties.

(8) Any party to a suit may appeal from a final judgment as in other civil cases.

(9) All civil penalties recovered in suits instituted under this Act by the State of Texas through the department of water resources or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by a state agency exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without having obtained a permit as required by a state agency exercising jurisdiction under Section 4 of this Act or in knowing violation of any material condition or requirement of a permit;

(C) makes, or causes to be made, any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; or

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, or conceals, or causes to be destroyed, altered, or concealed, any record required to be maintained under the rules promulgated by the state agency under this Act,

shall be subject, upon conviction, to a fine or not less than \$100.00 nor more than \$25,000.00 for each act of violation and each day of violation, or to imprisonment not to exceed 180 days, or both. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than \$200.00 nor more than \$50,000.00 for each day of violation, or by imprisonment not to exceed one year, or both.



(c) **Knowing Endangerment.** (1) Any person who knowingly:

(A) transports, processes, stores, or disposes of, or causes to be transported, processed, stored, or disposed of, any hazardous waste in violation of this Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, and

(B)(i) if his conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or

(ii) if his conduct in the circumstances manifests an extreme indifference for human life,

shall be subject upon conviction to a fine of not more than \$250,000.00 or imprisonment for not more than two years, or both, except that a person that violates Subsections (c)(1)(A) and (c)(1)(B)(ii) of this section shall, upon conviction, be subject to a fine of not more than \$250,000.00 or imprisonment for not more than five years, or both. A person, other than an individual, shall upon conviction of violating this Section 8(c) be subject to a fine of not more than \$1,000,000.00.

(2) It is an affirmative defense to a prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods,

if such endangered person had been made aware of the risks involved prior to giving consent.

(d) For purposes of Sections 8(b) and 8(c) of this Act, the term "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

(e) Venue for prosecution for any alleged violation of Subsections (b)(1) and (c)(1) of this Section 8 is in the county in which the violation is alleged to have occurred or in Travis County, Texas.

(f) All fines recovered under Sections 8(b) and 8(c) of this Act shall be equally divided between the State of Texas and the local government or governments first instituting the cause with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent to be paid equally to the local government or governments instituting the cause, or as otherwise provided by this Act.

#### Appeals

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing a petition in a district court of Travis County. A

person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

#### Cumulative Act

Sec. 10. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the department of water resources, the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

#### Severability

Sec. 11. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

[Acts 1969, 61st Leg., p. 1320, ch. 405, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 1762, ch. 516, §§ 19, 20, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 2631, ch. 863, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 351, ch. 149, § 1, eff. May 23, 1973; Acts 1973, 63rd Leg., p. 849, ch. 385, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1595, ch. 576, § 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 825, ch. 308, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2337, ch. 870, §§ 2 to 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 9, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2443, ch. 435, §§ 2, 3, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2946, ch. 503, §§ 1 to 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4586, ch. 771, § 1, eff. Sept. 1, 1983.]

Section 10 of the 1981 amendatory act provides:

"On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad

Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary."

Section 2 of Acts 1983, 68th Leg., p. 4587, ch. 771, provides:

"A rule adopted under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), as amended by this Act, applies only to an application for a permit filed on or after the effective date of rules promulgated under Section 1."

#### Creation of Special Districts

North East Texas Solid Waste Management

Authority ..... 1973, ch. 315

### Art. 4477-7a. Solid Waste Resource Recovery Financing Act

#### Short Title

Sec. 1. This Act may be cited as the Solid Waste Resource Recovery Financing Act.

#### Policy

Sec. 2. (a) It is the policy of this state to safeguard the health, general welfare, and physical property of the people from pollution resulting from solid waste by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. The accomplishment of the purposes stated in this Act will further such policy and is for the health and welfare of the people of this state and for the improvement and protection of their properties. The issuer in carrying out the purposes of this Act will be performing an essential public function under the constitution.

(b) It is hereby determined by the legislature and also declared to be the policy of this state that the processing of solid waste for reuse is essential to the well-being and survival of its inhabitants and the protection of the environment and will be for the specific purpose of the conservation and development of the natural resources of the state within the meaning of Article XVI, Section 59(a), of the Texas Constitution through the prevention of further damage to or destruction of the environment resulting in further conservation and development of such natural resources and through the conservation of valuable material and energy resources which otherwise might be disposed of as solid waste. Nothing in this Act shall authorize any public agency to compel the burning of materials which are presorted to be recycled.

#### Definitions

Sec. 3. As used in this Act, unless the context requires a different definition:

(1) "Cost" as applied to the acquisition, construction, or improvement of solid waste resource recovery systems, including real property acquired therefor, shall include financing charges, interest prior to and during construction and for a period found to be reasonable by the issuer after completion of

construction, expenses incurred for architectural and engineering services, license fees and royalties, legal services, plans, specifications, surveys, estimates, placing the solid waste resource recovery systems in operation, administration, and such other expenses as may be necessary or incident to such acquisition, construction, and improvement.

(2) "Governing body" means, with reference to an issuer, the commission, board of directors, trustees, city council, or similar body charged by law with the governance of an issuer.

(3) "Issuer" means any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution which is now or hereafter authorized under general law, special law, or any specific act to own a waste disposal system and which includes within its boundaries all of at least one county.

(4) "Person" means any individual, public agency as defined herein, public or private corporation, political subdivision or governmental agency of the United States of America or the state, copartnership, association, firm, trust, estate, or any other entity whatsoever.

(5) "Public agency" means any district or authority heretofore or hereafter created and existing under Article XVI, Section 59, as amended, or Article III, Section 52, as amended, of the Constitution of Texas which includes within its boundaries all of at least one county, any incorporated city or town in the state, whether operating under general law or under its home-rule charter, or any other political subdivision or agency of the state having the power to own and operate solid waste collection, transportation, or disposal facilities or systems.

(6) "Real property" means lands, structures, franchises and interests in land, and air rights and any thing and right pertaining thereto, including but not limited to easements, rights-of-way, uses, leases, licenses, and incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

(7) "Resolution" means the resolution, order, ordinance, or such other action as the case may be of the governing body authorizing the bonds.

(8) The term "solid waste" shall have the meaning as set forth in the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes).

(9) "Solid waste resource recovery system" means any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises which are used or useful in connection with the processing of solid waste to extract, recover, reclaim, salvage, reduce, concentrate, or convert to energy or useful matter or resources whatever their form, including electricity, steam, or other forms of energy, and metal, fertilizer, glass, or

other forms of metal and resources, from such solid waste, including any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in (i) the transportation, receiving, storage, transfer, and handling of solid waste, (ii) the preparation, separation, or processing of solid waste for reuse, (iii) the handling and transportation of recovered matter, resources, or energy, and (iv) the handling, transportation, and disposing of any nonrecoverable solid waste residue.

**Authority of Issuer; Public Agency Contracts  
With Issuer**

Sec. 4. (a) Each issuer is authorized to acquire, construct, and improve or cause to be acquired, constructed, and improved solid waste resource recovery systems for lease or sale as provided below. The issuer is also authorized to acquire real property as deemed appropriate by the issuer for the solid waste resource recovery systems. Such solid waste resource recovery systems may be located upon property owned by the issuer or upon property of another person or persons. The issuer is authorized to enter into leases with persons whereby such persons shall lease any solid waste resource recovery systems of the issuer. The issuer is authorized to sell such solid waste resource recovery systems to any person or persons, including a person or persons using such systems, such sale to be by installment payments or otherwise and upon such conditions as the issuer deems desirable. Any lease or other sales contract entered into pursuant to this Act may be for such term as the parties may agree and shall provide that it shall continue in effect until the bonds specified therein or refunding bonds issued in lieu of such bonds are fully paid.

(b) Any public agency may contract with an issuer or with any person financing, acquiring, constructing, or improving a solid waste resource recovery system to sell, lease, or dedicate the use of any real property or any solid waste disposal facility or part thereof for use as a part of such solid waste resource recovery system on such terms as the public agency considers appropriate.

**Bonds and Bond Anticipation Notes**

Sec. 5. (a) Each issuer is empowered to issue its bonds, notes, or other evidences of indebtedness (hereinafter referred to as "bonds") payable from revenues of the issuer for the purpose of financing or refinancing the cost of acquiring, constructing, or improving or causing to be acquired, constructed, or improved solid waste resource recovery systems.

(b) The issuer may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the issuer or to meet any other needs of the issuer and may issue bond anticipation notes to borrow the money needed by the issuer. Bond anticipation notes may bear interest at any rate or rates, fixed, floating, or otherwise, and shall mature within one year of their

date. The bond anticipation notes so issued will be taken up with the proceeds of bonds, or the bonds may be issued and delivered in exchange for and in substitution of such notes.

(c) Such bonds shall be authorized by resolution of the governing body and shall have characteristics and bear such designation as may be determined by the governing body, provided that the designation of the bonds shall include the name or names of the person or persons guaranteeing the contractual obligations of the person or persons leasing or purchasing such solid waste resource recovery systems, or if the solid waste resource recovery systems are to be leased or purchased by a group of persons, the designation may state that a group of persons will be leasing or purchasing such solid waste resource recovery systems as therein provided. The bonds shall be signed by the presiding officer or the assistant presiding officer of the governing body, shall be attested by its secretary, and shall bear the seal of the issuer of the governing body. It is provided, however, that such signatures may be printed or lithographed on the bonds if authorized by the governing body, and such may be impressed on the bonds or may be printed or lithographed thereon. The issuer may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds shall be delivered to a purchaser or purchasers. The bonds shall mature serially or otherwise in not to exceed 40 years, may bear interest at a rate or rates, fixed, floating, or otherwise, may be sold at public or private sale at a price or under terms determined by the governing body to be the most advantageous reasonably obtainable within the discretion of the governing body, may be made callable prior to maturity at such times and prices as may be prescribed by the governing body and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(d) Such bonds may be issued in more than one series and from time to time as required for carrying out the purposes of this Act.

(e) The bonds of any issuer shall be payable solely from and secured by a pledge of all or any part of the revenues of the issuer derived from the lease or sale of solid waste resource recovery systems and in certain events out of amounts attributable to the proceeds of such bonds or amounts obtained through the exercise of any remedy provided in any resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes in the manner specified in such resolution, trust indenture, or instrument. Any such pledge under this paragraph may reserve the right under conditions therein specified to issue additional bonds which will be on a parity with or subordinate to the bonds then being issued. Bonds issued for the purposes set out in this Act may be combined in the

same issue with bonds issued for other purposes authorized by law.

(f) It shall be the duty of the governing body to fix and from time to time revise payments under leases and contracts for sale of the solid waste resource recovery systems of the governing body in order that such payments together with any other pledged revenues will be sufficient to pay such bonds and the interest thereon as the same mature and become due and to maintain the reserve or other funds as provided in the resolutions authorizing such bonds or the trust indenture or other instruments securing such bonds. The governing body shall have the power to direct the investment of money in the funds created by such resolutions, trust indentures, or other instruments securing the bonds; provided, however, that the issuer in its discretion may delegate this power to its authorized agent.

(g) From the proceeds from the sale of the bonds, the governing body may set aside amounts for payments into the interest and sinking fund and reserve funds, and provisions for such may be made in the resolution authorizing the bonds or the trust indenture or other instrument securing the bonds. Proceeds from the sale of the bonds shall be used for the payment of all expenses of issuing and selling the bonds. The proceeds from the sale of the bonds shall be invested in the manner set forth in the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds. Any bank or trust company with trust powers may be designated to act as depository of the proceeds of bonds or of sales contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(h) The resolution authorizing the issuance of the bonds or the trust indenture or other instrument securing them may provide that in the event of a default or under the conditions therein stated a threatened default in the payment of principal or of interest on bonds any court of competent jurisdiction may, upon petition of the holders of outstanding bonds, appoint a receiver with authority to collect and receive pledged income, and such instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds payable from the same source to institute or prosecute any litigation affecting the issuer's property or income.

(i) All such bonds shall be special obligations of the issuer payable solely from the revenues pledged to their payment and shall not be considered general obligations of the governing body, an issuer, or the State of Texas. The holder of the bonds shall never have the right to demand payment from money derived by taxation or any other revenues of the issuer except those revenues pledged to the payment of the bonds.

#### Refunding Bonds

Sec. 6. The governing body is authorized to issue refunding bonds for the purpose of refunding the principal of and interest and redemption premium, if any, on outstanding bonds authorized by this Act. Such refunding bonds may be issued to refund more than one series of outstanding bonds and combine the revenues pledged to the outstanding bonds for the security of the refunding bonds and may be secured by other or additional revenues and deed of trust liens. The provisions of this law with reference to the issuance by the governing body of bonds, their security, and their approval by the attorney general and the remedies of the holders shall be applicable to refunding bonds. Refunding bonds shall be registered by the comptroller upon surrender and cancellation of the bonds to be refunded, but in lieu thereof the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the bank where the original bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the principal of, any redemption premium, and the interest on the original bonds to their option date or maturity date, and the comptroller shall register them without concurrent surrender and cancellation of the original bonds.

#### Additional Security

Sec. 7. Any bonds, including refunding bonds, authorized by this law may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or outside the State of Texas. Such bonds within the discretion of the governing body may be additionally secured by a mortgage or a deed of trust lien or security interest upon designated solid waste resource recovery systems and all property, franchises, easements, leases, and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell such solid waste resource recovery systems for the payment of the indebtedness, power to operate such solid waste resource recovery systems, and all other powers and authority for the further security of the bonds. Such trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties, may contain any provisions prescribed by the governing body for the security of the bonds and the preservation of the trust estate and may make provision for amendment or modification thereof, may condition the right to expend the issuer's money or sell the issuer's solid waste resource recovery systems as provided therein, and may make such other provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Any purchaser at a sale made under the mortgage or the deed of trust lien where one is given shall be the absolute owner of the solid waste resource recovery systems and rights so purchased. The trust indenture may also contain provisions governing the is-

suance of bonds to replace lost, stolen, or mutilated bonds.

#### Approval and Registration of Bonds and Contracts

Sec. 8. After any bonds, including refunding bonds, are authorized by the governing body, such bonds and the record relating to their issuance shall be submitted to the attorney general for his examination as to the validity thereof. Where such bonds recite that they are secured by a pledge of the proceeds of a lease or leases or a contract or contracts of sale theretofore made between the issuer and any person, such contracts may also be submitted to the attorney general. If such bonds have been authorized and if such contracts have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds and such contracts, and the bonds then shall be registered by the comptroller of public accounts. After the bonds and the leases or other contracts of sale, if any, have been approved by the attorney general and the bonds registered by the comptroller of public accounts, such bonds and any such leases or contracts of sale shall be incontestable for any cause.

#### Bonds as Investments and Security

Sec. 9. All bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

#### Contracts; Payments; Elections

Sec. 10. (a) All public agencies are authorized to enter into contracts with any person for the supply of solid waste, including contracts for the collection and transportation of solid waste, for disposal at any solid waste resource recovery system and may covenant and agree in such contracts to supply minimum quantities of solid waste and to pay minimum fees and charges for the right to have solid waste disposed of at such solid waste resource recovery system during the term of such contracts. Any such contract may continue in effect for such term of years as the governing body of the public agency shall determine is desirable.

(b) All public agencies are authorized to use and pledge any available revenues or resources whatsoever for and to the payment of amounts due under

such contracts as a source or sources of payment thereof or as the sole source or sources of payment thereof and may covenant with respect thereto so as to assure the availability thereof when required. All public agencies may agree to make sufficient provision in their annual budgets to make all payments under such contracts. In addition, all public agencies are authorized to fix, charge, and collect fees, rates, charges, rentals, and other amounts for any services or facilities provided pursuant to or in connection with any such contract from their inhabitants or from any users or beneficiaries of such services or facilities, including specifically water charges, sewage charges, solid waste disposal fees and charges (including garbage collection or handling fees), and other fees and charges and to use and pledge same to make payments required under such contract and may covenant to do so in amounts sufficient to make all or any part of such payments when due. Further, any public agency having taxing power, which at the time of entering into any such contract is using its general funds (including its tax revenues) for the purpose of paying all or a part of the costs of providing solid waste collection, transportation, and disposal services, may determine, agree, and pledge that such contracts may be an obligation against the taxing power of the public agency; provided that no person shall be entitled to demand payment from taxes during any period unless during such period the contracting person is willing and able to receive and dispose of solid waste as provided in the contract.

(c) Notwithstanding the foregoing, if a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> relating to the issuance of bonds of cities, and it is determined by a favorable vote at such election that the public agency is authorized to levy an ad valorem tax to make all or a part of the payments under a contract with a person and that such payments are to be made unconditionally even though the contracting person is not willing and able to receive and dispose of solid waste as provided in the contract, then the contract shall be an obligation against the taxing power of the public agency to the extent provided. The ballot proposition for any election held pursuant to this subsection shall plainly state that ad valorem tax funds may be used to make contract payments if, because of mechanical failure of the facility financed by such bonds or other reasons, the contractor is unable to receive or dispose of solid waste.

<sup>1</sup> Article 701 et seq.

#### Performance and Payment Bonds; Terms of Contracts; Procedures in Letting Contracts

Sec. 11. The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts entered into by an issuer. An issuer may contract for the acquisition, construction, and improvement of any solid waste re-

source recovery system upon such terms and under such conditions as the governing body deems appropriate, including without limitation a contract pursuant to which a person agrees to perform and supply or cause to be performed and supplied all services and materials required in connection with the design, construction, and placing into operation of such solid waste resource recovery system; provided, however, that as to any such contract, notice of the time and place when and where such contract shall be let shall be published in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least 14 days prior to the date set for letting said contract, and competitive proposals received in response to such notice will be analyzed and the contract shall be let to the responsible party making the proposal which will be most advantageous to the issuer and result in the best and most economical completion of the solid waste resource recovery system.

#### Taxation

Sec. 12. Bonds issued hereunder and their transfer and the income therefrom shall at all times be free from taxation within this state. Any solid waste resource recovery systems that are the subject of any contract for purchase or lease under this Act shall be construed to be subject to ad valorem taxation payable by the person contracting with the issuer in accordance with the laws of this state. Items purchased or leased as part of a solid waste resource recovery system are subject to all applicable state taxation.

#### Certain Actions Accomplished at Sole Expense of Issuer

Sec. 13. In the event any issuer in the exercise of the power of relocation or any other power makes necessary the relocation, raising, lowering, rerouting, or changing the grade of or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer, and such expense shall be paid from the proceeds of any bonds issued to finance solid waste resource recovery systems, the installation of which results in such expense. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of or alteration of construction to provide comparable replacement without enhancement of such facilities; after deducting therefrom the net salvage value derived from the old facility.

#### Construction With Other Laws

Sec. 14. Nothing in this Act diminishes or limits or is intended to diminish or limit the authority of the Texas Department of Water Resources, the

Texas Department of Health, or local governments in the performing of any of the powers, functions, and duties vested in such entities by other laws. The Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes), shall be enforced without regard to ownership of any solid waste resource recovery systems financed under this Act.

#### Remedies Available; Rules and Regulations

Sec. 15. (a) Nothing in this Act affects the right of any private person to pursue against a person contracting with an issuer pursuant to this Act all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor or both. No person contracting with an issuer for the purchase or lease of solid waste resource recovery systems shall ever be entitled to urge the defense of sovereign immunity by reason of the ownership of such solid waste resource recovery systems by an issuer.

(b) Notwithstanding the provisions of this section, it is further provided that nothing in this Act shall in any way limit or diminish the power and authority of the Texas Department of Water Resources, the Texas Department of Health, or a local government to enact and enforce rules and regulations to carry out other duties authorized by the Solid Waste Disposal Act, as amended (Article 4477-7, Vernon's Texas Civil Statutes).

#### Industrial Development Corporations

Sec. 16. A public agency which has entered into a contract pursuant to Section 10 of this Act may sponsor the creation of an industrial development corporation pursuant to the provisions of The Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and such an industrial development corporation may, pursuant to the provisions of such Act, issue its bonds, notes, or other evidences of indebtedness to finance the costs of any solid waste resource recovery system contemplated under such contract whether such system is located within or without the boundaries of such public agency.

#### Cumulative Act; Conflicts With Other Laws

Sec. 17. This Act shall be cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds, the execution of the contracts, the performance of the other acts and procedures, and the pledge of revenues authorized hereby, without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein, except as herein specifically provided; and in any case, to the extent of any conflict or inconsistency between any provision of this Act and any other provision of law (including any home-rule city charter provisions), this Act shall prevail and control; provided, however, that all issuers and public agencies shall have the right to use any other

provisions of law not in conflict with the provisions of this Act to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

#### Constitutional Construction and Acts

Sec. 18. Nothing in this Act shall be construed to violate any provision of the United States or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not.

#### Severability

Sec. 19. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that the Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1981, 67th Leg., p. 2946, ch. 780, eff. Sept. 1, 1981.]

#### Art. 4477-7b. Garbage Reclamation Project Operated by City or Town

##### Definitions

Sec. 1. In this Act:

- (1) "City" means an incorporated city or town.
- (2) "Garbage reclamation project" means an undertaking by which solid waste products are converted into a form usable by persons for the production of energy or any other purpose.

##### Authority to Own and Operate

Sec. 2. A city may own and operate a garbage reclamation project.

##### Issuance of Bonds

Sec. 3. If necessary for a city to carry out the authority granted by Section 2 of this Act, the governing body of the city may issue and sell bonds in the name of the city to finance:

- (1) the purchase, lease, or acquisition by any other method of land, facilities, equipment, or supplies;
- (2) the construction or improvement of facilities; or
- (3) the installation of equipment.

##### Manner of Repayment of Bonds

Sec. 4. The governing body of the city may provide for the payment of principal of and interest on the bonds in any one of the following manners:

- (1) from the levy and collection of ad valorem taxes on all taxable property within the city;

- (2) by pledging all or any part of designated revenues from the ownership or operation of the garbage reclamation project; or

- (3) from a combination of the sources listed in Subdivisions (1) and (2) of this section.

##### Additional Security for Bonds

Sec. 5. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the garbage reclamation project and rights appurtenant to the properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the governing body of the city for the security of the bonds and the preservation of the trust estate and may make provisions for amendment or modification and may make provisions for investment of revenue from the garbage reclamation project.

(c) A purchaser under a sale under the deed of trust or mortgage lien becomes absolute owner of the properties and rights purchased and may maintain and operate them.

##### Bond Election

Sec. 6. (a) The governing body of the city may not issue the bonds until authorized to do so by a majority vote of the qualified voters of the city at an election called for that purpose.

(b) Except as provided by this Act, the election shall be held, to the extent practicable, in accordance with the bond election procedures established by Chapter 1, Title 22, Revised Statutes, as amended (Article 701 et seq., Vernon's Texas Civil Statutes).

(c) At an election to authorize bonds payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of bonds for a garbage reclamation project in the amount of \$\_\_\_\_\_ and the levy of taxes for payment of the bonds." At an election to authorize bonds payable wholly from revenues from the garbage reclamation project, the ballots must be printed to provide for voting for or against the proposition: "The issuance of bonds for a garbage reclamation project in the amount of \$\_\_\_\_\_ and the pledge of net revenues from the project for the payment of the bonds." At any election to authorize bonds payable from both ad valorem taxes and revenues from the garbage reclamation project, the ballots must be printed to provide for voting for or against the proposition: "The issuance of bonds for a garbage reclamation project in the amount of \$\_\_\_\_\_ and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the bonds."

**Form of Bonds**

Sec. 7. (a) A city may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate permitted by the constitution and laws of the state.

(c) A city's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the city, or may contain a mandatory redemption provision.

(d) A city's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details and shall be signed and executed as provided by the governing body of the city in the resolution or order authorizing their issuance.

**Provisions of Bonds**

Sec. 8. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body of the city may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the garbage reclamation project, the revenue of which is pledged.

(b) The orders or resolutions of the governing body of the city authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the governing body of the city issuing bonds may contain other provisions and covenants as the governing body may determine.

(d) The governing body of the city may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

**Approval by Attorney General; Registration by Comptroller**

Sec. 9. (a) The bonds issued by the city must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, he shall approve them, and they shall be registered by the comptroller of public accounts.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum, for any reason, and are valid and binding

obligations in accordance with their terms for all purposes.

**Refunding Bonds**

Sec. 10. (a) A city may issue bonds to refund all or any part of its outstanding bonds issued under this Act, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 40 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8 of the Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a) through (f) of this section, a city may refund bonds, notes, or other obligations as provided by the general laws of the state.

**Bonds as Investments**

Sec. 11. The bonds are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and



(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

#### Bonds as Security for Deposits

Sec. 12. The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

#### Tax Status of Bonds

Sec. 13. Since the operation of a garbage reclamation project is an essential public function, the bonds issued by the city, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

#### Levy of Taxes

Sec. 14. (a) The governing body of the city may annually levy ad valorem taxes to pay the bonds issued by the city under this Act.

(b) The city may not levy ad valorem taxes to pay the principal of or interest on bonds issued under this Act payable wholly from revenues from a garbage reclamation project.

[Acts 1983, 68th Leg., p. 2046, ch. 376, eff. Aug. 29, 1983.]

### Art. 4477-7c. Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act

#### Title

Sec. 1. This Act may be cited as the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

#### Policy

Sec. 2. It is the policy of this state to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, in order to accomplish the purposes of this Act, will further that policy.

#### Findings

Sec. 3. The legislature finds that:

(1) the growth of the state's economy and population has resulted in an increase in discarded materials;

(2) the improper management of solid waste creates hazards to the public health, can cause air and

water pollution, creates public nuisances, and causes a blight on the landscape;

(3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, there are municipal solid waste land disposal sites in the state being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in the dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of these private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) there are existing technologies to separate usable material from solid waste and to convert solid waste to energy and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies who have acquired knowledge, expertise, and technology in the fields of energy production and the recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter into long-term contracts to supply solid waste to resource recovery systems or to operate those systems; and

(11) the control of collection and disposal of solid waste should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste.

**Construction of Act; Exemptions**

Sec. 4. (a) This Act shall not be construed to displace, prohibit, preclude, or limit persons from extracting or using materials they generate or legally collect or acquire for purposes of recycling or resale.

(b) Materials that are separated from solid waste or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this Act.

**Application of Act**

Sec. 5. This Act applies only to solid waste and hazardous waste under the jurisdiction of the department as defined by the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

**Definitions**

Sec. 6. In this Act:

(1) "Advisory council" means the Municipal Solid Waste Management and Resource Recovery Advisory Council.

(2) "Board" means the Texas Board of Health.

(3) "City" means an incorporated city or town in the state.

(4) "Commissioner" means the commissioner of health.

(5) "Department" means the Texas Department of Health.

(6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any containerized or uncontainerized solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent of either solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into any surface water or groundwater.

(7) "Governing body" means the city council, commissioners court, board of directors, trustees, or similar body charged by law with governing a public agency.

(8) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(9) "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(10) "Local government" means a county, a city, or a political subdivision of the state exercising the authority granted under Section 6 of the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

(11) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(12) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(13) "Planning fund" means the municipal solid waste management planning fund.

(14) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(15) "Private operator" means a person, other than a government or governmental subdivision or agency, engaged in some aspect of operating a solid waste management system, and includes any person, other than a government or governmental subdivision or agency, owned and operated by investment of private capital.

(16) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to:

(A) neutralize the hazardous waste;

(B) recover energy or material from hazardous waste; or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(17) "Property" means land, structures, interests in land, air rights, water rights, and the rights that accompany interests in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(18) "Public agency" means a city, county, or a district or authority created and operating under either Article III, Section 52(b)(1) or (2) or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under this Act or other laws to own and operate a solid waste management system.

(19) "Regional or local solid waste management plan" means a plan adopted by a planning region or local government under Section 7 of this Act.

(20) "Resolution" means a resolution, order, ordinance, or other action of a governing body authorizing bonds.

(21) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(22) "Solid waste" means any garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(23) "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for the processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; for example, one or more landfills, surface impoundments, or combinations of them.

(24) "Solid waste management" means the systematic control of any or all of the following activities:

- (A) generation;
- (B) source separation;
- (C) collection;
- (D) handling;
- (E) storage;
- (F) transportation;
- (G) processing;
- (H) treatment;
- (I) resource recovery; or
- (J) disposal of solid waste.

(25) "Solid waste management system" means any plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated for the purpose of collecting, handling, storing, processing, recovering material or energy, or disposing of solid waste and includes sites for these works and equipment.

(26) "Solid waste resource recovery system" means any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises that are used or useful in connection with the processing of solid waste to extract, recover, reclaim, salvage, reduce, concentrate, or convert to energy or useful matter or resources whatever their form, including electricity, steam, or other forms of energy, and metal, fertilizer, glass, or other forms of material and resources, from such solid waste; and includes any real property, buildings, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) the transportation, receiving, storage, transfer, and handling of solid waste;

(B) the preparation, separation, or processing of solid waste for reuse;

(C) the handling and transportation of recovered matter, resources, or energy; and

(D) the handling, transportation, and disposing of any nonrecoverable solid waste residue.

(27) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the board.

(28) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund.

#### Regional and Local Solid Waste Management Plans

Sec. 7. (a) The board shall adopt rules for the implementation of this section, including but not limited to procedures for review of regional and local solid waste management plans and criteria for approval of regional and local solid waste management plans.

(b) A planning region may develop a regional solid waste management plan that must conform to the requirements of the state solid waste management plan. A regional solid waste management plan may be submitted to the department for review. If the department determines that a regional solid waste management plan conforms to the requirements adopted by the board, the department shall submit the regional solid waste management plan to the board for approval. A regional solid waste management plan approved by the board shall be adopted by rule in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) A local government may develop a local solid waste management plan that must conform to the requirements of a regional solid waste management plan for the region encompassing the jurisdiction of the local government which has been adopted by rule in accordance with Subsection (b) of this section. If there is no adopted regional solid waste management plan, the local solid waste management plan must conform to the state solid waste

management plan. A local solid waste management plan may be submitted to the department for review. If the department determines that a local solid waste management plan conforms to the requirements adopted by the board, the department shall submit the local solid waste management plan to the board for approval. A local plan approved by the board shall be adopted by rule in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a regional or local solid waste management plan is adopted by rule of the board, public and private solid waste management activities and state regulatory activities must conform to the adopted regional or local solid waste management plan. Under procedures and criteria adopted by the board, the department may grant a variance from an adopted regional or local solid waste management plan.

(e) A regional or local solid waste management plan must be the result of a planning process that is related to proper management of solid waste in the planning area under consideration and that identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives. A regional solid waste management plan must consider the entire area within an identified planning region. A local solid waste management plan must consider all the area within the jurisdiction of one or more local governments but may not include an entire planning region.

(f) In order to develop programs to implement regional or local solid waste management plans or other solid waste management alternatives, to include resource recovery, under this Act, a study must be made to determine their feasibility and acceptance. This study shall normally be conducted in three phases: a screening study, a feasibility study, and an implementation study. Public agencies that have conducted any or portions of one or more phases may qualify for assistance to accomplish other phases or portions of phases. After each phase, a determination will be made by the governing body as to whether to proceed to the next phase.

(g) A screening study provides a survey and assessment of the various factors impacting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination as to whether resource recovery or the other solid waste management systems are potentially successful alternatives to existing systems. The survey and assessment should include:

(1) the amount and characteristics of waste available;

(2) the suitability and economics of existing solid waste management systems;

(3) institutional factors impacting potential alternatives;

(4) technologies available;

(5) identification of potential material and energy markets;

(6) economics of alternative systems; and

(7) interest of the local citizenry in available alternatives.

(h) A feasibility study provides an evaluation of alternatives that:

(1) identifies current solid waste management practices and costs;

(2) analyzes the waste stream and its availability by composition and quantity;

(3) identifies potential markets and obtains statements of interest for recovered materials and energy;

(4) identifies and evaluates alternative solid waste management systems;

(5) provides an assessment of potential impacts of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;

(6) conducts and evaluates results of public hearings or surveys of local citizen opinions; and

(7) makes recommendations on alternatives for further considerations.

(i) An implementation study provides a recommended course of action for a public agency. An implementation study:

(1) provides for the collection and analysis of data;

(2) identifies and characterizes solid waste problems and issues;

(3) determines waste stream composition and quantity;

(4) identifies and analyzes alternatives;

(5) evaluates risk elements of alternatives;

(6) identifies and solidifies markets;

(7) makes site analyses;

(8) evaluates financing options and recommends preferred methods of financing;

(9) evaluates the application of resource recovery technologies;

(10) identifies and discusses potential impacts of alternative systems;

(11) provides for public participation and recommends preferred alternatives; and

(12) provides for implementation.

(j) A study may not include final design and working drawings of any request for proposals for project facilities or operations.

**Municipal Solid Waste Management Planning Fund**

Sec. 8. (a) The municipal solid waste management planning fund is created as a special fund in the state treasury, and money provided by legislative appropriation and money received from other sources, including money received under contracts or agreements entered into under Section 14 of this Act, must be deposited in the state treasury to the credit of the planning fund.

(b) The department shall use the planning fund to provide financial assistance to local governments and planning regions for the development of regional and local solid waste management plans and to public agencies and planning regions for the preparation of screening, feasibility, and implementation studies.

(c) The planning fund may not be used for preparation of final design and working drawings, construction, acquisition of land or an interest in land, or payment for recovered resources.

(d) The commissioner shall administer the financial assistance program and the planning fund under direction of the board.

(e) An applicant for financial assistance from the planning fund must agree to comply with the state solid waste management plan, the department's municipal solid waste management regulations, and other requirements adopted by the board.

(f) At least 90 percent of the total amount of money appropriated to the department for the planning fund must be used to provide financial assistance, and not more than 10 percent of the total funds appropriated to the department for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(g) The department may not authorize release of funds under an application for financial assistance until the applicant has furnished to the department a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying:

(1) that the applicant will comply with the provisions of the financial assistance program and the requirements of the department;

(2) that the funds will be used only for the purposes for which they are provided; and

(3) that regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy and that future municipal solid waste management activities will, insofar as reasonably feasible, conform to the plan.

(h) Financial assistance provided by the department to any public agency or planning region under this section must be matched at least equally by funds provided by the recipient.

(i) The board shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(j) The order of priority to be given to applicants in receiving financial assistance must be determined by:

(1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;

(2) the needs of the state;

(3) the financial need of the applicant; and

(4) the degree the proposed program will result in improvements that meet the requirements of the state, regional, and local solid waste management plans.

(k) The department may approve an application that is consistent with the rules adopted under Subsection (j) of this section and that the department finds requires state financial participation in the public interest.

**Municipal Solid Waste Resource Recovery Applied Research and Technical Assistance Fund**

Sec. 9. (a) The municipal solid waste resource recovery applied research and technical assistance fund is created as a special fund in the state treasury to be used for the purpose of accomplishing applied research and development studies and providing technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The commissioner shall administer the fund under direction of the board.

(d) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must be done in accordance with the state solid waste management plan, the department's municipal solid waste management regulations, and other policy requirements adopted by the board.

(e) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided from the technical assistance fund may include:

(1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for these systems;

(2) an evaluation of the state of the art of waste reduction systems and waste-to-energy systems that includes steam generation and electrical production;

(3) establishment and evaluation of a pilot source separation and recycling project;

(4) feasibility studies of appropriate technology that may be applicable to several local governments for the improvement of solid waste management systems;

(5) cost and economic comparisons of alternative solid waste management systems;

(6) an evaluation of available markets for energy and recovered materials;

(7) an evaluation of the availability of recovered materials and energy resources for new market opportunities; and

(8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(f) The department may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions.

#### Advisory Council

Sec. 10. (a) The Municipal Solid Waste Management and Resource Recovery Advisory Council is created and is composed of 15 members who are appointed by the board as follows:

(1) one member, an elected official from a city having a population of 750,000 or more according to the most recent federal census;

(2) one member, an elected official from a city having a population of 100,000 or more but less than 750,000 according to the most recent federal census;

(3) one member, an elected official from a city having a population of 25,000 or more but less than 100,000 according to the most recent federal census;

(4) one member, an elected official from a city having a population less than 25,000 according to the most recent federal census;

(5) two members, who are elected officials of separate counties, one of whom is from a county that has a population of less than 150,000 according to the most recent federal census;

(6) one member, an official from a city or county solid waste agency;

(7) one member, a representative from a private environmental conservation organization;

(8) one member, a representative from a public solid waste district or authority;

(9) one member, a representative from a planning region;

(10) one member, a representative of the financial community;

(11) one member, a representative from a solid waste management organization composed primarily of commercial operators;

(12) one member, a member of the board; and

(13) two members, who would not qualify as members under Subdivisions (1)–(12) of this subsection, representing the general public.

(b) Members of the advisory council shall serve for staggered terms of six years with the terms of five members expiring August 31 of each odd-numbered year. The board shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications under Subsection (a) of this section as the person who previously filled the vacated position on the advisory council. A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only so long as he continues to qualify for the category from which he is appointed, and a vacancy is created on the advisory council when he fails to qualify.

(c) Except for the member representing the board, each member of the advisory council is entitled to receive \$50 for each council meeting the member attends and the travel allowance authorized by the General Appropriations Act for state employees. The member representing the board is entitled to receive the same per diem and travel allowance that he receives for board meetings.

(d) The chairman of the board shall appoint one member as president of the advisory council. The president of the advisory council shall serve for a term of two years. The presidential term expires August 31 of each odd-numbered year.

(e) The advisory council shall adopt and may amend procedures for conduct of advisory council business.

(f) The advisory council shall hold at least one meeting every three months.

(g) The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the commissioner and the board on matters relating to municipal solid waste management;

(3) recommend legislation to the board to encourage the efficient management of municipal solid waste;

(4) recommend policies to the board for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those in Subsection (j), Section 8, of this Act, to be evaluated in establishing priorities for providing financial assistance to applicants;

(5) recommend to the commissioner special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

(h) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose.

#### Powers and Duties

Sec. 11. (a) The board may adopt rules necessary to implement this Act.

(b) The department, under the direction of the board, shall implement and enforce this Act.

(c) The department shall:

(1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out the purposes of this Act;

(2) promote planning for and implementation of the recovery of materials and energy from solid waste;

(3) establish guidelines for regional and local municipal solid waste management plans;

(4) review and approve or disapprove regional and local municipal solid waste management plans;

(5) assist the advisory council in its duties;

(6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;

(7) provide procedures under which public agencies and planning regions may apply for financial assistance grants, evaluate the applications, and award financial assistance grants in accordance with rules adopted by the board; and

(8) coordinate programs under this Act with other state agencies, including the Texas Air Control Board, the Texas Department of Water Resources, the Texas Energy and Natural Resources Advisory Council, the Railroad Commission of Texas, and any other state or federal agency having an interest in a program or project.

(d) The department may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program.

#### Establishment of Solid Waste Management Service

Sec. 12. Each city and county shall review the provision of solid waste management services in its jurisdiction and shall assure that such services are provided to all persons within its jurisdiction by a public agency or by a private person or persons.

#### Provision of Resource Recovery Services; Fees

Sec. 13. (a) Any public agency may offer a solid waste resource recovery service to persons within its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a solid waste resource recovery service, a public agency, after notice and hearing, may suspend service to a person who is delinquent in payment of those fees from any or all utilities owned or operated by the public agency.

#### Solid Waste Management Service Contracts

Sec. 14. (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services. Each contract may be for the time and under the terms considered appropriate by the governing body of the public agency. A home-rule city's charter provision restricting the duration of a city contract does not apply to a city contract that relates to solid waste management services.

(b) Under a solid waste management service contract, a public agency may:

(1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems, and may contract with any person or other public agency to manage solid waste for that person or other public agency;

(2) contract with any person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;

(3) contract with any person or other public agency for the operation of all or any part of a solid waste management system, including a resource recover system;

(4) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;

(5) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:

(A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the

public agency any solid waste management system or part of any solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(6) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at any permitted solid waste management facility, including a resource recovery facility, provided the contract may specify the minimum quantity and quality of solid waste to be provided by the public agency and the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(7) contract with any person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(8) contact with any person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities.

#### Management of Funds

Sec. 15. (a) The department may accept and disburse funds received from the federal government for purposes relating to solid waste management and resource recovery in the manner provided by this Act and by agreement between the federal government and the department.

(b) State funds provided to public agencies or planning regions under this Act may be combined with local or regional funds to match federal funds on approved programs for the municipal solid waste management.

#### Funding Solid Waste Management Services

Sec. 16. (a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract may also be made for the revenues of the public agency's solid waste, water, sewer, electric, gas, or any combination of utility systems.

(d) As a source or sources of payment or as the sole source of payment, a public agency may use and pledge any available revenues or resources for and to the payment of amounts due under contracts, and may enter into covenants with respect to these sources of payment to assure their availability when required.

(e) A public agency may fix, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided pursuant to or in connection with a contract. These fees, rates, charges, rentals, and other amounts may be charged to and collected from the inhabitants of the public agency, if any, or from any users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. The public agency may use and pledge these fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amount sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or a part of the costs of providing solid waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency.

#### Issuance of Bonds

Sec. 17. (a) A public agency may issue and sell bonds in the name of the public agency to acquire, construct, improve, enlarge, extend, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds.

#### Manner of Payment of Bonds

Sec. 18. A public agency may provide for the payment of principal of and interest on the bonds in one or more of the following manners:

(1) from the levy and collection of ad valorem taxes on all taxable property within the boundaries of the public agency if the public agency is authorized by law to levy and collect taxes;

(2) by pledging all or any part of the designated revenues from the ownership or operation of physical properties of a solid waste management system, including a resource recovery system, or from any contract entered into by a public agency under this Act; or

(3) from any other income of the public agency.



**Additional Security for Bonds**

Sec. 19. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of a solid waste management system, including a resource recovery system, of the public agency and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the governing body for the security of the bonds and the preservation of the trust estate, and may make provisions for amendment or modification and may make provisions for investment of funds of the public agency.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

**Bond Election**

Sec. 20. Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at an election called for that purpose. A bond election shall be called and held and the vote canvassed in the manner provided by law for other bond elections of the public agency.

**Form of Bonds**

Sec. 21. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of this state.

(c) A public agency's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code, and may be issued registrable as to principal as to both principal and interest and may be made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the governing body in the resolution or order authorizing their issuance.

**Provisions of Bonds**

Sec. 22. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues,

and the operation and maintenance of the physical properties of the solid waste management system, the revenue of which is pledged.

(b) The orders or resolutions of the governing body authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the governing body issuing bonds may include other provisions and covenants as the governing body may determine.

(d) The governing body may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

**Approval by Attorney General; Registration by Comptroller**

Sec. 23. (a) Bonds issued by a public agency and the records relating to their issuance must be submitted to the attorney general of the State of Texas for examination. If the bonds are secured by a pledge of proceeds from a contract, a copy of the contract and a copy of the records relating to the contract also must be submitted for examination.

(b) If the attorney general finds that the bonds have been authorized and the contract entered into in accordance with law, he shall approve the bonds, and they shall be registered by the comptroller of public accounts of the State of Texas.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

**Sale or Exchange of Bonds**

Sec. 24. (a) A public agency may sell the bonds at a public or private sale at prices and on terms determined by the governing body of the public agency.

(b) The public agency may exchange its bonds for property or any interest in property that is considered by the governing body of the public agency to be necessary or convenient to carry out the purposes of this Act.

**Refunding Bonds**

Sec. 25. (a) A public agency may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of this state.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded, if refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates, or to their option dates if the bonds have been duly called for payment prior to maturity according to their terms, shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register these refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries.

(g) In lieu of the method set forth in Subsections (a)-(f) of this section, a public agency may refund bonds, notes, or other obligations as provided by the general laws of this state.

#### Bonds as Investments

Sec. 26. Public agency bonds are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

#### Bonds as Security for Deposits

Sec. 27. Public agency bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

#### Tax Status of Bonds

Sec. 28. Since a public agency is a public entity performing an essential public function, bonds is-

sued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds, are free from taxation by the state or by any city, county, special district, or other political subdivision of the state.

#### Fees

Sec. 29. (a) So long as bonds are outstanding, the governing body of the public agency may adopt and collect fees for services furnished or made available by the solid waste management system, including a resource recovery system.

(b) The fees must be adequate to pay any operational costs or expenses allocable to the solid waste management system, including a resource recovery system, and must also be adequate to pay the principal of and interest on the bonds and provide and maintain the funds created by the resolution authorizing the bonds.

#### Use of Bond Proceeds

Sec. 30. (a) Money may be set aside out of bond proceeds to provide for:

- (1) interest to accrue on the bonds;
- (2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and
- (3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified in the resolution that authorized issuance of the bonds or the trust indenture securing them. The earnings on investments may be applied as provided in the resolution or trust indenture.

#### Adjustment of Rates for Adequate Revenue

Sec. 31. The public agency shall adopt and adjust the rates charged for solid waste management services so that the revenues, together with any taxes levied to support the services, will be sufficient to pay:

- (1) the expense of operating and maintaining the solid waste management system, including a resource recovery system;
- (2) the public agency's obligations under a contract; and
- (3) the public agency's obligations under and in connection with bonds issued up to that time or afterward that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system.

#### Bond Anticipation Notes

Sec. 32. A public agency may declare an emergency if funds are not available to pay the principal of or interest on bonds of the public agency issued

under this Act. The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by the constitution and the laws of this state and shall mature within one year of the date they are issued. The bond anticipation notes issued may be paid with the proceeds of bonds, or the bonds may be issued and delivered in exchange for and in substitution of the bond anticipation notes.

#### Industrial Development Corporations

Sec. 33. A public agency that has entered into a contract under Section 14 of this Act may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes). The industrial development corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract. These bonds, notes, and other evidences of indebtedness may be issued if the system is located within the boundaries of the public agency.

#### Adoption of Regulations, Ordinances, and Guidelines

Sec. 34. (a) The governing body of a public agency may adopt regulations for controlling and governing solid waste collection, handling, transportation, storage, processing, and disposal. The regulations may not authorize any activity, method of operation, or procedure prohibited by the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) or by rules and regulations of the department or other state and federal agencies.

(b) To prohibit the processing or disposal of solid waste in certain areas within the boundaries of the city or county, the governing body of a city or county shall adopt an ordinance or order that specifically designates the area of the city or county in which the disposal of solid waste will not be prohibited, unless the city or county has adopted solid waste management plans approved by the department pursuant to Subsection (a), Section 7, of this Act.

(c) An ordinance or order required under Subsection (b) of this section must be published for two consecutive weeks in a newspaper of general circulation in the area of the public agency before the proposed ordinance or order is adopted by the governing body.

#### Property Tax

Sec. 35. A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from all property taxes of any city, county, school district, or other political subdivision of the state.

#### Terms of Initial Advisory Council Members

Sec. 36. (a) On appointment of the initial members to the advisory council, the board shall designate:

(1) five members to serve for a term that expires August 31, 1985;

(2) five members to serve for a term that expires August 31, 1987; and

(3) five members to serve for a term that expires August 31, 1989.

(b) The board shall appoint the initial members to the advisory council not later than the 90th day after the effective date of this Act.

#### Compliance With Solid Waste Management Service Requirements

Sec. 37. Each city and county must comply with Section 12 of this Act not later than December 31, 1987.

#### Effective Date

Sec. 38. This Act takes effect September 1, 1983.

#### Statutes Unaffected by This Act

Sec. 39. The following statutes are not affected by this Act: the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), the County Solid Waste Control Act (Article 4477-8, Vernon's Texas Civil Statutes), and the Solid Waste Resource Recovery Financing Act (Article 4477-7a, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 5125, ch. 934, eff. Sept. 1, 1983.]

#### Art. 4477-7d. Home-Rule City Contracts Relating to Solid Waste Management; Duration

A home-rule city's charter provision restricting the duration of a city contract does not apply to a city contract:

(1) that relates to solid waste management; and

(2) that must be for a longer term than the charter permits in order for the city to qualify for the receipt of federal funds designated for solid waste management purposes.

[Acts 1983, 68th Leg., p. 5200, ch. 947, § 1, eff. Aug. 29, 1983.]

#### Art. 4477-8. County Solid Waste Control Act

##### Purpose

Sec. 1. This Act is for the purpose of authorizing a cooperative effort by counties, other public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid wastes in order to control pollution in this state.

**Title of Act**

Sec. 2. This Act may be cited as the "County Solid Waste Control Act."

**Definitions**

Sec. 3. Words and phrases used in this Act shall have meanings as follows:

(a) "Act" shall mean the County Solid Waste Control Act, as amended.

(b) "Person" means any individual, public agency as defined herein, public or private corporation, political subdivision or governmental agency of the United States of America or the state, city as defined herein, copartnership, association, firm, trust, estate, or any other entity whatsoever.

(c) "District" means any district or authority heretofore or hereafter created and existing under Article XVI, Section 59, or Article III, Section 52 of the Constitution of Texas.

(d) "City" means any incorporated city or town in the state, whether operating under general law or under its home-rule charter.

(e) "Public agency" means any district as defined herein, any city as defined herein, or any other political subdivision or agency of the state having the power to own and operate solid waste collection, transportation, or disposal facilities or systems.

(f) "County" means any county in the state.

(g) "Solid waste disposal system" means any plant, composting process plant, incinerator, sanitary landfill, or other works and equipment not specifically mentioned herein which is acquired, installed, or operated for the purpose of collecting, handling, storing, treating, neutralizing, stabilizing, or disposing of solid waste, including sites therefor.

(h) The terms "solid waste," "sanitary landfill," and "composting" shall have meanings as set forth in the Solid Waste Disposal Act, as amended (compiled as Article 4477-7, Vernon's Texas Civil Statutes).

**Disposal Systems; Acquisition, Etc., Purchase, Sale or Operating Agreements; Leases**

Sec. 4. A county may acquire, construct, improve, enlarge, extend, repair, operate, or maintain all or any part of one or more solid waste disposal systems, and may make contracts with any person under which the county will collect, transport, handle, store, or dispose of solid waste for such person. A county may also enter into contracts with any person to purchase or sell, by installments over such term as may be deemed desirable, or otherwise, all or any part of any solid waste disposal system. A county is also authorized to enter into operating agreements with any person, for such terms and upon such conditions as may be deemed desirable, for the operation of all or any part of any solid waste disposal system by any person or by the county; and a county may lease to or from any

person, for such term and upon such conditions as may be deemed desirable, all or any part of any solid waste disposal system.

**Eminent Domain**

Sec. 5. A county shall have the power and right to acquire by purchase, lease, gift, condemnation, or in any other manner, and to own, maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein necessary or convenient to the exercise of the powers and purposes authorized by this Act. Such power of eminent domain shall be restricted to the respective county and be exercised in the manner provided in the laws applicable or available to counties.

**Public Agencies; Contracts with County for Disposal Services; Authorization**

Sec. 6. Public agencies are hereby authorized to make contracts with a county under which the county will make all or any part of a solid waste disposal system available to a public agency or group of public agencies or to other persons and furnish solid waste collection, transportation, handling, storage, or disposal services by the county's system. The contract may be upon such terms and for such periods of time as the parties may agree and may provide that it will remain in effect until any bonds issued or to be issued by the county, and any bonds which may be issued to refund the same, are paid; the contract may contain provisions to assure equitable treatment of parties who contract with the county for solid waste collection, transportation, handling, storage, or disposal services from all or any part of the same solid waste disposal system; shall provide the method of determining the amounts to be paid by the public agency to the county; may provide for the sale or lease to or use of by the county of any solid waste disposal system or any part thereof at the time owned or to be acquired by the public agency; may provide that the county shall operate any solid waste disposal system or part thereof at the time owned or to be acquired by the public agency; may provide that the public agency shall have the right to continued performance of such services after the amortization of the county's investment in the disposal system during the useful life thereof upon payments of reasonable charges therefor, reduced to take into consideration such amortization; and may contain such other provisions and requirements as the county and the public agency may determine to be appropriate or necessary. A city may also provide in its contract that the county shall have the right to use the streets, alleys, and public ways and places within the city during the term of the contract.

**Payments by Public Agency to County for Disposal Services; Sources**

Sec. 7. Payments by a public agency to the county for solid waste collection, transportation, handling, storage, or disposal services may be made from the income of the public agency's solid waste

disposal fund as may be prescribed in the contract between the county and the public agency. Such payments shall constitute an operating expense of such fund the revenues of which are thus to be applied. Payments to be made under the contract by the public agency may also be made from the revenues of the public agency's water, sewer, electric, gas, or any combination of utility systems, but in such event shall be subordinate to amounts required to be paid from the revenues of such system or systems for principal of and interest on bonds of the public agency which are outstanding at the time of the making of the contract and which are payable from such revenues unless the ordinance or resolution authorizing such outstanding bonds of the public agency expressly reserves the right to accord such contract payments a position of parity with, or a priority over, such public agency's bond requirements. Unless the alternative procedure prescribed in Section 8 is followed, neither the county nor a holder of any bonds of the county shall have the right to demand payment of the public agency's obligation out of any funds raised or to be raised by taxation. If the alternative procedure prescribed in Section 8 is followed, payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the public agency or may be payable both from taxes and from such revenues as may be prescribed in the contract.

**Alternative Procedure for Payments by Public Agency to County; Bond Election; Taxes**

Sec. 8. (a) If an election is held substantially according to applicable procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of Texas, as amended,<sup>1</sup> in reference to the issuance of bonds by cities, by a public agency having taxing powers, and in such election it is determined that the governing body of the public agency is authorized to levy an ad valorem tax to pay all or a portion of the payments to be made by the public agency under a contract between the public agency and a county to be authorized by the governing body of the public agency, the contract, in such event, will constitute an obligation against the taxing power of the public agency to the extent therein provided. No election is required for the exercise of any power conferred by this Act except for the levy of such tax.

(b) Only qualified electors of the public agency shall be entitled to vote at such election. Except as otherwise provided in this section and in said Chapter 1, Title 22, the general election code<sup>2</sup> shall govern such election.

<sup>1</sup> Article 701 et seq.

<sup>2</sup> Election Code, art. 1.01 et seq.

**Payments by Public Agency to County from Solid Waste Disposal Fund; Adjustment of Rates for Adequate Revenue**

Sec. 9. Whenever a public agency shall have executed a contract with a county under this Act and the payments thereunder are to be made either wholly or partly from the revenues of the public

agency's solid waste disposal fund, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rates charged by the public agency to the end that the revenues therefrom, together with any taxes levied in support thereof, will be sufficient at all times to pay the expense of operating and maintaining such service or system, all of the public agency's obligations to the county under the contract, and all of the public agency's obligations under and in connection with bonds theretofore issued, or which may be issued thereafter, secured by revenues of such service or system. The contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates are to be adjusted.

**Rendering of Disposal Services Concurrently to More Than One Person; Contracts; Allocation of Cost**

Sec. 10. Any contract or group of contracts under this Act may provide for services to be rendered concurrently by the county to more than one person relating to the construction or operation of all or any part of a solid waste disposal system and provide that the cost of such services shall be allocated among the several persons as determined in the contract or group of contracts.

**Bonds; Pledge of Revenues from Contracts**

Sec. 11. For the purpose of acquiring, constructing, improving, enlarging, extending, and repairing all or any part of a solid waste disposal system or systems, a county is authorized to issue bonds payable from and secured by a pledge of all or any part of the revenues to accrue under any contract or contracts made under this Act and from any other income pledged by the county. Said bonds shall constitute investment securities governed by Chapter Eight, Uniform Commercial Code,<sup>1</sup> and shall be in such form and denomination and shall bear such rate or rates of interest as are prescribed by the governing body of the county. A county is likewise authorized to refund any bonds issued under this Act upon such terms and conditions and bearing such rate or rates of interest as the governing body may prescribe. Said bonds may be sold at such price or prices and upon the terms determined by the governing body of the county at public or private sale or may be exchanged for property of any kind, real, personal, or mixed, or any interest therein deemed by the governing body of the county to be necessary or convenient to the purposes authorized by this Act. Pending the issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

**Collection of Rates and Charges to Maintain Adequate Revenue; Allocation of Bond Proceeds**

Sec. 12. While any such bonds are outstanding, it shall be the duty of the governing body of the county to fix, maintain, and collect rates and

charges for services furnished or made available by the solid waste disposal system adequate to pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on such bonds and to provide and maintain the funds created by the resolution authorizing the bonds. Interest to accrue on the bonds, administrative expenses to estimated date when the solid waste disposal system will become revenue producing, and reserve funds created by the resolution authorizing the bonds may be set aside out of bond proceeds.

**Establishment of Disposal Service as a Utility; Use of Service; Fees; Enforcement of Collection**

Sec. 13. Any public agency or any county may offer solid waste disposal service to persons within its boundaries, may require the use of such service by any or all such persons, may charge fees therefor, and may establish said service as a utility separate from other utilities within its boundaries. To aid in enforcing collection of fees for such solid waste disposal service, any public agency or county may suspend service from any or all other utilities owned or operated by it to any person who may become delinquent in payment of solid waste disposal service fees until such delinquency has been paid in full.

**Approval of Bonds and Contracts; Registration; Validation**

Sec. 14. After any bonds are authorized to be issued by a county pursuant to the powers provided in this Act, such bonds and the record relating to their issuance may be submitted to the Attorney General for his examination as to the validity thereof. Where such bonds recite that they are secured by pledge of the proceeds of a contract or contracts between the county and a public agency, a copy of such contract and the proceedings of the public agency authorizing same may also be submitted to the Attorney General. If the Attorney General finds that such bonds have been authorized and the contracts have been made in accordance with the Constitution and laws of the State of Texas, he shall approve the bonds and such contracts; and the bonds shall be registered by the Comptroller of Public Accounts. Thereafter, the bonds and contracts, if any, shall be valid and binding and shall be incontestable for any cause. In lieu of, or in addition to, such approval by the Attorney General, the board of directors of the district may have any such bonds validated by suit in the District Court in the manner and with the effect provided in Chapter 316, Acts of the 56th Legislature.<sup>1</sup> The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit. If the proposed bonds recite that they are secured by the proceeds of a contract or contracts made by the district and one or more public agencies, the petition shall so allege; and the notice of the suit shall mention such allegation and each public agency's fund or revenues from which such

contract or contracts are payable. Such suit shall be in the nature of a proceeding in rem. The judgment shall be res adjudicata as to the validity of such bonds and any such contract or contracts and the pledge of revenues thereof.

<sup>1</sup> Article 717m.

**Investment of Bond Proceeds**

Sec. 15. Proceeds from the sale of bonds may be invested, pending their use, in such securities or time deposits as are specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them; and the earnings on such investments may be applied as provided in such resolution or trust indenture.

**Bonds as Legal Investments and Security for Deposits**

Sec. 16. All bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, school districts, or any other political corporation or subdivision of the State of Texas. Such bonds shall be eligible to secure the deposits of any and all public funds of the State of Texas and of any political subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value when accompanied by all unmatured coupons appurtenant thereto.

**Relocation of Highways, Railroads, or Utility Facilities at County Expense**

Sec. 17. In the event that any county, in the exercise of the power of eminent domain or power of relocation, or any other power granted hereunder, makes necessary the relocation, raising, rerouting or changing the grade of, or altering the construction of, any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipeline, all such necessary relocation, raising, rerouting, changing of grade or alteration of construction shall be accomplished at the sole expense of the county. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

**Regulations; Ordinances; Guidelines; Adoption Procedures**

Sec. 18. (a) Subject to the limitation prescribed in Subsection (a), Section 5, Solid Waste Disposal Act,<sup>1</sup> a county, acting through its commissioners court, may make regulations for the areas of the county not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns to provide for governing and controlling solid waste

collection, handling, storage, and disposal. The regulations shall not authorize any activity, method of operation, or procedure which is prohibited by the Solid Waste Disposal Act or by the rules and regulations of the State Department of Health or the Texas Water Quality Board or the board. The county shall not, in its regulations, under the licensing power granted in the Solid Waste Disposal Act, or otherwise, impose any unreasonable requirements on the disposal of such solid waste in the county, not warranted by the circumstances. The county may prohibit the disposal of any solid waste within the county if the disposal of the solid waste is a threat to the public health, safety, and welfare. The county may institute legal proceedings to enforce its regulations.

(b) To prohibit the disposal of solid waste within the county, the commissioners court must adopt an ordinance in the general form as prescribed for municipal ordinances specifically designating the area of the county in which the disposal of solid waste shall not be prohibited, unless such county has adopted solid waste disposal guidelines approved by the State Department of Health.

(c) The ordinance required in Subsection (b) of this section may be passed on first reading; however, such proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before such proposed ordinance is taken up by the Commissioners court, and such publication shall contain:

(1) a statement of the time, place, and date such proposed ordinance shall be considered by the commissioners court, and

(2) notice that any interested citizen of the county may testify at such hearing.

(d) A public hearing shall be had on the proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.

<sup>1</sup> Article 4477-7, § 5(a).

[Acts 1971, 62nd Leg., p. 1757, ch. 516, eff. Aug. 30, 1971.]

Sections 21 to 24 of the 1971 Act provided:

"Sec. 21. This Act is cumulative of other statutes now or hereafter enacted governing the Texas Water Quality Board, the Texas Air Control Board, and the Texas State Department of Health relating to the issuance of bonds; the collection, transportation, handling, storage, or disposal of solid wastes; and the design, construction, acquisition, or approval of facilities for such purposes.

"Sec. 22. This Act and all of the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein, and the powers granted under this Act shall be in addition to and not in derogation of any and all existing powers of any county or public agency. Chapter 854, Acts of the 61st Regular Legislature (compiled as Article 2351g-2, Vernon's Texas Civil Statutes) is hereby repealed; otherwise, this Act shall not be deemed to repeal, expressly or by implication, any power or right granted to any county or to any public agency; and any county or public agency having powers under existing law similar to or in the nature of those granted hereunder may continue to operate and act in the exercise of such powers or may operate and act under the powers granted herein or both. This Act shall, however, constitute full authority for any county and any public agency and any

person to enter into any contracts as authorized herein, for any county to authorize and issue bonds in accordance with the provisions hereof, and for any county to exercise any power granted herein without reference to the provisions of any other general or special law or specific act or charter; and no other general or special law or specific act or charter provision which in any way limits or restricts or imposes additional requirements upon the carrying out of any of the matters herein authorized to be done shall ever be construed as applying to any action or proceeding taken hereunder or done pursuant hereto except as expressly provided to the contrary in this Act.

"Sec. 23. All acts and proceedings of the governing bodies of any county or any public agency heretofore accomplished in the authorization and execution of solid waste disposal contracts as contemplated by said Chapter 854 as well as the terms and provisions of said contracts themselves are hereby ratified, approved, confirmed, and validated in all respects as of the respective dates thereof with the parties thereto bound accordingly until the terms and provisions of said contracts are lawfully changed by mutual consent of the parties thereto. All bonds authorized and issued by any district as contemplated by said Chapter 854 are also hereby ratified, approved, confirmed, and validated. Notwithstanding the foregoing provisions of this section, nothing herein shall validate any contract or any bonds now involved in litigation questioning the validity thereof if the question is ultimately determined against the validity thereof.

"Sec. 24. If any section, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional."

**Art. 4477-9. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 5240, ch. 964, § 7(b), eff. Aug. 29, 1983.**

This article was repealed by § 2(1) of Acts 1981, 67th Leg., p. 2725, ch. 741 (art. 4477-9a), eff. Jan. 1, 1982, without reference to the amendment of this article by Acts 1981, 67th Leg., p. 2728, ch. 744, § 1, eff. Sept. 1, 1981. This article, as amended by Acts 1981, 67th Leg., p. 2728, ch. 744, § 1, was repealed by Acts 1983, 68th Leg., p. 5240, ch. 964, § 7(b).

Section 4 of the 1981 repealing act provides:

"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Section 9 of the 1983 repealing act provides:

"This Act is intended as a recodification only, and no substantive change is intended. Section 3.11, Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes), applies to this Act as if this Act were part of the state's continuing statutory revision program."

**Art. 4477-9a. Litter Abatement Act**

## ARTICLE I. GENERAL PROVISIONS

### Short Title

Sec. 1.01. This Act may be cited as the Texas Litter Abatement Act.

### Construction of Act

Sec. 1.02. The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision of this Act except as otherwise expressly provided by this Act.

ARTICLE II. CERTAIN ACTIONS  
PROHIBITED OR RESTRICTED

Disposing of Solid Waste Restricted

Sec. 2.01. (a) A person commits an offense if that person disposes of trash, junk, garbage, refuse, unsightly matter, or other solid waste on a public highway, right-of-way, other public or private property, or into inland or coastal waters of Texas.

(b) A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$15 nor more than \$200.

(c) It is a defense to prosecution under this section that before the disposal, the person disposing of solid waste had written consent to dispose of solid waste on that property from the owner, the owner's agent, or the public official in charge of the property.

(d) A law enforcement officer of this state or of a political subdivision of this state or a health officer of a municipality authorized by law to regulate matters of sanitation and public health may enforce this section.

Discarding Refuse in County Park Restricted

Sec. 2.02. (a) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) A person commits an offense if that person discards in a county park situated in a county that has as one boundary the Gulf of Mexico garbage, paper, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(c) This section does not apply to a beach that is included within the boundaries of a county park situated in a county that has as one boundary the Gulf of Mexico.

(d) A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$1 nor more than \$200.

Disposing of Refuse in Caves Restricted

Sec. 2.03. (a) A person commits an offense if that person, without prior permission of the owner, stores, dumps, disposes of, or otherwise places in a cave a chemical, a dead animal, sewage, trash, garbage, or other refuse.

(b) A first offense under this section is a Class C misdemeanor. A second offense under this section is a Class A misdemeanor. A third or subsequent offense under this section is a felony of the third degree.

Dumping Refuse On or Near Highway Prohibited

Sec. 2.04. (a) In this section:

(1) "Refuse" means garbage, rubbish, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses. The term does not include sewage from a public or private establishment or residence.

(2) "Garbage" means all decayable wastes from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses. The term does not include sewage, body wastes, or industrial by-products.

(3) "Rubbish" means all nondecayable wastes, except ashes, from a public or private establishment or residence.

(4) "Junk" means all worn-out, worthless, and discarded material, including odds and ends, old iron or other metal, glass, paper, and cordage.

(5) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(b) A municipal or private corporation, firm, or individual commits an offense if that corporation, firm, or individual dumps, deposits, or leaves refuse, garbage, rubbish, or junk on a public highway in this state.

(c) A municipal or private corporation, firm, or individual commits an offense if that corporation, firm, or individual dumps, deposits, or leaves refuse, garbage, rubbish, or junk within 300 yards of a public highway in this state, whether or not the refuse, garbage, rubbish, or junk being dumped, deposited, or left, or the land on which refuse, garbage, rubbish, or junk is dumped, deposited, or left belongs to the offender.

(d) Subsection (c) of this section does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with rules and standards adopted by the Texas Department of Health.

(e) This section does not apply to farmers in the handling of anything necessary in the growing, handling, and care of livestock, or in the erection, operation, and maintenance of improvements necessary in the handling, threshing, and preparation of agricultural products.

(f) The Texas Department of Health shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway.

(g) A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$50 nor more than \$400, and each day of the offense is a separate offense. A county or district attorney may bring suit for injunction to prevent or



restrain a violation of this section. A person affected or to be affected by a violation is entitled to enjoin the violation.

#### Throwing Injurious Substance on Highway Prohibited

Sec. 2.05. (a) A person commits an offense if that person throws or deposits on a highway a glass bottle, glass, a nail, a tack, wire, a can, or any other substance likely to injure a person, animal, or vehicle on the highway.

(b) A person who commits an offense under this section is, on conviction, subject to the penalties and procedures provided by Sections 143 through 153, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

#### Polluting Water in the State Prohibited

Sec. 2.06. The pollution of water in the state is controlled by Chapter 26, Water Code.

#### Throwing Certain Substances In or Near Lake Lavon Prohibited

Sec. 2.07. (a) A person commits an offense if that person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(b) A person who commits an offense under this section is, on conviction, subject to a fine of not less than \$25 nor more than \$100.

### ARTICLE III. REGULATING LITTER

#### Disposal of Refuse in Certain Areas Under Control of Parks and Wildlife Department

Sec. 3.01. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, sewage, and refuse in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department in the manner provided by Chapter 13, Parks and Wildlife Code.

#### Regulating Litter on Public Beaches

Sec. 3.02. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.<sup>1</sup>

<sup>1</sup> Natural Resources Code, §§ 61.061 et seq. and 61.121 et seq.

#### Regulating Litter, Garbage, Refuse, and Rubbish on Lake Sabine

Sec. 3.03. The governing body of the city of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the corporate limits of the city.

### ARTICLE IV. HIGHWAY BEAUTIFICATION

#### Definitions

Sec. 4.01. In this article:

(1) "Commission" means the State Highway and Public Transportation Commission.

(2) "Interstate system" means that portion of the national system of interstate and defense highways that is located in this state and is designated officially by the commission and approved pursuant to Title 23, United States Code.

(3) "Primary system" means that portion of connected main highways located in this state that is designated officially by the commission and approved pursuant to Title 23, United States Code.

(4) "Outdoor advertising" or "sign" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing designed, intended, or used to advertise or inform, if any part of the advertising or information content is visible from a place on the main-traveled way of the interstate or primary system.

(5) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or junked, dismantled, or wrecked automobiles or automobile parts, or iron, steel, and other old or scrap ferrous or nonferrous material.

(6) "Automobile graveyard" means an establishment or place of business that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(7) "Junkyard" means an establishment or place of business maintained, used, or operated for storing, keeping, buying, or selling junk, for processing scrap metal, or for maintaining or operating an automobile graveyard. The term includes garbage dumps and sanitary fills.

(8) "Urbanized area" means an area defined by the commission in cooperation with local officials, subject to the approval of the secretary of the United States Department of Transportation, which as a minimum includes an urbanized area as defined by the United States Bureau of the Census or that part of a multistate urbanized area located in this state.

(9) "Urban area" means an area defined by the commission in cooperation with local officials, subject to the approval of the secretary of the United States Department of Transportation, which as a minimum includes an urban place as designated by the United States Bureau of the Census having a population of 5,000 or more and not located within an urbanized area.

#### Purpose of Article

Sec. 4.02. Subject to the availability of state and federal funds, it is the intent of the legislature to comply with the Highway Beautification Act of 1965

(Public Law 89-285)<sup>1</sup> to the extent that it is implemented by Congress. This article is conditioned on the provisions of that law. The legislature declares that to promote the health, safety, welfare, morals, convenience, and enjoyment of the traveling public and to protect the public investment in the interstate and primary highway systems, it is necessary to regulate the erection and maintenance of outdoor advertising and the establishment, operation, and maintenance of junkyards and automobile graveyards in areas adjacent to the interstate and primary systems. The legislature considers that the landscaping and developing of recreational areas, acquisition of interests in and improvement of strips of land within, adjacent to, or within view of the interstate or primary system, which are necessary for the restoration, preservation, and enhancement of scenic beauty, and developing publicly owned and controlled rest and sanitary facilities within or adjacent to highway rights-of-way are means of protecting and providing for the general welfare of the traveling public and promoting the safety of citizens using the highways of this state.

<sup>1</sup> 23 U.S.C.A. §§ 131, 136, 319.

#### Control of Outdoor Advertising

Sec. 4.03. (a) Except as provided by this section, a person commits an offense if that person erects or maintains outdoor advertising within 660 feet of the nearest edge of a right-of-way if the advertising is visible from the main-traveled way of the interstate or primary system or erects or maintains outdoor advertising outside an urban area if the advertising is located more than 660 feet from the nearest edge of a right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) A person does not commit an offense if that person erects and maintains in an area proscribed by Subsection (a) of this section:

(1) a directional or other official sign authorized by law, including a sign pertaining to a natural wonder or a scenic or historic attraction;

(2) a sign advertising the sale or lease of the property on which it is located;

(3) a sign advertising activities conducted on the property on which it is located;

(4) a sign located within 660 feet of the nearest edge of a right-of-way in an area in which the land use is designated industrial or commercial under authority of law;

(5) a sign located within 660 feet of the nearest edge of a right-of-way in an area in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with an area designated industrial or commercial;

(6) a sign located on property within the limits proscribed by Subsection (a) of this section that has as its purpose the protection of life and property; or

(7) a sign erected on or before October 22, 1965, that the commission, with the approval of the secretary of the United States Department of Transportation, determines to be a landmark sign of such historic or artistic significance that preservation is consistent with the purposes of this section.

(c) The determination of whether an area is to be designated industrial or commercial shall be based on actual land use under criteria established by rules of the commission.

(d) The commission may adopt rules to regulate the orderly and effective display of outdoor advertising consistent with the customary use of outdoor advertising in this state in an area in which the land use is designated industrial or commercial under authority of law and in an area in which the land use is not designated industrial or commercial but in which the land use is consistent with areas designated industrial or commercial in the manner provided by Subsection (c) of this section.

(e) The commission may enter into agreements with the secretary of the United States Department of Transportation to regulate the orderly and effective display of outdoor advertising in the areas described in Subsection (d) of this section.

(f) The commission may purchase or acquire by eminent domain a sign that is lawfully in existence on any highway in the interstate or primary system.

(g) If the commission takes a sign, the commission shall pay just compensation:

(1) to the owner for the right, title, leasehold, and interest in the sign; and

(2) to the owner or, if appropriate, the lessee of the real property on which the sign is located for the right to erect and maintain the sign.

#### Licenses

Sec. 4.04. (a) A person who has not obtained a license under this article commits an offense if that person erects or maintains a sign:

(1) within 660 feet of the interstate or primary system, if the sign is visible from the main-traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of a right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) The commission shall issue a license to a person who:

(1) completes the application form specified by the commission within the time specified by the commission;

(2) pays the license fee of \$125; and

(3) files with the commission a surety bond:

(A) in the amount of \$2,500 for each county in the state in which the person erects or maintains outdoor advertising; and

(B) payable to the commission to reimburse it for removal costs of a sign the licensee unlawfully erects or maintains.

(c) A person may not be required to provide more than \$10,000 in surety bonds.

(d) The commission may revoke or suspend a license issued under this section if the licensee:

(1) violates a provision of this article; or

(2) violates a commission rule adopted under this article.

(e) A person whose license is revoked or suspended may appeal the revocation or suspension to a district court in Travis County. The appeal must be taken not later than the 15th day after the day of the commission's action.

#### Permits

Sec. 4.05. (a) A person who has a license commits an offense if that person erects or maintains a sign for which a license is required by Section 4.04(a) of this article unless that person also has a permit for that sign.

(b) The commission shall adopt rules specifying:

(1) a reasonable fee for each permit;

(2) the time for and manner of applying for a permit and the form of the permit application; and

(3) the information that must be in a permit application.

(c) The commission shall issue a permit to a person with a license whose license application complies with the commission's rules adopted under Section 4.04 of this article and whose sign, if erected, would comply with this article and the commission's rules adopted under Section 4.03(d) of this article.

(d) A permit issued to control the erection and maintenance of outdoor advertising by a political subdivision of this state within the jurisdiction of the political subdivision shall be accepted in lieu of the permit required by this section if the erection and maintenance of outdoor advertising is in compliance with Section 4.04 of this article and the commission's rules adopted under Section 4.03(d) of this article.

(e) Funds the commission receives under this article shall be deposited in the state treasury in a special fund to be known as the Texas highway beautification fund. The commission shall use the fund in the administration of this article.

#### Exceptions

Sec. 4.06. (a) A person is not required to obtain a license or permit to erect or maintain a sign

advertising the sale or lease of the property on which it is located.

(b) A person is not required to obtain a license or permit to erect or maintain a sign that relates solely to an activity conducted on the property on which the sign is erected or maintained.

(c) This article does not apply to a sign or marker giving information about the location of underground electric transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers, or waterlines.

#### Official Signs

Sec. 4.07. (a) The commission may designate and provide official signs that give specific information of interest to the traveling public, including specific brand names.

(b) The signs may be erected and maintained within rights-of-way at appropriate distances from interchanges and at appropriate locations on the interstate and primary systems.

#### Control of Junkyards and Automobile Graveyards

Sec. 4.08. (a) A person commits an offense if that person establishes, operates, or maintains a junkyard or automobile graveyard if any portion of it is within 1,000 feet of the nearest edge of a right-of-way of the interstate or primary system, except:

(1) a junkyard or automobile graveyard screened by natural objects, plantings, fences, or other appropriate means so that it is not visible from the main-traveled way of the interstate or primary system; or

(2) a junkyard or automobile graveyard located in an area that is a zoned or unzoned industrial area.

(b) The determination of whether an area is to be designated industrial shall be based on actual land use under criteria established by rules of the commission.

(c) The commission may screen with natural objects, plantings, fences, or other appropriate means, a lawfully existing junkyard or automobile graveyard if the junkyard or automobile graveyard is within 1,000 feet of the nearest edge of a right-of-way of the interstate or primary system. The commission may acquire an area outside of a highway right-of-way so that a junkyard or automobile graveyard may be screened from the main-traveled way of the interstate or primary system.

(d) The commission may adopt rules governing the location, planting, construction, and maintenance of the materials used in screening junkyards and automobile graveyards.

(e) If the commission determines that screening a junkyard or automobile graveyard is not feasible, the commission shall pay just compensation to:

(1) the owner of the junkyard or automobile graveyard for its relocation, removal, or disposal; and

(2) the owner or, if appropriate, the lessee of the real property on which the junkyard or automobile graveyard is located for the taking of the right to erect and maintain a junkyard or automobile graveyard.

(f) The commission shall compensate an owner of a junkyard or automobile graveyard and an owner or lessee of real property on which the junkyard or automobile graveyard is located if the junkyard or automobile graveyard is lawfully in existence on any highway in the interstate or primary system.

#### Landscaping and Scenic Enhancement

Sec. 4.09. (a) The commission may acquire, improve, and maintain a strip of land adjacent to a federal aid highway in this state if the land is necessary to restore, preserve, or enhance scenic beauty. The commission may also acquire and develop rest and recreation areas and sanitary and other facilities within or adjacent to a highway right-of-way if the area or facility is necessary to accommodate the traveling public.

(b) The interest in land authorized by this section to be acquired and maintained may be the fee simple or a lesser interest, as determined necessary by the commission. The acquisition may be by gift, purchase, exchange, or condemnation.

#### Powers of Acquisition

Sec. 4.10. (a) The commission may acquire by gift, purchase, exchange, or condemnation land or an interest in land and property or a property right of any kind or character that it considers necessary or convenient to carry out this article.

(b) On delivery to and acceptance by the commission of instruments conveying to the state an interest in land, property, or property rights considered necessary or convenient by the commission to effectuate the purposes of this article, the commission shall prepare and transmit to the comptroller of public accounts vouchers covering the commission's costs in acquiring the interests in land, property, or property rights, and the comptroller shall issue warrants on the appropriate account covering the state's obligation as evidenced by the vouchers.

(c) Land owned by the state or by a state agency or department is subject to the terms of this article.

(d) The exercise of the power of eminent domain authorized by this article is the same as that authorized by Section 4, Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w-3, Vernon's Texas Civil Statutes).

#### Recording and Disposal of Surplus Property

Sec. 4.11. (a) In the implementation of this article instruments conveying land or an interest in land to the state must be recorded in the deed

records of the county or counties in which the land is situated. The state shall pay the fees for recording the instruments in the same manner as fees are paid for the recording of highway right-of-way instruments and in accordance with the laws of this state establishing fees to be charged by the county clerk for the recording of these instruments.

(b) Land or an interest in land acquired to carry out this article that becomes surplus and is, in the opinion of the State Highway and Public Transportation Commission, no longer needed by the state for the purposes for which it was acquired or for highway purposes shall be disposed of in accordance with the provisions of Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes).

#### Penalty

Sec. 4.12. A person who wilfully commits an offense under this article or wilfully violates any rule adopted by the commission in accordance with this article is, on conviction, subject to a fine of not less than \$25 nor more than \$200. Each day of the wilful offense or violation constitutes a separate offense.

### ARTICLE V. ABANDONED MOTOR VEHICLES

#### Definitions

Sec. 5.01. In this article:

(1) "Police department" means the Department of Public Safety, the police department of a city, town, or municipality, acting under the general police power authority as vested in the department by its respective governing body, or the sheriff or a constable of a county.

(2) "Abandoned motor vehicle" means a motor vehicle that is inoperable and more than eight years old and left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway within this state for more than 48 hours or for more than 12 hours on a turnpike project constructed and maintained by the Texas Turnpike Authority.

(3) "Demolisher" means a person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

(4) "Garagekeeper" means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

(5) "Junked vehicle" means a motor vehicle as defined in Section 1, Chapter 42, General Laws,

Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), that:

(A) is inoperative, does not have lawfully affixed to it both an unexpired license plate and a valid motor vehicle safety inspection certificate, and that is wrecked, dismantled, partially dismantled, or discarded; or

(B) remains inoperable for a continuous period of more than 120 days.

(6) "Storage facility" means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

(7) "Motor vehicle" means a motor vehicle subject to registration under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), except that for purposes of Sections 5.02, 5.03, and 5.04 of this Act, "motor vehicle" includes a motorboat, outboard motor, or vessel subject to registration under Chapter 31, Texas Parks and Wildlife Code.

(8) "Antique auto" means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least 35 years old.

(9) "Special interest vehicle" means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

(10) "Collector" means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

#### Authority to Take Possession of Abandoned Motor Vehicles

Sec. 5.02. (a) A police department may take into custody an abandoned motor vehicle found on public or private property.

(b) A police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle it takes into custody.

#### Notification of Owner and Lien Holders

Sec. 5.03. (a) A police department that takes into custody an abandoned motor vehicle shall notify not later than the 10th day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), or Chapter 31, Parks and Wildlife Code, that the vehicle has been taken into custody. The notice shall describe the year, make, model, and

vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle not later than the 20th day after the date of the notice, on payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garagekeeper's charges if notice is under Section 5.05 of this article. The notice shall also state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given under this section.

(d) A police department or an agent of a police department that takes custody of an abandoned motor vehicle is entitled to reasonable storage fees for:

(1) a period of not more than 10 days beginning on the day the department takes custody and continuing through the day the department mails notice as provided by this section; and

(2) a period beginning on the day after the day the department mails notice and continuing through the day any accrued charges are paid and the vehicle is removed.

#### Auction of Abandoned Motor Vehicles

Sec. 5.04. If an abandoned motor vehicle has not been reclaimed as provided by Section 5.03 of this article, the police department shall sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given, and in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the

costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred under Section 5.03 of this article. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for 90 days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs.

#### Garagekeepers and Abandoned Motor Vehicles

Sec. 5.05. (a) A motor vehicle left for more than 10 days in a storage facility operated for commercial purposes after notice is given by registered or certified mail, return receipt requested, to the owner and to any lien holder of record under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) to pick up the vehicle, or for more than 10 days after a period when under a contract the vehicle was to remain on the premises of the storage facility, or a motor vehicle left for more than 10 days in a storage facility by someone other than the registered owner or by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, is considered an abandoned vehicle, and shall be reported by the garagekeeper to the police department. If the notice to the owner or a lien holder is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area in which the vehicle was left in storage is sufficient notice.

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of 10 days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within 10 days after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this section shall follow the notification procedures provided by Section 5.03 of this article, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee of \$2 shall accompany the report of the garagekeeper to the police depart-

ment. The \$2 fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle. If the Department of Public Safety is the police department involved this fee shall be deposited in the state treasury and shall be used to defray the cost of administering this article.

(d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by Section 5.03 of this article shall be taken into custody by the police department and sold in the manner provided by Section 5.04 of this article. The proceeds of a sale under this section shall first be applied to the garagekeeper's charges for servicing, storage, and repair, but as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction, the police department shall retain two percent of the gross proceeds of the sale of each vehicle auctioned, unless the gross proceeds are less than \$10. If the gross proceeds are less than \$10, the department shall retain the \$10 to defray expenses of custody and auction. If the Department of Public Safety conducts the auction, the compensation shall be deposited in the state treasury and shall be used to defray the expense incurred. Surplus proceeds remaining from an auction shall be distributed in accordance with Section 5.04 of this article.

(e) Except for the termination or limitation of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.

(f) Deleted by Acts 1983, 68th Leg., p. 5236, ch. 964, § 3, eff. Aug. 29, 1983.

#### Disposal to Demolishers

Sec. 5.06. (a) A person, firm, corporation, or unit of government on whose property or in whose possession is found any abandoned motor vehicle and a person who is the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may apply to the State Department of Highways and Public Transportation for authority to sell, give away, or dispose of the vehicle to a demolisher. Nothing in this section may be construed as being in conflict with the provisions of Sections 5.09 and 5.10 of this article. The application, except one submitted by a unit of government, shall be accompanied by a fee of \$2 that shall be deposited in the state highway fund.

(b) The application must set out the name and address of the applicant, the year, make, model, and vehicle identification number of the motor vehicle, if ascertainable, together with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, a statement that the title of the motor vehicle is lost or destroyed, or a statement of the reasons for the

defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged in the application are true and that no material fact has been withheld.

(c) If the State Department of Highways and Public Transportation finds that the application is executed in proper form and shows that the motor vehicle has been abandoned on the property of the applicant or that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the department shall follow the notification procedures as provided in Section 5.03 of this article.

(d) If an abandoned motor vehicle is not reclaimed in accordance with Section 5.03 of this article, the State Department of Highways and Public Transportation, on notification of that fact by the applicant, shall issue the applicant a certificate of authority to sell the motor vehicle to a demolisher for demolition, wrecking, or dismantling. A demolisher shall accept the certificate in lieu of the certificate of title to the motor vehicle.

(e) The State Department of Highways and Public Transportation may issue the applicant a certificate of authority to dispose of the motor vehicle to a demolisher without following the notification procedures of Section 5.03 of this article if the motor vehicle is more than eight years old and has no engine or is otherwise totally inoperable.

(f) A person in possession of an abandoned vehicle that was authorized to be towed in by a police department and that is more than eight years old and has no engine or is otherwise totally inoperable may, on affidavit of that fact and approval of the police department, apply to the State Department of Highways and Public Transportation for a certificate of authority to dispose of the vehicle to a demolisher for demolition, wrecking, or dismantling only.

(g) The State Department of Highways and Public Transportation may adopt rules and prescribe forms that are necessary to carry out the provisions of this section.

#### Duties of Demolishers

Sec. 5.07. (a) A demolisher who purchases or otherwise acquires a motor vehicle to wreck, dismantle, or demolish it shall obtain a valid certificate of title, sales receipt, or transfer document under Sections 5.04 and 5.10 of this Act, respectively, or a certificate of authority from the person delivering the vehicle for demolition, but the demolisher is not required to obtain a certificate of title for the motor vehicle in the demolisher's name. On demand of the State Department of Highways and Public Transportation, the demolisher shall surrender for cancellation the certificate of title or authority. The State Department of Highways and Public Transportation shall issue such forms and rules governing the surrender of auction sales receipts and certificates of title as are appropriate. The Certificate of Title

Act (Article 6687-1, Vernon's Texas Civil Statutes) governs the cancellation of title of the motor vehicle.

(b) A demolisher commits an offense if the demolisher fails to keep an accurate and complete record of a motor vehicle purchased or received in the course of business in the manner provided by this subsection. These records must contain the name and address of the person from whom each motor vehicle was purchased or received and the date of the purchase or receipt. The records shall be open for inspection by the State Department of Highways and Public Transportation or any police department at any time during normal business hours. A record required by this subsection must be kept by the demolisher for at least one year after the transaction to which it applies. A demolisher who commits an offense under this subsection is, on conviction, subject to a fine of not less than \$100 nor more than \$1,000, to confinement in the county jail for not less than 10 days nor more than six months, or to both.

#### Junked Vehicles as Public Nuisance

Sec. 5.08. (a) A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the state by producing urban blight adverse to the maintenance and continuing development of the municipalities in the state, and is a public nuisance.

(b) A person commits an offense if that person maintains a public nuisance as determined under this section.

(c) A person who commits an offense under this section is, on conviction, subject to a fine not to exceed \$200. On conviction, the court shall order removal and abatement of the nuisance.

#### City or County Procedures for Abating Nuisance

Sec. 5.09. (a) A city, town, or county within this state may adopt procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance, from private property, public property, or public rights-of-way. The procedures must conform to the requirements of this section.

(b) For a nuisance on private property, the procedures must require not less than 10 days' notice stating the nature of the public nuisance on private property, that it must be removed and abated within 10 days, and that a request for a hearing must be made before expiration of the 10-day period. The notice must be mailed, by certified mail with a 5-day return requested, to the last known registered owner of the junked motor vehicle, any lien holder of record, and the owner or occupant of the private

premises on which the public nuisance exists. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than 10 days after the date of the return.

(c) For a nuisance on public property, the procedures must require not less than 10 days' notice, stating the nature of the public nuisance on public property or on a public right-of-way, that the nuisance must be removed and abated within 10 days, and that a request for a hearing must be made before expiration of the 10-day period. The notice must be mailed, by certified mail with a 5-day return requested, to the last known registered owner of the junked motor vehicle, any lien holder of record, and the owner or occupant of the public premises or to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than 10 days after the date of the return.

(d) In addition, the procedures must prohibit a vehicle from being reconstructed or made operable after it has been removed.

(e) The procedures must require a public hearing before the removal of the vehicle or vehicle part as a public nuisance. The hearing shall be held before the governing body of the city, town, or county or any board, commission, or official of the city, town, or county as designated by the governing body, if a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which the vehicle is located, within 10 days after service of notice to abate the nuisance. A resolution or order requiring the removal of a vehicle or vehicle part must include a description of the vehicle and the correct identification number and license number of the vehicle if the information is available at the site.

(f) The procedures must require notice to be given to the State Department of Highways and Public Transportation not later than the fifth day after the date of removal. The notice must identify the vehicle or vehicle part. The department shall immediately cancel the certificate of title to the vehicle pursuant to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

(g) The procedures may not apply to a vehicle or vehicle part that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, a vehicle or vehicle part that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or an unlicensed, operable, or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in a manner so

that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(h) The procedures must be administered by regularly salaried, full-time employees of the city, town, or county, except that the removal of a vehicle or vehicle part from property may be by any duly authorized person.

(i) The procedures must provide for the filing of a complaint concerning a public nuisance in an appropriate court, if the nuisance is not removed and abated and a hearing is not requested within the 10-day period provided by Subsections (b) and (c) of this section.

#### Disposal of Junked Vehicles

Sec. 5.10. A junked vehicle or vehicle part may be disposed of by removal to a scrapyard, demolisher, or any suitable site operated by the city, town, or county for processing as scrap or salvage. The process of disposal must comply with the provisions of Section 5.09(d) of this article. A city, town, or county may operate a disposal site if its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of the vehicles or vehicle parts, or the city, town, or county may transfer the vehicles or vehicle parts to another disposal site if the disposal is only as scrap or salvage.

#### Authority to Enforce

Sec. 5.11. A person authorized by the city, town, or county to administer the procedures authorized by this article may enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance. An appropriate court in a city, town, or county that enacts procedures under this article may issue orders necessary to enforce the procedures.

#### Effect of Article on Other Statutes

Sec. 5.12. This article does not affect a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property. [Acts 1981, 67th Leg., p. 2710, ch. 741, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 369, ch. 81, § 10(b), eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4056, ch. 635, §§ 1, 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5235, ch. 964, § 1, eff. Sept. 1, 1983, §§ 2 to 5, eff. Aug. 29, 1983.]

Section 4 of the 1981 Act provides:

"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed



before the effective date of this Act if any element of the offense occurs before that date."

The enacting clauses of §§ 1 to 4 of Acts 1983, 68th Leg., p. 5235, ch. 964, stated that the amendments were to conform the section so amended to Acts 1981, 67th Leg., p. 2728, ch. 744, and to Acts 1981, 67th Leg., p. 3075, ch. 811.

Sections 8 and 9 of Acts 1983, 68th Leg., p. 5240, ch. 964, provide:

"Sec. 8. (a) The change in law made by Section 1 of this Act applies only to an offense committed on or after the effective date of that section. For purposes of this section, an offense is committed before the effective date of Section 1 of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of Section 1 of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

"Sec. 9. This Act is intended as a recodification only, and no substantive change is intended. Section 3.11, Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes), applies to this Act as if this Act were part of the state's continuing statutory revision program."

#### Art. 4477-10. Treating and Conveying Waste in Cities of 1,200,000 or More

##### Application

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census (hereinafter called "eligible city").

##### Acquisition of Property; Construction of Improvements; "Waste" Defined

Sec. 2. An eligible city is authorized to acquire, by purchase, lease or otherwise, any or all property (real, personal or mixed) and to construct or otherwise acquire, improve and equip any property for the purposes of treating and conveying waste, including, but not limited to waste treatment facilities including plants, disposal fields, lagoons and areas devoted to sanitary landfills for the purposes of treating, neutralizing, stabilizing or disposal of waste, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste (such waste treatment facilities and sewer systems are hereinafter called "project" or "projects"). An eligible city is also authorized to enter into leases and other contracts, including installment sale agreements, with persons, firms or corporations to use or acquire a project or projects of such city and to enter into agreements under which the project or projects may be operated on behalf of such city; such leases, contracts and agreements to contain such terms and conditions as the eligible city deems appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions. The term "waste" as used in this section has the meaning defined in the Texas Water Quality Act, codified as Chapter 21 of the Texas Water Code, as heretofore and hereafter amended.

##### Issuance of Bonds

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of an eligible city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any project or projects.

##### Ordinances Authorizing Bonds; Maturity; Registration as "Security"; Disposition of Proceeds from Sale; Property Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by an eligible city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of such bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967).<sup>1</sup> The bonds may be issued registrable as to principal alone or as to principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions and details, and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction or improvement of any project or projects, for paying expenses of operation and maintenance of said project or projects, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

(d) An eligible city is authorized to levy and pledge to the payment of the operation and maintenance of any project or projects, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate or rates on each \$100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for eligible cities; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereun-

der. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by, or provided in, the ordinance for operation and maintenance of such projects, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such projects, as may be enumerated therein, or all of such costs, will be paid by the eligible city from the proceeds of such tax.

(e) An eligible city shall not acquire or construct any such project or projects with the proceeds of bonds, notes, or other evidences of indebtedness the interest on which is exempt from federal income taxation by virtue of Section 103(c)(4) of the Internal Revenue Code of 1954, as heretofore or hereafter amended,<sup>2</sup> unless (1) such project is operated by an eligible city or a political subdivision of the State of Texas on behalf of such eligible city or, (2) such project provides pretreatment for waste which is then discharged into a project operated by an eligible city or a political subdivision on behalf of such city.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

<sup>2</sup> 26 U.S.C.A. § 103(c)(4).

#### Fees, Purchase Prices, Rentals, Rates and Charges

Sec. 5. An eligible city is authorized to fix and collect fees, purchase prices, rentals, rates and charges for the sale, occupancy, use or availability of all or any of the projects in such amounts and in such manner as may be determined by the governing body of the eligible city.

#### Pledges for Payment of Bonds

Sec. 6. (a) An eligible city may pledge all or any part of the revenues, income or receipts from such fees, purchase prices, rentals, rates and charges to the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds. The pledged fees, purchase prices, rentals, rates and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance and other expenses in connection with the projects.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the projects owned or to be acquired by the eligible city and by chattel mortgages, liens or security interests on any personal property appurtenant to that real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust or other forms of encumbrances to evidence the indebtedness.

(c) An eligible city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

#### Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the eligible city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

#### Examination of Bonds by Attorney General; Approval and Registration

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall also be submitted to the attorney general. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

#### Bonds as Legal and Authorized Investments and Security

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public

funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds are also eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

#### Cumulative Effect; Conflicting Laws

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule-charter provision, the provisions of this Act shall prevail and control. An eligible city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

#### Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 257, ch. 106, eff. Sept. 1, 1975.]

### CHAPTER FOUR B. TUBERCULOSIS

#### Art.

- 4477-11. Texas Tuberculosis Code.  
4477-12. Prevention, Eradication and Control of Tuberculosis.  
4477-13. Repealed.

#### Art. 4477-11. Texas Tuberculosis Code

##### Short Title

Sec. 1. This Act shall be known and cited as the Texas Tuberculosis Code.

#### Purpose

Sec. 2. It is the purpose of this Code to provide care and treatment for those afflicted with tuberculosis, to facilitate their hospitalization, and to enable them to obtain needed care.

#### Definitions

Sec. 3. As used in this Code, unless the context otherwise requires:

(a) "Board" means the Texas Board of Health;  
(b) "Person" includes firm, partnership, joint stock company, joint venture, association, and corporation;

(c) "Political subdivision" includes a county, city, town, village, or hospital district in this State but does not include the Board or any other department, board, or agency of the State having state-wide authority and responsibility;

(d) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas;

(e) "Head of hospital" means the individual in charge of a hospital;

(f) "State Chest Hospital" means a chest hospital operated by the Board and includes San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas;

(g) "Tuberculosis patient" means any person, adult or child, who has any form of tuberculosis disease in any part of the body;

(h) "Person legally responsible" means parents, guardians, spouses, or any person whom the laws of this State hold responsible for the debts incurred as a result of hospitalization and/or treatment;

(i) "Local health authority" means the city or county health officer, a director of a local health department or local board of health, or a regional director of the Texas Department of Health, provided that such health officer is a licensed and practicing physician, within their respective jurisdictions;

(j) "Resident of this State" means a person who is physically present and living voluntarily in the State of Texas with the intention of making a home within the State and whose stay is not for temporary purposes. Such intent may be demonstrated by (but not limited to) the following: the presence of personal effects at a specific abode within this State; employment within this State; possession of such documentation as a Texas driver's license, motor vehicle registration or voter registration forms;

(k) "Department" means the Texas Department of Health.

#### Control and Sanitary Management of Tuberculosis

Sec. 4. Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health.

(a) Any physician, or other person, who makes a diagnosis in, or treats a case of tuberculosis, and every head or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of tuberculosis, shall report such case as soon as possible, in writing, or by an acknowledged telephone communication to the local health authority, stating the name, address, age, sex, color, and occupation of the diseased person and the date of the onset of the disease, and the probable source of infection.

(b) All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Department. Such health authorities shall make a report of all tuberculosis cases of which they may be cognizant to the Department within forty-eight (48) hours of receiving a report upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas.

(c) It shall be the duty of every physician and of every other person who examines or treats a person having tuberculosis to instruct him in measures for preventing the spread of such disease and of the necessity for treatment until cured.

#### Notice of Evidence of Tuberculosis

Sec. 4A. (a) The Bureau of Tuberculosis Services must be notified when a laboratory examination of a specimen derived from a human indicates microscopical, cultural, or other evidence of the presence or likely presence of *Mycobacterium tuberculosis*.

(b) The person in charge of the laboratory in which the evidence of tuberculosis disease is discovered shall notify the local health authority, or if there is no local health authority, the Bureau of Tuberculosis Services in the Department.

(c) The notification must contain:

(1) the name and age of the person from whom the specimen was obtained;

(2) the name and address of the physician requesting the tests; and

(3) the tests performed, the date of the tests, and the results.

(d) Cumulative reports must be reported weekly.

(e) All laboratory notifications required by this section are confidential and are not open for inspection by anyone other than authorized public health personnel.

(f) No person from the Bureau of Tuberculosis Services or the local health authority may communicate with a suspected tuberculosis patient or a per-

son who may be exposed to tuberculosis by a suspected patient until a diagnosis is reported to the Department by the attending physician.

#### Measures for Protection of Persons not Having Tuberculosis

Sec. 5. Upon receipt of a report of a case of tuberculosis, the local health authority shall institute measures for protection of other persons from infection by such diseased person.

(a) All duly authorized health authorities of this State are authorized to notify any person who is known to be infected with tuberculosis, to place himself under the medical care of a physician licensed by the Texas State Board of Medical Examiners, hospital, or clinic, for treatment or examination until such physician, hospital, or clinic shall furnish such health authority with a certificate that such person examined or treated is free from tuberculosis in an infectious or contagious state. The certificate shall state that the person examined has been given an actual and thorough examination. A certificate may not be issued until the physician, hospital, or clinic has submitted to the local health authority a report on the person for whom a certificate is to be issued summarizing the clinical and appropriate radiologic or laboratory evidence that the person no longer has tuberculosis in an infectious or contagious state.

(b) Physicians, local health authorities, and all other persons are prohibited from issuing certificates of freedom from tuberculosis unless the examination includes clinical and appropriate radiographic or laboratory evidence that the person so examined is free from tuberculosis in an infectious or contagious state. Before a certificate of freedom from tuberculosis can be issued in the case of a person who has previously had tuberculosis, it will be necessary that the physician or person on giving the certificate shall submit to the local health authority a report of the person summarizing the clinical and appropriate radiologic or laboratory evidence that the person no longer has tuberculosis in an infectious or contagious state.

(c) Any person who violates the provisions of Section 4, or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4, or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct the removal of the person to a suitable place for examination, and if such person is found to have tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined, until such person is no longer in an infectious and contagious state.

Quarantine, as used in this Section, means the limitation of movement and separation, during that

period of time while infectious and contagious, from other persons not infected, in such places and under such conditions as will prevent the conveyance of such infectious or contagious condition to others not infected.

A person found to have tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State chest hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Section; and such commissioners courts and governing body of incorporated cities and towns are hereby authorized to incur on behalf of their said counties, cities, or towns, the expenses necessary to the enforcement of this Section.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide transportation to the State chest hospital so designated by the Board for any person quarantined under the provisions of this Section when suitable facilities are not available within the jurisdiction of the local health authority.

The local health authority shall inform all persons who are to be released from quarantine for tuberculosis of the status of their disease and what further treatment is required.

(d) It shall be the duty of all persons with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any local health authority of the State in order to prevent the spread of tuberculosis.

(e) If an attending physician or other person knows or has good reason to suspect that a person having tuberculosis is so conducting himself or herself so as to expose other persons to infection or is about so to conduct himself or herself, he shall notify the local health authority of the name and address of the diseased person and the essential facts in the case, and the local health authority shall investigate the facts of the case and shall adopt or employ the necessary measures as set out herein.

#### Violations; Penalties

Sec. 6. (a) A person commits an offense if he violates the provisions of Section 4, 4A, or 5 of this Act.

(b) An offense under this section is a Class B misdemeanor.

#### Local Regulations

Sec. 7. These regulations shall not be construed to prevent any city, county, or town from establishing such types of disinfection, isolation, control, and management of tuberculosis cases which they deem necessary for the preservation of the health of the individuals and the public; provided that such rules and regulations are not inconsistent with the provisions of this Code and are subordinate to said Code, and the rules and regulations prescribed by the Department. The local health authority shall at once furnish the Department with a true copy of any such regulations adopted by said local authorities.

Provided, however, that no provision in this Act shall be construed in any manner such that it would deprive any person of his right to depend on prayer or spiritual means alone for healing, in the practice of the principles, tenets, or teachings of his religion; provided that in so doing the isolation and quarantine rules and regulations under this Act are complied with.

#### Admission

Sec. 8. Residents of Texas as defined in Section 1 herein, having tuberculosis, may be admitted to a State chest hospital. Non-resident indigents with tuberculosis who have been quarantined under the provisions of Section 5 herein may be admitted to a State chest hospital pending their return to the State or country of their residence.

#### Classification of Patients

Sec. 9. Patients admitted to State chest hospitals shall be two (2) classes:

- (1) Indigent public patients and
- (2) Non-indigent public patients.

(a) Indigent public patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

(b) Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally responsible for their support. This class shall be kept and maintained at the expense of the State as in (a) above, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or in case he has a guardian, against any property of his which is in the possession of said

guardian, or against the person or persons who may be legally responsible for his support and financially able to contribute as herein provided. Such claim may be collected by suit or other proceedings in the name of the State of Texas by the County or District Attorney of the county from which said patient is sent or the Attorney General against such patient or his guardian or the person or persons legally responsible for his support; and the suit shall be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the head of the State chest hospital accompanied by a certificate as to the amount due the State. In all suits or proceedings, the certificate of the head of the hospital shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said Attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent (10%) of the amount collected. All moneys so collected, less such commission, shall be paid by said County Attorney to the head of said hospital, who shall receive and receipt for the same.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1529, ch. 658, § 9, eff. Aug. 27, 1979.

#### Certificate of Examination

Sec. 11. The application for admission to a State chest hospital shall be accompanied by a certificate of a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, or in the case of indigent patients by a certificate from the local health authority if such individual or individuals are licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis. The certificate shall be in the form and contain such information as prescribed by the Department.

In the event that the person applying for admission to a State chest hospital is afflicted with a contagious, infectious, or transmissible disease other than tuberculosis, then in such event the head of the State chest hospital to whom application has been made may use the presence of such contagious, infectious, or transmissible disease other than tuberculosis as a valid reason for delaying admission until such contagious disease is rendered non-contagious.

#### Duties of Board

Sec. 12. (a) The State chest hospital shall review applications for admission and admit or deny admission to applicants.

(b) The Board shall prepare and adopt by-laws, rules, and regulations for the government, control, and management of all State chest hospitals, prescribing the duties of all officers and employees,

and for enforcing the necessary discipline and restraint of all patients.

(c) The Board shall appoint for each of said chest hospitals a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners. Each physician so appointed shall be the head of the hospital under his control and shall have power to remove with just cause any person employed in said hospital over which he has such authority. Any such physician so appointed shall be removable at the discretion of the Board. The provisions applying to the powers and duties of the Board and of the head of the hospital as set forth in this Section are in addition to any others provided for by law. The Board shall supply each hospital with the necessary personnel for the operation and maintenance of such hospital.

(d) In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of application, certificates, records, and reports provided for under this Code and the information required to be contained therein; to require reports from the head of any State chest hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each hospital regularly to review the admitting procedures and care and treatment of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of tuberculosis patients.

(e) Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the Board may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the Board from its responsibility.

Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the head of a hospital may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the head of a hospital from his responsibility.

(f) The Board may return a non-resident patient admitted to a State chest hospital in this State to the proper agency of the State of his residence.

The Board may permit the return of any resident of this State who is admitted to a tuberculosis hospital in another state.

All expenses incurred in returning admitted patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

(g) The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients admitted to State chest hospitals in this or other states.

Sec. 13. Repealed by Acts 1979, 66th Leg., p. 1530, ch. 658, § 12, eff. Aug. 27, 1979.

#### No Preference in Admission

Sec. 14. (a) No patient in any state chest hospital shall be discriminated against but all patients shall be treated alike, given equal facilities, equal attention and equal treatment; it being recognized, however, that the condition of the individual patient may necessitate a greater or lesser degree of care and treatment.

(b) No patient in any such hospital shall be permitted to give any officer, servant, agent, or employee in any such hospital any tip, pay, or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said hospital, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced.

#### Private Additions to State Chest Hospitals

Sec. 15. (a) The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing, and maintenance by such fraternities or societies upon the grounds of any State chest hospital or dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may have tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing, and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing, or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said State chest hospitals. "Children" under this Article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said State chest hospitals at the discretion of the head of the hospital and without any charge therefor against the State.

(b) Plan of buildings.

All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in

the preceding Section, shall be arranged and agreed upon in writing by and between the Board on the part of the State and the properly authorized officers, board, or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board.

(c) Rules of admission.

The members of such charitable fraternities or societies, members of their families, and the widows and children of deceased members thereof, shall be classified according to the facts the same as other patients of said State chest hospitals are classified, and shall be admitted, maintained, cared for and treated in said hospitals upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies when not already filled with others having the same preferential right.

Sec. 16. Repealed by Acts 1979, 66th Leg., p. 1532, ch. 658, § 15, eff. Aug. 27, 1979.

#### Conveyances by Counties in Establishing Chest Hospitals

Sec. 17. All counties in this State are hereby authorized to donate and convey land to the State of Texas in consideration of the establishment of a State chest hospital by the Board. The desirability, manner, and form of the donation and conveyance shall be within the discretion of the Commissioners Court of the particular county. No provision of this Section shall authorize the Commissioners Court of any such county to convey any land given or donated or granted to the county for the purpose of education in any manner other than that which is or shall be directed by law.

#### Appropriations

Sec. 18. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, shall remain available for their use and benefit.

#### Contracts

Sec. 19. All contracts heretofore entered into in behalf of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, are hereby ratified, confirmed, and validated for and in their behalf.

#### Incorporation of Statutes into Code

Sec. 20. Article 1970a-1 as to jurisdiction of specially created Probate Courts, Article 4493 as to adequate facilities in county hospitals, and Section

6A of Article 4437a as to tuberculosis control in counties of two hundred thousand (200,000) or more, of the Revised Civil Statutes of Texas, 1925, as amended, are by reference hereby adopted and made part of this Code.

[Acts 1959, 56th Leg., p. 379, ch. 181. Amended by Acts 1979, 66th Leg., p. 1524, ch. 658, §§ 1 to 18, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 822, ch. 293, §§ 1, 2, eff. Aug. 31, 1981.]

#### Repealer

*Acts 1977, 65th Leg., p. 752, ch. 282, classified as art. 3201a-4, transfers control of the East Texas Chest Hospital from the Department of Health to the University of Texas System. Section 7 of the Act provides, in part, " \* \* \* insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes), are repealed."*

#### Change of Names

*Acts 1969, 61st Leg., p. 848, ch. 282, §§ 1 to 5, provided for the transfer of the McKnight State Tuberculosis Hospital from the State Department of Health to the Department of Mental Health and Mental Retardation, for the change of name of the facility to the San Angelo Center, for the transfer of patients over a one year period, and for the transfer of certain employees.*

*Acts 1971, 62nd Leg., p. 1001, ch. 189, § 1, changed the names of Harlingen State Tuberculosis Hospital to Harlingen State Chest Hospital, of San Antonio State Tuberculosis Hospital to San Antonio State Chest Hospital, and of East Texas Tuberculosis Hospital to East Texas Chest Hospital. See article 3201a-2, § 1.*

#### Transfer of Responsibilities

*Acts 1965, 59th Leg., p. 124, ch. 51, § 1, in part, provides that all responsibilities, powers and duties concerning the care and treatment of those afflicted with tuberculosis possessed by the Board for Texas State Hospitals and Special Schools are transferred to the State Health Department, including all powers provided in this article. See article 4477-12, § 1.*

Acts 1983, 68th Leg., p. 1141, ch. 255, adopted the Communicable Disease Prevention and Control Act (art. 4419b-1) and repealed certain provisions relating to quarantine and disinfection and to powers and duties of the State Board of Health. Section 3 of said Act provides:

"The following statutes are not affected by this Act: Article 4445, Revised Statutes; Chapter 548, Acts of the 51st Legislature, Regular Session, 1949 (Article 4445a, Vernon's Texas Civil Statutes); Chapter 537, Acts of the 61st Legislature, Regular Session, 1969 (Article 4445c, Vernon's Texas Civil Statutes); the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Stat-

utes); the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes); and Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes)."

#### Art. 4477-12. Prevention, Eradication and Control of Tuberculosis

##### Custody and Control of Tuberculosis Hospitals; Jurisdiction of State Board of Health; Transfer of Plants, Equipment, Staff Funds and Records

Sec. 1. From and after September 1, 1965, all tuberculosis hospitals in the custody and control of the State Board for Hospitals and Special Schools shall be transferred to the State Health Department. This transfer is made to unify and consolidate the responsibility and functions of tuberculosis case finding and follow-up with treatment and cure of the disease. From and after September 1, 1965, the custody, control, maintenance and operation of all tuberculosis hospitals maintained by the State of Texas shall be under the jurisdiction and control of the State Board of Health and all responsibilities, powers and duties concerning the care and treatment of those afflicted with tuberculosis heretofore possessed by the Board for Texas State Hospitals and Special Schools are hereby transferred to the State Health Department, including all powers provided in House Bill No. 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, codified in Vernon's as Article 4477-11, Vernon's Civil Statutes.

There shall be transferred to the State Health Department from the State Board for Hospitals and Special Schools all equipment, staff, inventory and perishable stores necessary to insure the continual functioning of all state tuberculosis hospitals without interruption. This transfer shall also include the transfer to the State Health Department of all personnel employed by the Board for Hospitals and Special Schools in its tuberculosis program, authorized salary rates for employment of personnel and all appropriations made to the Texas State Board for Hospitals and Special Schools for the operation of tuberculosis hospitals. This transfer shall be made effective September 1, 1965.

It is the intent and desire of the Legislature that the State Board for Hospitals and Special Schools and the State Health Department consult with the State Auditor, the Comptroller of Public Accounts, Budget Board and any other State Agency necessary for the orderly transfer of all physical plants, equipment, perishable stores, inventories, staff, funds and all records from the State Board for Hospitals and Special Schools to the State Health Department.

##### Contracts for Care and Treatment of Tubercular Patients; Outpatient Clinics

Sec. 2. The State Board of Health may contract for the support, maintenance, care and treatment of tubercular patients admitted to any facilities under the jurisdiction of the Board and/or for the support,



maintenance, care and treatment of tubercular patients under its jurisdiction. Such contract may be made between the Board and city, county and state hospitals, private physicians, licensed nursing homes and hospitals and hospital districts, and the State Board of Health may contract for such existing diagnostic and other services available in a community or region as deemed necessary to prevent further spread of tuberculosis. Full development of these essential services needed for the control of tuberculosis is the responsibility of the State Board of Health.

Authority to contract provided herein shall be cumulative of all other contractual rights of the State Board of Health. Provided such contract shall not include the assignment of any lien accruing to the state.

The State Board of Health is authorized to establish and operate Outpatient Clinics on the premises of the State's Tuberculosis Hospitals or other locations deemed necessary for the purpose of providing follow-up treatment on discharged patients. Persons receiving such treatment are financially liable as are inpatients.

From and after the effective date of this Act, the Board for Texas State Hospitals and Special Schools shall not have the authority to contract for the support, maintenance, care and treatment of tubercular patients committed to the State Board of Health. Provided, however, nothing herein shall affect the contractual obligations created by the Board for Texas State Hospitals and Special Schools prior to the effective date of this Act for the support, maintenance, care and treatment of tubercular patients, and all such contractual obligations on behalf of the state created by the Board for Texas State Hospitals and Special Schools prior to the effective date of this Act, pursuant to the provisions of Acts of the 58th Legislature, Regular Session, 1963, Chapter 43, codified in Vernon's as Article 3174b-5, Vernon's Civil Statutes, shall be performed and carried out by the State Board of Health.

#### Reports; Pathological Findings

Sec. 3. All reports required by Section 4 of House Bill No. 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, codified in Vernon's as Section 4, Article 4477-11, Vernon's Civil Statutes, shall be accompanied by a copy or results of any and all pathological findings or reports pertinent to the disease of tuberculosis by the physician diagnosing, treating or offering to treat the disease. The State Board of Health shall be responsible for obtaining, where desirable, subsequent pathological reports and/or findings relating to tubercular patients so reported.

#### Examination of Pupils for Tuberculosis Infection

Sec. 4. The Texas Board of Health Resources may provide for the examination for tuberculosis infection of pupils in the first and seventh grades of

the public, parochial and private schools of this state, and of pupils transferred to the public, parochial and private schools of this state from another state or country.

#### Certificate of Examination of School Personnel

Sec. 5. (a) The governing body of each public school within the State shall require that each individual who is employed by or who acts as a volunteer for the governing body, and who is included within certain categories designated by the Texas Board of Health, shall present to the governing body a certificate, signed by a physician licensed to practice medicine in Texas, which states that the individual has been examined for tuberculosis and discloses the results of the examination. The governing body of each public school shall verify that each individual within its jurisdiction who is included within this Act, has the required certificate and shall not permit any individual to commence his or her duties in the absence of the certificate. The Texas Board of Health may require reexamination of any individual employee or volunteer as the Board determines is necessary and appropriate to protect the public health.

(b) The Texas Board of Health shall adopt rules describing the following:

- (1) the designation of the categories of employees or volunteers who are required to be examined;
- (2) the form and content of the required examination certificate;
- (3) the closing dates for filing such individual certificates;
- (4) the transfer of such individual certificates between public school districts;
- (5) the frequency of such required examinations;
- (6) the criteria for requiring reexaminations; and
- (7) the reporting of the results of such examinations to the Texas Department of Health.

(c) This section and the rules adopted by the Texas Board of Health by the authority of this Act, shall be the minimum acceptable standards for the examination of the named categories of individuals for tuberculosis. A school district may adopt and enforce more stringent standards, except that the requirements for a tuberculosis examination may not include exposure to X-rays unless the person being examined consents or the examining physician determines that the X-ray examination is medically necessary and states that determination on the required certificate.

#### Examination of Migratory Workers; Duties of Labor Agents; Violations

Sec. 6. All persons seeking to perform migratory work in this state shall furnish the labor agent for such person a certificate signed by a person licensed to practice medicine in this state revealing:

(1) that the person seeking to perform migratory work has been examined for the disease of tuberculosis;

(2) the results of such examination; and

(3) that the results of such examination have been furnished to the State Board of Health.

No labor agent shall obtain employment for any migratory worker unless and until such labor agent has been furnished a certificate revealing that such worker has been examined for the disease of tuberculosis within a period of time not exceeding sixty (60) days prior to employment. Violation of the provisions of this Section shall be grounds to revoke and cancel the license of any labor agent who violated the provisions of this Section.

As used in this Section, "labor agent" means a person, partnership, corporation, association, legal representative, trustee, or receiver who is licensed by the Commissioner of Labor Statistics and who, for a fee, procures or attempts to procure employment for a migratory worker.

#### Form of Certificates and Reports; Rules and Regulations of State Board of Health

Sec. 7. The State Board of Health shall have the power to prescribe the form of the certificates and reports required to be furnished the State Health Department by the provisions of this Act and shall also have the power to pass such reasonable rules and regulations as it deems necessary to carry out the provisions of this Act, and such rules and regulations it deems necessary to prevent, control and eradicate the disease of tuberculosis.

Sec. 8. Repealed by Acts 1977, 65th Leg., p. 1180, ch. 452, § 3, eff. Aug. 29, 1977.

#### Violations; Punishment

Sec. 9. Any person violating the provisions of this Act 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/or by imprisonment in the county jail for not more than thirty (30) days.

#### Cumulative Effect

Sec. 10. The provisions of this Act shall be cumulative of all other power now possessed by the State Department of Health relating to the care and treatment of those afflicted with tuberculosis and relating to the control and sanitary management of tuberculosis, and shall be cumulative of the provisions of House Bill No. 421, Acts of the 56th Legislature, Regular Session, 1959, Chapter 181, codified in Vernon's as Article 4477-11, Vernon's Civil Statutes.

[Acts 1965, 59th Leg., p. 124, ch. 51. Amended by Acts 1977, 65th Leg., p. 1179, ch. 452, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 345, ch. 157, § 1, eff. May 11, 1979.]

Acts 1983, 68th Leg., p. 1141, ch. 255, adopted the Communicable Disease Prevention and Control Act (art. 4419b-1) and repealed

certain provisions relating to quarantine and disinfection and to powers and duties of the State Board of Health. Section 3 of said Act provides:

"The following statutes are not affected by this Act: Article 4445, Revised Statutes; Chapter 548, Acts of the 51st Legislature, Regular Session, 1949 (Article 4445a, Vernon's Texas Civil Statutes); Chapter 537, Acts of the 61st Legislature, Regular Session, 1969 (Article 4445c, Vernon's Texas Civil Statutes); the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes); the Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes); and Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes)."

Art. 4477-13. Repealed by Acts 1977, 65th Leg., p. 754, ch. 282, § 8, eff. Sept. 1, 1977

See, now, art. 3201a-4.

### CHAPTER FOUR C. KIDNEY DISEASE

Art. 4477-20. Kidney Health Care Act

#### Short Title

Sec. 1. This Act shall be known and may be cited as the "Texas Kidney Health Care Act."

#### Purpose

Sec. 2. The State of Texas hereby finds and declares that one of the most serious and tragic problems facing the public health and welfare is the death of hundreds of persons in the State of Texas each year from chronic kidney disease, when the present state of the medical art and technology could return most of these stricken individuals to a socially productive life. Advances and discoveries in the treatment of patients suffering from chronic kidney disease now allow, not only mere survival, but rehabilitation of such patients to their normal occupations and activities. Presently, these patients are dying for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. No parallel situation exists in the public health and welfare today where techniques have been developed for the diagnosis and prevention of disease which would save lives, yet at the same time people continue to progress to chronic kidney disease and death only for the lack of facilities for diagnosis and treatment. The State of Texas hereby recognizes its responsibility to its citizens to allow them to keep their health without being pauperized and to use the resources and organization of the state in gathering and disseminating information on the prevention and treatment of chronic renal disease. It is imperative that a comprehensive program to combat kidney disease be implemented through the combined and correlated efforts of state and local governments, medicine, universities, non-profit organizations and individuals. The program provided by this Act is designed to bring to bear all possible resources of the state and to coordinate the efforts of the state in this vital matter of public health.

**Division of Kidney Health Care; Creation and Powers**

Sec. 3. For the purpose of administering and carrying out the provisions of this Act, there is hereby created within the State Department of Health a Division of Kidney Health Care to be administered by the State Board of Health, hereinafter referred to as the board, which is hereby empowered and authorized to:

(1) Establish and maintain standards for the accreditation of all facilities designed or intended to deliver care or treatment for sufferers from chronic kidney disease;

(2) Determine the terms, conditions and standards for the eligibility of persons suffering from chronic kidney disease for aid, care or treatment provided under the provisions of this Act;

(3) Cooperate with private, public, civic, municipal, state or federal agencies to facilitate the availability of adequate care to all citizens suffering from chronic kidney disease;

(4) Institute and supervise educational programs for the public and for health providers with respect to chronic kidney disease and the prevention and treatment thereof. The board may utilize existing programs and groups for this purpose, whether or not such programs and groups are governmental;

(5) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic kidney diseases, including dialysis and other medical procedures and techniques which will have a life-saving effect in the care and treatment of persons suffering from these diseases;

(6) Institute and carry on educational programs among physicians, hospitals, public health departments, and the public concerning chronic kidney diseases, including the dissemination of information in the conducting of educational programs concerning the prevention, care and treatment of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases;

(7) Conduct surveys of all existing facilities within the state having to do with the diagnosis, evaluation and treatment of patients with kidney disease and to prepare and submit its findings and a specific program of action;

(8) Evaluate the need for the creation of local or regional facilities and for the establishing of a major kidney research center;

(9) Develop and administer scientific investigations into the cause, prevention, methods of treatment and cure of kidney diseases, including research into transplantation of kidneys;

(10) Develop techniques for an effective method of mass testing for the detection of kidney diseases and urinary tract infections;

(11) Report to the Governor of the State of Texas and to the legislature, annually on or before Febru-

ary 1 of each year, its findings, a progress report, its activities carried on under this Act and the state's total need in this area;

(12) Enter into such contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this Act. Such contracts may provide for payment by the state, within the limits of funds available, for material, equipment or services;

(13) Promulgate rules and regulations necessary to provide adequate kidney care and treatment for citizens of the State of Texas and to carry out the purposes and intent of this Act.

**Authority Under Act**

Sec. 4. The board shall provide kidney care services directly or through public or private resources to individuals determined by the board to be eligible therefor, and in carrying out the purposes of this Act, the board is authorized to:

(1) Cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this Act to eligible individuals, in studying the public health and welfare needs involved therein, and in planning, establishing, developing, and providing such programs or facilities and services as may be necessary or desirable, including those jointly administered with state agencies;

(2) Enter into reciprocal agreements with other states;

(3) Establish or construct rehabilitation facilities and workshops, make grants to public agencies, make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this Act;

(4) Conduct research and compile statistics relating to the provision of kidney care services or to the need for such services by disabled or handicapped individuals;

(5) Provide for the establishment, supervision, management and control of kidney care facilities;

(6) Contract with schools, hospitals, private individuals, corporations and other agencies and with doctors, nurses, technicians and other persons for training, physical restoration, transportation and other services necessary in connection with the treatment and care of persons suffering from kidney diseases.

(7) Provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act, as amended,<sup>1</sup> for certain classes of persons with end stage renal disease in individually

considered instances according to the criteria established by the rules of the board.

142 U.S.C.A. § 1395 et seq.

#### Cooperation With Federal Government

Sec. 5. The board shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this Act or of any federal statute or rule or regulation promulgated pursuant thereto pertaining to the prevention, care or treatment of kidney diseases or the care or treatment or rehabilitation of persons suffering from kidney diseases, and to this end may adopt such rules, regulations or methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements, arrangements, or plans for the prevention, care, or treatment of kidney diseases.

#### Obtaining Federal Funds

Sec. 6. The board is authorized to comply with such requirements as may be necessary to obtain federal funds in the maximum amount and most advantageous proportions possible in order to carry out the purposes and objectives of this Act.

#### Gifts and Donations

Sec. 7. The board is authorized to receive and use gifts and donations for carrying out the purposes of this Act.

#### Receipt and Disbursement of Funds; Audit; Reporting Procedure

Sec. 8. The state treasurer is hereby authorized to receive all moneys appropriated by congress and allotted to Texas for carrying out the purposes of this Act or agreements, arrangements, or plans authorized thereby; and to make disbursements therefrom upon the certification of the board. All public moneys available to the board shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as provided by law for other public funds in the state treasury. The state auditor shall regularly audit all accounts established by the board in local depositories to assure that non-public funds made available to the board through gift or bequest, by local organizations desiring to participate in projects for persons suffering from kidney diseases or by endowment or otherwise, are expended in a manner consistent with the purposes of this Act, and the board shall comply with such reporting procedures as the state auditor may prescribe for the board's acceptance, holding, investment and use of non-public funds.

#### Reimbursement of Health Department for Cost of Treatment

Sec. 9. (a) Subject to the limitations contained in Subsection (b) of this section, a person who is a recipient of services provided under this Act or the person or persons who have a legal obligation to

support the recipient, shall reimburse the Texas Department of Health, for the cost of the services and the proceeds resulting from the reimbursement shall be deposited in the general revenue fund of the state treasury and are appropriated to the Texas Board of Health for the purposes of this Act.

(b) The reimbursement obligation of the recipient or the person or persons who have a legal obligation to support the recipient may not exceed the sum of:

(1) the proceeds of insurance, group health plan or prepaid medical care plan, if the proceeds are paid to the recipient or the person or persons who have a legal obligation to support the recipient and if the Texas Department of Health has paid for the services upon which the claims for the proceeds are based; and

(2) five percent of the adjusted gross income, as defined in the United States Internal Revenue Code, as amended, for federal income tax purposes of the recipient or the person or persons who have a legal obligation to support the recipient; minus

(3) the yearly premiums paid by the recipient or the person or persons who have a legal obligation to support the recipient for insurance, group health plan or prepaid medical care plan which provides benefits to pay the cost or part of the cost of the services required by the recipient because of end stage renal disease section; and

(4) a uniform yearly deduction of \$1,000.

(c) The failure or refusal by a recipient of services under this Act and/or by a person or persons who have a legal obligation to support the recipient to provide the financial information necessary for the department to determine the recipient's reimbursement obligation may constitute cause for the modification, suspension, or termination of services in Section 9.2 of this Act.

(d) The failure or refusal by a recipient of services under this Act and/or by a person or persons who have a legal obligation to pay the reimbursement obligation determined by the department to be owed by the recipient or the person or persons who have a legal obligation to support the recipient may constitute cause for the modification, suspension, or termination of services in Section 9.2 of this Act, and/or the filing of a suit for total reimbursement obligation under Subsection 9.1(5) of this Act.

(e) This section may not be interpreted in a manner which would prevent the payment of costs by an insurance company, a group health plan, or a prepaid medical care plan directly to a medical provider.

#### Entitlement to Other Benefits

Sec. 9.1. (1) An applicant or recipient is not eligible to receive services provided by this Act to the extent that the applicant or recipient or other person or persons who have a legal obligation to support the applicant or recipient are eligible for some other benefit that would pay for the service or part

of the service provided by this Act. This requirement may be waived by the Texas Board of Health in certain individually considered cases where its enforcement will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or regulations.

(2) An applicant or recipient of services provided by this Act, or the person or persons who have a legal obligation to support the applicant or recipient, shall inform the department at the time of application or at any time during eligibility and the receipt of services of any other benefit to which the applicant or recipient or other person or persons who have a legal obligation to support the applicant or recipient may be entitled.

(3) In this section, "other benefit" means a benefit to which a person is entitled other than a benefit under this Act for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies including but not limited to benefits available under:

- (a) an insurance policy, group health plan, or pre-paid medical care plan;
- (b) Title XVIII or Title XIX of the Social Security Act, as amended;<sup>1</sup>
- (c) Veterans Administration;
- (d) the Civilian Health and Medical Program of the Uniformed Services;
- (e) workers' compensation or other compulsory employers' insurance program;
- (f) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, or a hospital district; or
- (g) benefits available from a cause of action for medical expenses to a person applying for or receiving services from the department or a settlement or judgment based upon such cause or action, if the expenses are related to the need for services provided by the program.

(4) The recipient or other person or persons who have a legal obligation to support a recipient who has received services that are covered by some other benefit shall reimburse the department to the extent of the cost of the services provided when the other benefit is received.

(5) The department may recover the expenditure for services provided under this Act from a person who does not reimburse the department as required by Subsection (4) of this section or from any third party upon whom there is a legal obligation to pay other benefits and to whom notice of the department's interest in the other benefits has been given. At the request of the Commissioner of Health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs,

and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

(6) This section may not be interpreted in a manner which would limit the freedom of an eligible person in selecting a treating physician, a treatment facility, or a treatment modality if the physician, facility, or modality is approved by the board as required in this Act.

<sup>1</sup> 42 U.S.C.A. § 1395 et seq. or 1396 et seq.

#### Modification, Suspension, or Termination of Services

Sec. 9.2 (a) The department, after notice to an applicant or to a recipient and/or a person or persons who have a legal obligation to support the applicant or recipient, for good cause may modify, suspend, or terminate services to an applicant who has been found to be eligible for services or a recipient who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in the department's program rules.

#### Appropriations Authorized

Sec. 10. The legislature shall make such appropriations as may be necessary to carry out all the provisions of this Act.

#### Severability

Sec. 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

#### Repealer

Sec. 12. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed.

[Acts 1973, 63rd Leg., p. 106, ch. 57, eff. April 26, 1973. Amended by Acts 1975, 64th Leg., p. 1884, ch. 597, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 426, ch. 180, §§ 1 to 4, eff. Aug. 31, 1981.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed."

### CHAPTER FOUR D. HEMOPHILIA

#### Art. 4477-30. Hemophilia Assistance Program

##### Definitions

Sec. 1. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Committee" means the hemophilia advisory committee.

(3) "Department" means the Texas Department of Health Resources.

(4) "Program" means the hemophilia assistance program.

(5) "Director" means the director of health resources.

(6) "Administrator" means a person employed or appointed by the director to administer the program.

#### Hemophilia Assistance Program

Sec. 2. (a) There is established in the department a hemophilia assistance program to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products but who are unable to pay the entire cost.

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act;

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

#### Administrator

Sec. 3. (a) The administrator is responsible for carrying out the hemophilia assistance program.

(b) The administrator shall report to the director.

(c) The administrator may employ two persons in carrying out the program.

#### Funding Sources

Sec. 4. (a) The department may accept grants, gifts, and donations from individuals, private or public organizations, or federal or local funds for the support of the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs.

#### Hemophilia Advisory Committee

Sec. 5. (a) There is established a hemophilia advisory committee which shall review the program and consult with the department in the administration of the program. The department shall make an annual report of the program to the committee.

(b) The committee consists of 12 members appointed by the director as follows:

(1) three members representing hospitals where hemophilia treatment occurs;

(2) two members representing voluntary agencies interested in hemophilia;

(3) three members who are medical specialists in hemophilia patient care;

(4) three members who are adult hemophiliacs or parents of hemophiliacs; and

(5) one member representing the general public.

(c) Except for those first appointed, members are appointed for terms of six years, expiring January 31 of odd-numbered years. If a vacancy occurs on the committee, the director shall appoint a member to serve the unexpired portion of the term.

(d) In making the initial appointments, the director shall appoint four members for terms expiring in 1983, four for terms expiring in 1981, and four for terms expiring in 1979.

(e) The committee shall meet annually, and the committee may meet at other times as necessary.

(f) The members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred by committee activities.

[Acts 1977, 65th Leg., p. 732, ch. 274, eff. Aug. 29, 1977.]

## CHAPTER FOUR E. CANCER

### Art. 4477-40. Cancer Control Act

#### Short Title

Sec. 1. This Act may be cited as the Texas Cancer Control Act.

#### Purpose

Sec. 2. It is the intent of the legislature to require the establishment and maintenance of a cancer registry for the State of Texas. This responsibility is delegated to the Texas Board of Health, along with the authority to exercise certain powers to implement this requirement. To insure an accurate and continuing source of data concerning cancer and certain specified precancerous and tumorous diseases, the legislature by this Act requires all general and special hospitals, clinical laboratories, and cancer treatment centers within the state to make available to the Texas Board of Health information contained in the medical records of patients who have cancer or specified precancerous or tumorous diseases. It is intended that the product of these efforts will be a central data bank of accurate, precise, and current information regarding the subject diseases which medical authorities agree would serve as an invaluable tool in their early recognition, prevention, cure, or control.

**Definitions**

Sec. 3. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Cancer" includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal; and malignant neoplasm.
- (4) "Precancerous disease" means abnormality of development and organization of adult cells. It is a condition of early cancer, without the invasion of neighboring tissue.
- (5) "Tumorous disease" means a new growth of tissue in which the multiplication of cells is uncontrolled and progressive, also called neoplasm. It is a swelling, enlargement, or abnormal mass, either benign or malignant, which performs no useful functions.
- (6) "Hospital" means a general or special hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), or The University of Texas System Cancer Center.
- (7) "Clinical laboratory" means an accredited facility where tests are performed identifying findings of anatomical changes, and where specimens are interpreted and pathological diagnoses are made.
- (8) "Cancer treatment center" means a special health facility devoted to study, prevention, diagnosis, and management of neoplastic and allied diseases.

**Cancer Registry**

Sec. 4. The board shall establish and maintain a registry that includes a record of the cases of cancer and of precancerous disease and tumorous disease, as specified by the board, that occur within the state and such information concerning these cases as the board determines necessary and appropriate for the recognition, prevention, cure, or control of the subject diseases.

**Duties of the Board**

Sec. 5. In order to implement this Act, the board may:

- (1) adopt rules that the board considers necessary;
- (2) execute contracts that the board considers necessary;
- (3) receive the data contained in the medical records that are in the custody or under the control of clinical laboratories, hospitals, and cancer treatment centers, of persons having cancer, precancerous disease, and tumorous disease, for the purpose

of recording and analyzing that data directly related to the subject diseases;

(4) compile and publish statistical and other studies derived from the patient data authorized by this Act to be collected, to provide in an accessible form information useful to physicians, other medical personnel, and the general public;

(5) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible; and

(6) receive and use gifts and donations made for the purpose of this Act.

**Annual Report**

Sec. 6. The department, in cooperation with The University of Texas System Cancer Center and other cancer research institutions, shall publish an annual report to the legislature of the information obtained under this Act.

**Availability of Records**

Sec. 7. (a) On the request of the board or its authorized representative, each hospital, clinical laboratory, and cancer treatment center within the state shall:

(1) produce and make available to the board or its authorized representative, on a form prescribed by the department, the data that the board determines is necessary and appropriate from each medical record in its custody or under its control of a case of cancer or of those precancerous or tumorous diseases specified by the board; or

(2) make available each medical record to the board or its authorized representative on presentation of proper identification, during normal working hours, on the premises of the respective hospital, clinical laboratory, or cancer treatment center, for the purpose of recording specific data about a patient's cancer, precancerous disease, or tumorous disease, on a form prescribed by the department.

(b) The data required to be produced shall include, but is not limited to:

- (1) diagnosis;
- (2) stage of disease;
- (3) medical history;
- (4) laboratory data;
- (5) tissue diagnosis;
- (6) method of treatment; and
- (7) annual lifetime follow-up of each patient.

**Confidentiality and Disclosure**

Sec. 8. All data obtained directly from medical records of individual patients are for the confidential use of the department, the private and public entities, or the persons that the board determines are necessary to carry out the intent of this Act. The data are privileged and may not otherwise be

divulged or made public so as to disclose the identity of an individual whose medical records have been used for acquiring data. Information that could possibly identify individuals whose medical records have been used for collecting data may not be included in materials available to public inspection under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Statistical information collected under this Act shall be open and accessible to the public.

#### Immunity from Liability

Sec. 9. No hospital, clinical laboratory, or cancer treatment center, no administrator, officer, or employee of a hospital, clinical laboratory, or cancer treatment center, and no physician subject to the provisions of this Act who acts in compliance with this Act shall be civilly or criminally liable for divulging the information required by this Act.

#### Freedom of Choice

Sec. 10. This Act does not compel an individual to submit to any medical examination or supervision or to examination or supervision by the board or its authorized representatives.

#### Effective Date

Sec. 11. This Act takes effect September 1, 1979. However, the provisions of this Act extend to records of all cases of cancer and the specified precancerous and tumorous diseases diagnosed on or after January 1, 1979, and to records of all ongoing cases of such diseases diagnosed before January 1, 1979.

[Acts 1979, 66th Leg., p. 170, ch. 94, eff. Sept. 1, 1979.]

### CHAPTER FOUR F. EPILEPSY

#### Art. 4477-50. Epilepsy Program

##### Definitions

Sec. 1. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health.
- (4) "Epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior.

##### Program Authorized

Sec. 2. The department, with approval of the board, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

##### Implementation

Sec. 3. The board may adopt rules it considers necessary to define the medical and financial standards for eligibility and the scope of the program.

##### Administrator

Sec. 4. (a) The commissioner, with the approval of the board, may appoint an administrator who will be responsible for carrying out the program.

(b) The administrator shall report to and be under the direction of the commissioner.

##### Contracts

Sec. 5. The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this Act, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

##### Funds

Sec. 6. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of this program.

##### Advisory Board

Sec. 7. The commissioner may appoint an epilepsy advisory board to assist the department in developing the epilepsy program.

##### Fees

Sec. 8. Program patients may be charged a fee for services according to rules adopted by the board.

[Acts 1981, 67th Leg., p. 1852, ch. 435, eff. Aug. 31, 1981.]

### CHAPTER FOUR G. DIABETES

#### Art. 4477-60. Texas Diabetes Council

##### Definitions

Sec. 1. In this Act:

- (1) "Council" means the Texas Diabetes Council.
- (2) "Department" means the Texas Department of Health.
- (3) "Person with diabetes" means a person who has been diagnosed by a physician as having diabetes.

##### Texas Diabetes Council

Sec. 2. (a) The Texas Diabetes Council is composed of six private citizen members and one representative each from the Texas Department of Health, the Central Education Agency, the Texas Department of Human Resources, the Texas Com-



mission for the Blind, and the Texas Rehabilitation Commission. Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the council or act as the general counsel.

(c) The governor with the advice and consent of the senate shall appoint the following private citizen members:

(1) one member, a licensed physician with a specialization in treating diabetes;

(2) one member from the nursing profession who is a registered nurse with a specialization in diabetes education and training;

(3) one member from the dietitian profession with certification as a nutritionist or dietitian and a specialization in the diabetes education field;

(4) one member with a graduate degree in public health or public policy and with experience and training in public health policy; and

(5) two consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Foundation or the American Diabetes Association.

(d) The commissioner of each agency listed in Subsection (a) of this section shall appoint that agency's representative.

(e) Members serve for staggered two-year terms, with the terms of three private citizen members and two agency representatives expiring February 1 of every odd-numbered year and the terms of three private citizen members and three agency representatives expiring February 1 of every even-numbered year. The office of a member appointed by an agency becomes vacant when the person terminates employment with the agency. If the office of a member who is an agency representative becomes vacant, the commissioner of that agency shall appoint an agency representative to serve for the remainder of that member's term.

(f) The members of the council shall annually elect one private citizen member to serve as chairperson.

(g) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(h) Any action taken by the council must be approved by a majority of the members present.

#### State Plan

Sec. 3. (a) The council shall develop and implement a state plan for diabetes treatment, education, and training to ensure that:

(1) this Act is properly implemented by the agencies affected;

(2) individual and family needs are assessed statewide and all available resources are coordinated to meet those needs;

(3) health care provider needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for review of individual complaints about services provided under this Act is implemented.

(b) The council shall make written recommendations for carrying out its duties under this Act to the State Board of Health and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

#### Advisory Committee

Sec. 4. (a) The council may establish an advisory committee composed of two persons with diabetes, two professionals in health care delivery, two professionals in health care financing, and three representatives of advocacy or volunteer groups or associations.

(b) The committee shall meet quarterly and serve under the rules of the council, but the committee shall elect its own chairman. The committee may be divided into regional committees to assist the council in community-level program planning and implementation.

(c) Members of the advisory committee serve at the pleasure of the council.

#### Duties

Sec. 5. (a) The council with the advice of the advisory committee, if one is established, shall address contemporary issues affecting health promotion services in the state, including:

- (1) professional and patient education;
- (2) successful diabetes education strategies;
- (3) personnel preparation and continuing education;
- (4) state expenditures for treatment of chronic diseases;
- (5) screening services; and
- (6) public awareness.

(b) The council with the advice of the advisory committee, if one is established, shall advise the legislature on legislation that is needed to further develop and maintain a statewide system of quality education services for all persons with diabetes.

The council may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

(c) The council shall:

(1) compile and publish regional directories of services for persons with diabetes;

(2) design or adapt and publish a handbook in English and Spanish relating to diet, exercise, and other self-care management skills for persons with diabetes;

(3) study the feasibility of a statewide hotline for persons with diabetes; and

(4) study the standards and structure of pilot programs to provide diabetes education and training in this state.

(d) The council may engage in studies that it determines are necessary or suitable under the state plan as provided by this Act.

(e) The department shall accept funds appropriated for the purposes of this Act. The council will recommend to the department for allocation of funds appropriated for purposes of this Act. The department shall allocate the funds.

#### Reimbursement and Staff Support

Sec. 6. (a) Council and advisory committee members shall be reimbursed by the department for travel and other necessary expenses incurred in performing official duties, at the same rate provided for state employees in the General Appropriations Act. Funds for travel reimbursement shall be appropriated to the department.

(b) The agencies represented on the council shall provide periodic staff support of specialists as needed to the council. The agencies may provide staff support to the advisory committee.

#### Public Awareness and Training

Sec. 7. (a) The Texas Department of Health, the Texas Commission for the Blind, the Texas Rehabilitation Commission, the Texas Department of Human Resources, and the Central Education Agency shall jointly develop and implement:

(1) a general public awareness strategy focusing on diabetes, its complications, and techniques for achieving good management;

(2) a general public awareness strategy focusing on the pilot programs established by this Act; and

(3) a statewide plan for conducting regional training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

(b) The council must approve the strategies and plans developed under this section.

#### Report to Legislature

Sec. 8. The council shall study morbidity and mortality related to diabetes and shall report its

findings to the members of the 69th Legislature before January 31, 1985.

#### Staggered Terms

Sec. 9. (a) Solely for the purpose of computing terms, the terms of members of the council appointed before February 1, 1984, begin February 1, 1984. At that time, the members shall draw lots for the purpose of staggering terms so that the terms of three private citizen members and two agency representatives expire February 1, 1985.

(b) Members appointed to the council before February 1, 1984, have all the powers and duties of the council.

#### Application of Sunset Act

Sec. 10. The Texas Diabetes Council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act, the council is abolished, and this Act expires effective September 1, 1987.

[Acts 1983, 68th Leg., p. 1994, ch. 363, eff. Aug. 29, 1983.]

### CHAPTER FIVE. COUNTY HOSPITAL

#### Art.

- 4478. Authority.
- 4478a. Intervals Between Elections.
- 4479. Board of Managers.
- 4480. Powers of Board.
- 4481. Clinics.
- 4482. School for Children.
- 4483. Health Bulletins.
- 4484. Records.
- 4485. Superintendent.
- 4486. Admission of Patients.
- 4487. Support of Patients.
- 4488. Inspection.
- 4489. Poorhouse.
- 4490. Additional Hospitals.
- 4491. Contract with Hospital.
- 4492. Contracts with Cities.
- 4493. Adequate Facilities.
- 4493a. Validation of County Hospital Bond Elections in Counties Containing Large City.
- 4494. Counties May Join.
- 4494a. Lease of County Hospital.
- 4494b. Lease of County Hospitals in Counties of 30,900 to 31,000 Population.
- 4494c. Construction, Maintenance, and Operation of Hospitals by Counties of 17,600 to 17,700 Population; Leasing of Hospital.
- 4494c-1. Use of Hospital Operating Funds for Improvements to Hospitals in Counties of 23,000 to 23,100.
- 4494d. Lease of County Hospitals in Counties of 23,825 to 23,850.
- 4494e. Lease of County Hospitals in Counties of 7,680 to 7,700.
- 4494f. Leases of Hospitals in Counties of 29,760 to 29,960.
- 4494g. Establishment of Hospital in Counties of Over 92,600 and Having a City of Over 57,250; Lease of Hospital.

- Art.  
4494h. Lease of Hospitals in Counties of 5,000 to 10,390.
- 4494i. Joint Establishment and Operation of Hospitals by Counties and Cities or Towns.
- 4494i-1. Joint County-City Hospital Boards.
- 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under \$20,000,000.
- 4494k. Sale or Lease in Counties of 69,080 to 69,100.
- 4494l. Sale, Lease or Closure of County Hospital by County.
- 4494m. Sale of County Hospital in Counties of 22,000 to 22,800.
- 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County.
- 4494n-1. Validating Organization and Creation of County-wide Hospital Districts in Counties of 190,000 or More and Galveston County.
- 4494n-2. Sale and Lease Back of Land, Buildings, Equipment, etc., for Hospital District Purposes.
- 4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000.
- 4494o. Public Hospital Districts; Counties of 75,000 or Less.
- 4494p. Optional Hospital District Law of 1957.
- 4494q. Particular Hospital Districts.
- 4494r. County Hospital Authority Act.
- 4494r-1. Issuing and Refunding Revenue Bonds.
- 4494r-2. Issuance of Revenue Bonds in Counties of 200,000 or More.
- 4494r-2.1. Advisory Elections in Issuance of Revenue Bonds.
- 4494r-3. County Hospital Revenue Bonds; Issue; Refunding.
- 4494r-4. Adoption of Tax Rolls by Hospital Districts; Board of Equalization; Assessment and Collection of Taxes.
- 4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More.
- 4494s. Parking Stations Near Hospitals in Counties of 900,000 or More.

#### Art. 4478. Authority

The commissioners court of any county shall have power to establish a county hospital and any medical or other health facilities and to enlarge any existing hospitals or facilities for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, or any medical or other health facilities, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital or facilities. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish

and maintain such hospital or facilities and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital or facilities. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital or facilities and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital or facilities, or both.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital or facilities, and apply the same in accordance with the terms of the gift.

7. The Commissioners Court may sell or lease all or part of any medical facility so constructed, purchased or acquired under this Act.

8. The Commissioners Court of any county may close by order on terms it considers reasonable any medical facility constructed, purchased, or acquired under this Act, and this order shall be final thirty days after promulgation unless at least ten per cent of the qualified electors in the county petition the Commissioners Court within the thirty days requesting that an election be held in the county to determine whether or not the medical facility should be closed. On proper petition, the Commissioners Court shall set a time for an election and shall submit to the qualified electors of the county ballots providing for voting for or against the proposition: "The closing of (Name of medical facility to be closed)."

[Acts 1925, S.B. 84. Amended by Acts 1973, 63rd Leg., p. 1332, ch. 502, § 1, eff. June 14, 1973; Acts 1977, 65th Leg., p. 2, ch. 2, § 1, eff. Feb. 23, 1977; Acts 1981, 67th Leg., p. 2364, ch. 583, § 6, eff. Aug. 31, 1981.]

Section 2 of the 1977 amendatory act (which added subd. 8 to this article), provided:

"Nothing in this Act shall exempt any county commissioners court from any provision of the Health Planning and Development Act of 1975 [art. 4418h]."

**Art. 4478a. Intervals Between Elections**

The provision contained in Article 4478, Revised Civil Statutes of Texas of 1925, which restricts the presentation of petitions to the Commissioners Court of a county for the establishment of a county hospital to intervals of not less than twelve (12) months shall not be applicable to counties which at the time of presentation of any such petition have no county-owned hospital. Provided however that nothing in this Article will permit the Commissioners Court to submit a bond election for the above purposes to the voters of their respective county more than twice in any twelve-month period.

[Acts 1953, 53rd Leg., p. 13, ch. 18, § 1.]

**Art. 4479. Board of Managers**

When the Commissioners Court shall have acquired site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint not less than six (6) nor more than twelve (12) resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital. Except for the term of an initial member, the term of office of each member of said board shall be two (2) years. The Commissioners Court may stagger the terms of members of the board so that as near as possible to one-half of the members' terms expire each year. The initial members of the board may be appointed for terms of less than two years if necessary to fix the scheme for the expiration of members' terms. In case of a tie vote of said board the deadlock may be voted off one way or the other by the county judge of the county. Appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three (3) consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board managers. The managers may receive compensation for their services to consist of such insurance plan as may be deemed necessary by the Commissioners Court to provide hospitalization insurance. The managers shall be allowed their actual and necessary traveling and other expenses within this state to be audited and paid by the Commissioners Court in the same manner as other expenses of the hospital. Any manager after being cited may at any time for cause be removed from office by said court.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 263, ch. 189, § 1; Acts 1961, 57th Leg., p. 456, ch. 227, § 1; Acts 1983, 68th Leg., p. 4646, ch. 802, § 1, eff. Aug. 29, 1983.]

**Art. 4480. Powers of Board**

The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board,

and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

The board shall also appoint a staff of visiting physicians who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board shall fix the salaries of the superintendent and all other officers and employes within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employes thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners court at which appropriations for the ensuing year are to be considered.

[Acts 1925, S.B. 84.]

**Art. 4481. Clinics**

The board of managers may also establish and operate an outpatient department or free dispensary and clinic at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over. They shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board shall also appoint one or more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries within the limits of the appropriation made therefor by the commissioners court.

[Acts 1925, S.B. 84.]

**Art. 4482. School for Children**

The board may also establish, at the hospital or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this law. Said board shall

appoint a teacher or teachers, specially qualified, to instruct and care for the pupil inmates of said school. Said board shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician, to attend the inmates of said school, and to supervise their care and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils.

[Acts 1925, S.B. 84.]

#### Art. 4483. Health Bulletins

The State Board of Health, from time to time, shall make rules and regulations for the care of persons suffering from communicable disease and for the prevention and spread of such diseases; and prepare bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers shall, from time to time, purchase from the State Board of Health, at the actual cost of printing, printed copies of such rules and regulations, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the State Board of Health.

[Acts 1925, S.B. 84.]

#### Art. 4484. Records

The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners court and to any citizen of the county. The board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their payment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners court annually, and at such times as said court shall direct, a detailed report of the operation of the hospital dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes.

[Acts 1925, S.B. 84.]

#### Art. 4485. Superintendent

The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employes thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and maintain discipline therein, and enforce compliance with and obedience to all rules, bylaws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employes and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employes as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, he may discharge any such officer or employe at his discretion, after giving such officer or employe an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report as required by this law, and present the same to the board of managers who shall incorporate them in their report to the commissioners court.

He shall receive into the hospital, under the general direction of the board of managers, in order of application, or according to the urgency of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners court of any adjacent county, which has contracted with the board for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex,

color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board, and the said board shall make such final disposition of the case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office.

[Acts 1925, S.B. 84.]

#### Art. 4486. Admission of Patients

Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he finds that such person is suffering from any illness, disease or injury may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital and shall be forwarded by the superintendent thereof free to any reputable physician in the county upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital. Every application shall be filed and recorded in a book kept for that purpose in the order of its receipt. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that

the patient or his relatives contribute to the cost of his maintenance, in whole or in part. No patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital. No officer or employe of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services.

[Acts 1925, S.B. 84.]

#### Art. 4487. Support of Patients

Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient, a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal.

[Acts 1925, S.B. 84.]

#### Art. 4488. Inspection

The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts, and records pertaining to the hospital, and shall furnish copies, abstracts, and reports whenever required by them. All hospitals established or maintained under the provisions of this law shall be subject to inspection by any duly authorized representative of the State Board of Health, or any State board of charities that may hereafter be created, and of the commissioners court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital.

[Acts 1925, S.B. 84.]

**Art. 4489. Poorhouse**

Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poorhouse or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to each provision of this law, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners court shall in like manner be subject to each provision of this law.

[Acts 1925, S.B. 84.]

**Art. 4490. Additional Hospitals**

When deemed advisable by the commissioners court, and approved by the State Board of Health, a county may maintain more than one county hospital for the purpose aforesaid.

[Acts 1925, S.B. 84.]

**Art. 4491. Contract with Hospital**

Any commissioners court of any county which has no city with a population of more than ten thousand persons, may contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established such hospital, the board of managers may contract with any regularly incorporated society or hospital or city or town within the county maintaining a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital.

[Acts 1925, S.B. 84.]

**Art. 4492. Contracts with Cities**

Sec. 1. Any Commissioners Court may cooperate with and join the proper authorities of any city having a population of ten thousand (10,000) persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said Court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such Court and city authorities.

Sec. 2. Any Commissioners Court may cooperate with and join the proper authorities of any two (2) or more cities in the establishment, building, equipment and maintenance of a hospital in said county, and to appropriate such funds as may be determined by said Court, after a joint conference with the authorities of such cities or towns, and the

management of such hospital shall be under the joint control of such Court and city authorities.

[Acts 1925, S.B. 84. Amended by Acts 1953, 53rd Leg., p. 526, ch. 190, § 1.]

**Art. 4493. Adequate Facilities**

Where no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, the commissioners court of each county which may have a city with a population of more than ten thousand persons, within six months from the time when such city shall have attained such population, such population to be ascertained by such court in such manner as may be determined upon resolution thereof, shall provide for the erection of such county hospital or hospitals as may be necessary for that purpose, and provide therein a room or rooms, or ward or wards for the care of confinement cases, and a room or rooms or ward or wards for the temporary care of persons suffering from mental or nervous disease, and also make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the State Board of Health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county available for such purpose, issuance of county warrants and script, the commissioners court shall submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds.

[Acts 1925, S.B. 84.]

**Art. 4493a. Validation of County Hospital Bond Elections in Counties Containing Large City**

Sec. 1. In each instance where a county containing a city of not less than one hundred and fifty thousand (150,000) population, according to the last preceding Federal Census, has held an election resulting favorably to the issuance of bonds for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a county hospital or sanitarium, or for the purpose including any one or more of the following: constructing, building, equipping, improving, extending, or enlarging a city-county hospital or sanitarium, the act of the Commissioners Court in calling and noticing said election, the election, the act of the Commissioners Court in canvassing the returns of such election and declaring the results thereof, each and all are hereby expressly

validated; all such bonds heretofore executed, approved by the Attorney General, registered by the Comptroller, sold and delivered, are hereby in all things validated; and all such bonds so voted but not heretofore sold, when they shall have been executed, approved by the Attorney General, and registered by the Comptroller, shall constitute valid and binding obligations of such county.

Sec. 2. Provided however, that this Act shall not affect any litigation pending at the time this Act becomes effective, in which the validity of any such election or bonds is being questioned.

[Acts 1937, 45th Leg., 2nd C.S., p. 1920, ch. 37.]

#### Art. 4494. Counties May Join

Where found to be more practicable, and when approved by the State Board of Health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this law, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers and be subject to the same liabilities as a single county, herein provided for.

[Acts 1925, S.B. 84.]

#### Art. 4494a. Lease of County Hospital

Any county in this State having a population of not less than 46,600 and not more than 48,000 according to the United States Census of 1920, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

[Acts 1929, 41st Leg., 2nd C.S., p. 170, ch. 86, § 1.]

#### Art. 4494b. Lease of County Hospitals in Counties of 30,900 to 31,000 Population

Any county in this State having a population of not less than thirty thousand nine hundred (30,900) and not more than thirty-one thousand (31,000) according to the United States Census of 1930, shall have authority to lease any county hospital belonging to said county to be operated as a county hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court of said county and the lessee. The action of the Commissioners' Court in leasing such hospital shall be evidenced by order of the Commissioners' Court, which order shall be recorded in the minutes of said Court.

[Acts 1937, 45th Leg., 1st C.S., p. 1754, ch. 9, § 1.]

WTSC Civil Statutes—8

#### Art. 4494c. Construction, Maintenance, and Operation of Hospitals by Counties of 17,600 to 17,700 Population; Leasing of Hospital

Sec. 1. In any County in this State having a population of not less than seventeen thousand six hundred (17,600) or not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, in which are established hospitals or in which hospitals may be constructed, a direct tax of not over Ten Cents (10¢) on the valuation of One Hundred Dollars (\$100.00) on all real and personal property within such County may be authorized and levied by the Commissioners' Court of such County for the purpose of erecting buildings and other improvements, equipping such hospital, and for maintaining and operating such hospital, provided that all such levy of taxes shall be submitted to the qualified tax paying voters of the County and a majority vote shall be necessary to levy such taxes.

Sec. 2. Any County in this State having a population of not less than seventeen thousand six hundred (17,600) and not more than seventeen thousand seven hundred (17,700) according to the United States Census of 1930, shall have authority to lease any County Hospital belonging to said County now in existence or that may hereafter be constructed, to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners' Court and the lessee. The action of the Commissioners' Court on leasing such hospital shall be evidenced by order of the Commissioners' Court which shall be recorded in the minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 851.]

#### Art. 4494c-1. Use of Hospital Operating Funds for Improvements to Hospitals in Counties of 23,000 to 23,100

In all counties in this State with not less than 23,000 inhabitants or more than 23,100 inhabitants according to the last preceding federal census, the Commissioners Court may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of county hospital facilities.

[Acts 1965, 59th Leg., p. 917, ch. 451. Amended by Acts 1971, 62nd Leg., p. 1846, ch. 542, § 116, eff. Sept. 1, 1971; Acts 1981, 67th Leg., p. 589, ch. 237, § 117, eff. Sept. 1, 1981.]

#### Art. 4494d. Lease of County Hospitals in Counties of 23,825 to 23,850

Any county in this State having a population of not less than twenty-three thousand, eight hundred and twenty-five (23,825) and not more than twenty-three thousand, eight hundred and fifty (23,850) inhabitants according to the last preceding Federal Census of 1930, shall have authority to lease any



county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 849, § 1.]

**Art. 4494e. Lease of County Hospitals in Counties of 7,680 to 7,700**

Any county in this State having a population of not less than seven thousand, six hundred and eighty (7,680) and not more than seven thousand and seven hundred (7,700) according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1939, 46th Leg., Spec.Laws, p. 848, § 1.]

**Art. 4494f. Leases of Hospitals in Counties of 29,760 to 29,960**

Any county in this State having a population of not less than twenty-nine thousand, seven hundred and sixty (29,760) and not more than twenty-nine thousand, nine hundred and sixty (29,960) inhabitants, according to the last preceding Federal Census, shall have authority to lease any county hospital belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital shall be evidenced by the order of the Commissioners Court, which order shall be recorded in the Minutes of said Court.

[Acts 1941, 47th Leg., p. 428, ch. 258, § 1.]

**Art. 4494g. Establishment of Hospital in Counties of Over 92,600 and Having a City of Over 57,250; Lease of Hospital**

Sec. 1. In all counties of the State having a population of not less than ninety-two thousand, six hundred (92,600), according to the last preceding United States Census, containing an incorporated city or cities or an incorporated town or towns of not less than fifty-seven thousand, two hundred and fifty (57,250) population, each according to the last preceding United States Census, the Commissioners Court of such county and the governing body of any such city or town may establish, erect, equip, maintain and operate a hospital for the care and treatment of sick, infirm, and/or injured inhabitants of such county and/or city or town. By agreement

between such bodies, the cost thereof may be divided between such county and city or town.

Sec. 2. If there be insufficient moneys in the respective general funds of such county and/or city or town for such purpose, the Commissioners Court and/or governing body of the city or town may submit to the qualified, taxpaying voters of the county and/or city or town, respectively, at a special or regular election or elections the proposition of whether such a hospital should be established, erected, equipped, maintained and operated by the county and city or town and a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town levied for such purpose and/or whether the county and/or city or town should issue its bonds in an amount not exceeding that specified in such proposition to wholly or partially defray the expense of establishing, erecting, and/or equipping such hospital, and provide for the payment of interest on such bonds and the creation of a sinking fund for the payment thereof out of a direct tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town.

Sec. 3. If such proposition shall receive a majority of the votes cast by the voters at such elections, the Commissioners Court and/or governing body of the city or town may assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town respectively, for such purpose. If, however, the Commissioners Court and/or the governing body of such city or town deem it advisable and the question has received a majority vote at the election called for in the preceding Section, either or both of such bodies may, in the manner provided for the issuance of other bonds of such county and/or city or town in an amount not exceeding that specified in the proposition submitted at such election, assess and levy a tax of not exceeding Ten (10) Cents on the one hundred dollars valuation of real and personal property located in such county and/or city or town for the purpose of paying the interest on such bonds and creating a sinking fund for the payment thereof.

Sec. 4. Any hospital heretofore or hereafter erected, established, equipped, maintained, or operated by such a county and such a city may be leased by such county and city or town upon such terms as are agreeable to such county and city or town and the lessee.

[Acts 1941, 47th Leg., p. 420, ch. 250.]

**Art. 4494h. Lease of Hospitals in Counties of 5,000 to 10,390**

(a) Any county in this State having a population of not less than five thousand (5,000) and not more than ten thousand, three hundred and ninety (10,390) inhabitants according to the last preceding

Federal Census, shall have authority to lease any county hospital or a portion thereof belonging to said county to be operated by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee. The action of the Commissioners Court in leasing such hospital or a portion thereof shall be evidenced by order of the Commissioners Court, which order shall be recorded in the minutes of said Court. The proposed lease of such hospital or portion thereof shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

(b) When the Commissioners Court of any such county owning and operating its hospital shall determine and find that it is to the best interest of such county that such hospital or portion thereof be leased, it shall be the duty of the Court to fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform all qualified electors of said county and all other persons who may be interested in the question of the leasing of such county hospital or portion thereof of the time and place of the hearing and of their right to appear at such hearing and contend for or protest the proposed leasing of the county hospital or portion thereof. The county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

(c) If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital or portion thereof shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital or portion thereof and shall not finally lease the same unless the proposition to lease such county hospital or portion thereof is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of leasing such hospital or portion thereof. Any person interested may appear before

the Court in person or by attorney and contend for or protest the leasing of such county hospital or portion thereof. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital or portion thereof shall be leased. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

(d) If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing of such hospital or portion thereof would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased. Such Court shall thereupon be fully authorized and empowered to lease such county hospital or portion thereof to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing such hospital or portion thereof shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property, taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital or portion thereof shall be leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to lease such hospital or portion thereof for a period in excess of five (5) years and shall not finally lease the same for a period in excess of five (5) years unless the proposition to lease such hospital or portion of is sustained by a majority of votes cast at said election.

[Acts 1941, 47th Leg., p. 142, ch. 107, § 1. Amended by Acts 1949, 51st Leg., p. 224, ch. 124, § 1; Acts 1973, 63rd Leg., p. 1190, ch. 437, § 1, eff. June 14, 1973.]

#### Art. 4494i. Joint Establishment and Operation of Hospitals by Counties and Cities or Towns

##### Establishment and Operation Authorized; Tax to Pay Bonds

Sec. 1. Any county of the State and any incorporated city or town within such county, acting through the Commissioners Court of such county and the governing body of such city or town, may jointly establish, erect, equip, maintain and operate a hospital or hospitals for the care and treatment of the sick, infirm, and/or injured; and for the pur-

poses of establishing, erecting, equipping, maintaining and operating such a hospital or hospitals, the Commissioners Court of any county and the governing body of any city or town within such county may, by resolution or other appropriate action, confer upon, delegate to and grant to a Board of Managers, as hereinafter provided, full and complete authority to establish, erect, equip, maintain and operate such hospital or hospitals. Such cities or towns and counties that have heretofore issued and sold bonds for the specific purpose of jointly establishing, erecting, equipping, maintaining and operating such joint county-city hospital may finance such hospital or hospitals out of general revenues and are each, respectively, hereby authorized to levy and collect a tax, not to exceed Ten (10) Cents per one hundred dollar valuation on the property subject to taxes therein, for such purposes.

**Board of Managers; Membership; Term; Vacancies**

Sec. 2. The Board of Managers shall be composed of seven (7) members; three (3) of this number shall be appointed by the Commissioners Court of such county, three (3) shall be appointed by the governing body of such city or town, and one shall be appointed by the Commissioners Court of such county and the governing body of such city or town acting jointly as one appointive body. The Commissioners Court of such county shall appoint to the Board one member for a term of office expiring at the end of two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment. In like manner, the governing body of such city or town shall appoint to the Board one member for a term of office expiring two (2) years from date of appointment, one member for a term of office expiring four (4) years from date of appointment, and one member for a term of office expiring six (6) years from date of appointment; and similarly, the Commissioners Court and the governing body of such city or town, acting together as an appointive body, shall appoint one member for a term of office expiring six (6) years from date of appointment. Thereafter, at the expiration of each term of office of the members so appointed to such Board, the Commissioners Court and the governing body of such city or town acting jointly as an appointive body, shall each respectively make, and continue to make similar appointments to such Board for a term of office of six (6) years each. Any vacancy occurring during the term of office of any member, whether by resignation or death, shall be filled for the unexpired portion of such term by the particular appointive body previously making the appointment of the resigning or deceased member.

**Presiding Officer; Quorum**

Sec. 3. Such Board of Managers shall select a chairman or presiding officer from among their number who shall preside over all meetings of the

said Board, and shall sign all contracts, agreements and other instruments made by said Board on behalf of such county and such city or town. A majority of the members of the Board shall constitute a quorum with full authority and power to act.

**Powers of Board**

Sec. 4. Such Board of Managers shall have full and complete authority to enter into any contract connected with or incident to the establishment, erection, equipping, maintaining or operating such hospital or hospitals, and in this connection shall have authority to disburse and pay out all funds set aside by such county and such city or town for purposes connected with such hospital or hospitals, and such action by such city or town as though such action had been taken by the Commissioners Court of such county or governing body of such city or town.

**Financial Statement; Budget**

Sec. 5. Once each year such Board of Managers shall prepare and present to such Commissioners Court and the governing body of such city or town a complete financial statement of the financial status of such hospital or hospitals, and shall submit therewith a proposed budget of the anticipated financial needs of such hospital or hospitals for the ensuing year. On the basis of such financial statement and budget the Commissioners Court of such county and the governing body of such city or town shall appropriate or set aside for the use of such Board of Managers in the operation of such hospital or hospitals the amount of money which seems proper and necessary for such purpose.

**Contributions**

Sec. 6. The Commissioners Court of such county and the governing body of such city or town may contribute to the funds necessary for such hospital or hospitals in whatever proportion may be determined by them by agreement.

**Management and Control**

Sec. 7. In connection with the erection and equipping of such hospital or hospitals said Board of Managers shall have the authority to determine the manner of expending any funds that may have been provided by such county and such city or town for such purpose, whether by the issuance of bonds or other obligations, or by appropriations from other funds of such county and city or town, it being the intention by this Act to grant to such Boards the complete authority to manage and control all matters affecting such hospitals, reserving to such county and city or town the right only to appoint members to such Board of Managers and to approve the annual budget hereinabove provided for.

**Act Cumulative**

Sec. 8. This Act is cumulative of all other Acts relating to city and county hospitals.

[Acts 1943, 48th Leg., p. 691, ch. 383.]

**Art. 4494i-1. Joint County-City Hospital Boards****Resolutions Creating Boards; Designation**

Sec. 1. The commissioners court of any county, and the governing body of any city (including any Home Rule Charter City) located wholly or partially in said county, shall be authorized to adopt resolutions creating a joint county-city hospital board, without taxing powers, to constitute a public agency and body politic, and to be designated the "\_\_\_\_\_ County-City of \_\_\_\_\_, Texas, Hospital Board."

**Directors; Appointment; Boards as Separate Entities**

Sec. 2. Said Hospital Board shall consist of seven Directors, to be appointed and serve as hereinafter provided, and said Hospital Board shall constitute a joint agent of said county and city for hospital purposes, and shall act solely for the joint benefit of said county and city. Although acting as such joint agent, said Hospital Board shall constitute a separate entity in the exercise and performance of the powers, duties, and functions authorized by this Act, and with reference thereto said Hospital Board shall act and proceed independently, and may sue and be sued separately, in its own name, capacity, and behalf.

**Terms of Directors; Reimbursement for Expenses; Chairman and Secretary; Officers**

Sec. 3. In the resolution of the commissioners court creating said Hospital Board four Directors of said Board shall be appointed, with two being designated to serve for two-year terms of office, and with two being designated to serve for one-year terms of office. At the expiration of the term of office of any Director appointed by the commissioners court, said commissioners court shall appoint his successor to serve for a two-year term of office. In the resolution of the governing body of the city creating said Hospital Board three Directors shall be appointed, with two being designated to serve for two-year terms of office, and with one being designated to serve for a one-year term of office. At the expiration of the term of office of any Director appointed by the governing body of said city, said governing body shall appoint his successor to serve for a two-year term of office. It is the intention of this Act that at all times said Hospital Board shall consist of four Directors appointed by said commissioners court and three Directors appointed by the governing body of said city. All Directors shall serve until their successors are appointed, except that in the case of any vacancy the unexpired term of office shall be filled by the appointment of a Director by said commissioners court or the governing body of said city, as the case may be, which appointed the Director whose death or

resignation has caused the vacancy. All Directors shall be eligible to succeed themselves in office. Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as Directors, to the extent authorized and permitted by the Hospital Board. The Directors shall elect one of their number as Chairman of the Hospital Board, and he shall preside at meetings of said Board and perform such other duties and functions as are prescribed by the Board. The Chairman of the Hospital Board shall have a vote the same as the other Directors. The Directors shall elect a secretary of the Hospital Board, who may or may not be a Director, and who shall be the official custodian of the minutes, books, records, and seal of said Board, and who shall perform such other duties and functions as are prescribed by the Board. The Directors shall be authorized to elect any other officers of said Hospital Board as they deem necessary or advisable; and said Directors shall be authorized to appoint or employ such agents, employees, and officials as they deem necessary or advisable to carry out any power, duty, or function of said Hospital Board. Said Hospital Board shall act and proceed by and through resolutions adopted by the Directors, and the affirmative vote of four Directors shall be required to adopt a resolution.

**Acquisition of Hospital Facilities; Purchase or Sale of Property; Donations**

Sec. 4. Said Hospital Board shall be authorized to purchase, construct, receive, lease, or otherwise acquire hospital facilities, and to improve, enlarge, furnish, equip, operate and maintain the same. Further, the Hospital Board shall be authorized to own, hold title to, receive, encumber, sell, lease, or convey, any interest in real or personal property, including gifts, grants, and donations from any source.

**Transfer of Hospital Facilities to Boards; Contracts for Care and Treatment of Needy Patients; Federal and State Funds**

Sec. 5. The county and the city, respectively, which created said Hospital Board shall be authorized to lease, or to convey and transfer the title or any other interest in, all or any part of their hospital facilities, including all real and personal property pertaining thereto, to said Hospital Board, upon such terms and conditions, if any, as shall be determined by the parties. It is provided, however, that said Hospital Board shall not be authorized to encumber, sell, lease, or convey any real or personal property unless such encumbrance, sale, lease, or conveyance is approved, prior to the final consummation thereof, by resolutions of the commissioners court of said county and the governing body of said city, respectively. Said county and said city, respectively, further shall be authorized to enter into contracts with said Hospital Board for the care and treatment of indigent or needy patients, or for any

other hospital services, and each shall be authorized to expend money and make payments to said Hospital Board pursuant to such contracts, and to levy ad valorem taxes, and to pledge any of their funds or resources, for the payments to be made under said contracts. Said Hospital Board shall be authorized to apply for, receive, and expend any available funds from the federal or state government for hospital purposes. Further, said county and said city, respectively, may adopt resolutions authorizing and designating such Hospital Board as the lawful agency to apply for, receive, and expend any available funds from the federal or state government for county or city hospital purposes; and to the extent of such authorization the Hospital Board may apply for, receive, and expend any such funds.

#### Bond Issue

Sec. 6. For the purpose of carrying out any power, duty, or function authorized by this Act, said Hospital Board shall be authorized to issue its revenue bonds to be payable from, and secured by a pledge of, all or any part of the revenues, income, or resources of the Hospital Board and the hospital facilities of said Board. Said bonds may be additionally secured by mortgages and deeds of trust on any real or personal property, and said Board may authorize the execution and delivery of trust indentures, or other forms of encumbrances to evidence same. Said Hospital Board shall have no right or power whatsoever to levy taxes of any nature and all bonds issued by said Board shall contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by said Hospital Board." If so provided in the proceedings authorizing the issuance of the bonds, any required part of the proceeds from the sale thereof may be used for paying interest on the bonds during the period of the construction of any hospital facilities to be acquired through the issuance of said bonds, and for the payment of operation and maintenance expenses of said hospital facilities to the extent, and for the period of time, specified in said proceedings, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys may be invested, until needed, to the extent and in the manner provided in the Bond Resolution or any trust indenture executed in connection therewith.

#### Interest Rate; Additional Parity Bonds

Sec. 7. Said bonds may be issued to mature serially or otherwise within not to exceed 40 years from their date, and may be issued to bear interest at any rate or rates not to exceed 6% per annum. In the authorization of any such bonds, the Directors may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions as may be set forth in the proceedings authorizing the issuance of said bonds, all within the discretion of the Directors. Said bonds, and any interest coupons appertaining there-

to, shall be negotiable instruments (provided that such bonds may be made registrable as to principal alone or as to both principal and interest), and they may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be executed, as provided by the Directors in the proceedings authorizing the issuance of said bonds. Said bonds may be sold at public or private sale and at a price and under such terms as shall be determined by the Directors, provided that the interest cost to said Hospital Board, including any discount on the bonds, shall not exceed 6% per annum calculated by the use of standard bond interest tables currently in use by insurance companies and investment banking companies.

#### Approval of Bond Issue

Sec. 8. Notwithstanding the foregoing provisions of this Act, said Hospital Board shall not deliver any bonds unless the issuance thereof is approved by resolutions adopted by the commissioners court of said county and the governing body of said city, respectively.

#### Charges for Services and Facilities

Sec. 9. All hospital facilities of said Hospital Board shall be operated for the use and benefit of the public, but it shall be the duty of said Board to establish and collect sufficient charges for services and facilities, and to utilize all other available sources of revenues and income, in order to pay all expenses in connection with the ownership, operation, and maintenance of its hospital facilities, to pay the principal of and interest on its bonds, and to create and maintain reserves and any other funds as provided in the proceedings authorizing the issuance of its bonds. In the proceedings authorizing the issuance of its bonds said Hospital Board may prescribe systems, methods, routines, and procedures under which its hospital facilities shall be operated and maintained.

#### Notice of Bond Resolution; Petition for Election; Adoption of Bond Resolution

Sec. 10. (a) Before authorizing the issuance of any bonds, other than refunding bonds, the Directors shall cause a notice to be prepared stating that the Directors of said Hospital Board intend to adopt a resolution (herein called the "Bond Resolution") authorizing the issuance of bonds, on a named date, and stating the maximum amount and maximum maturity thereof. Such notice shall be published once each week for two consecutive weeks in a newspaper having general circulation in the county and the city, with the first publication thereof to be made at least fourteen days prior to the date set for adopting the Bond Resolution.

(b) If, prior to the date set for the adoption of the Bond Resolution, there is presented to the secretary of said Hospital Board a petition signed by not less than ten per centum (10%) of the qualified voters

residing within the county and any part of the city which is not within the county, praying that the Directors order an election be held on the proposition of the issuance of the bonds, such bonds shall not be issued unless an election is held and such bonds are duly and favorably voted at said election. Such election shall be called by the Directors and held within said county and any part of the city which is not within the county, substantially in accordance with the procedures prescribed in Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup> If no such petition is filed, the Bond Resolution may be adopted on the date set therefor, or within not to exceed thirty days thereafter, and the bonds may be issued and delivered without any election in connection with the issuance thereof or the creation of any encumbrance pertaining thereto. It is provided, however, that the Directors may call such election on their own motion, if they deem it advisable, on the proposition of the issuance of such bonds, without the filing of any petition.

<sup>1</sup> Article 701 et seq.

#### Examination and Approval of Bonds; Registration

Sec. 11. All bonds permitted to be issued under this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with this Act he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

#### Refunding Bonds

Sec. 12. Any bonds issued under this Act may be refunded by the issuance of refunding bonds for such purpose, in such manner as may be determined by the Directors; and any such refunding bonds shall be issued as provided herein for other bonds authorized under this Act, except that the refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In such case, the Comptroller of Public Accounts shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the proceedings authorizing the refunding bonds, and any such exchange may be made in one delivery, or in several installment deliveries.

#### Bonds as Legal and Authorized Investment

Sec. 13. All bonds issued under this Act shall be legal and authorized investments for all banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees and guardians, and for all interest and sinking

funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

#### Depository

Sec. 14. Said Hospital Board may select a depository or depositories according to the procedures provided by law for the selection of county and city depositories, or it may enter into a depository contract with any depository or depositories selected by the county or the city, and on the same terms.

Sec. 15. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

#### Eminent Domain

Sec. 16. For the purpose of carrying out any power, duty, or function authorized by this Act, said Hospital Board shall have the right to acquire the fee simple title or any other interest in land and any other property by condemnation in the manner provided by Title 52, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> relating to eminent domain. Said Hospital Board shall have the same rights as counties and cities under Article 3268, as amended, of said Title 52. The amount and character of interest in land or other property thus to be acquired shall be determined by the Directors.

<sup>1</sup> Article 3264 et seq.

#### Investment of Funds

Sec. 17. The law as to the security for, and the investment of, funds of counties and cities shall be applicable to funds of said Hospital Board. The Bond Resolution, or any trust indenture executed in connection therewith, may further restrict the securing and investment of funds of said Hospital Board. Also, said Hospital Board shall have the power to invest all or any part of the proceeds received from the sale and delivery of its bonds, until such proceeds are needed, in direct obligations of the United States of America, to the extent authorized in the Bond Resolution or any trust indenture executed in connection therewith.

#### Cumulative Effect; Conflicting Laws

Sec. 18. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations

contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control; provided, however, that any Hospital Board shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1965, 59th Leg., p. 1030, ch. 511. Amended by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 15 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under \$20,000,000**

Any county in this State having an assessed valuation of property for ad valorem tax purposes of less than Twenty Million Dollars (\$20,000,000) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpayers living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1947, 50th Leg., p. 257, ch. 152, § 1. Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(b), eff. Jan. 1, 1982.]

**Art. 4494k. Sale or Lease in Counties of 69,080 to 69,100**

Sec. 1. Any county in this State having a population of not less than sixty-nine thousand and eighty (69,080) and not more than sixty-nine thousand, one hundred (69,100) inhabitants according to the last preceding Federal Census shall have authority to lease or sell any county hospital belonging to said county to be operated as a county hospital by the lessee or purchaser under such terms and conditions as may be satisfactory to the Commissioners Court of said county and the lessee or purchaser; provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interest of such county to sell or lease said

county hospital. The action of the Commissioners Court in leasing or selling such hospital shall be evidenced by the order of the Commissioners Court showing in full the terms and conditions of the lease or sale of said hospital.

Sec. 2. Provided, however, the sale of such hospital shall not be confirmed by such Commissioners Court unless and until said proposed sale shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpayers living in the county in reference to such subject. The Commissioners Court of such county upon its own motion may order such an election or such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provision of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1949, 51st Leg., p. 141, ch. 85.]

**Art. 4494l. Sale, Lease or Closure of County Hospital by County**

*Text of article as amended by Acts 1981, 67th Leg., p. 2365, ch. 583, § 7*

**Authority to Sell, Lease, or Close**

Sec. 1. Any county in this State having a county hospital which is operated by said county, may sell or lease such hospital, provided the Commissioners Court of said county shall find and determine by an order entered in the minutes of said Court that it is to the best interest of said county to sell or lease all or any part, including real property of such hospital. The county may also close the hospital or a part of the hospital. The proposed sale or lease of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

**Notice and Hearing**

Sec. 2. When the Commissioners Court of any such county owning and operating its hospital shall determine and find that it is to the best interest of such county that such hospital be sold or leased, it shall be the duty of the Court to fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform all qualified electors of said county and all other persons who may be interested in the question of the selling or leasing of such county hospital of the time and place of the hearing and of their right to appear at such hearing and contend for or protest the proposed action the county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the

first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

**Petition for Referendum; Conduct of Hearing; Adjudication**

Sec. 3. If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be sold or leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to sell or lease such hospital and shall not finally sell or lease the same unless the proposition to sell or lease such county hospital is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of selling or leasing such hospital. Any person interested may appear before the Court in person or by attorney and contend for or protest the selling or leasing of such county hospital. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital shall be sold or leased. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

**Orders When No Petition Submitted**

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed selling or leasing of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be sold or leased. Such Court shall thereupon be fully authorized and empowered to sell or lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in selling or leasing such hospital shall be evidenced by an order duly entered, which order shall contain a complete

copy of the sales or lease contract and shall be recorded in the minutes of the Court.

**Application of Other Laws**

Sec. 5. If a hospital is sold or leased as provided by this Act, Chapter 5, Title 71, revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> does not apply to a purchaser or lessee of the hospital unless the purchaser or lessee is a county, a city and a county acting as joint purchasers or lessees, a county hospital authority, or a hospital district.

<sup>1</sup> Article 4478 et seq.

[Acts 1949, 51st Leg., p. 225, ch. 125. Amended by Acts 1955, 54th Leg., p. 1041, ch. 395, § 1; Acts 1981, 67th Leg., p. 2365, ch. 583, § 7.]

*For text of article as amended by Acts 1981, 67th Leg., p. 2446, ch. 629, § 1, see art. 4494I, post*

**Art. 4494I. Lease of County Hospital by Any County or Sale by Counties of 10,000 or Less**

*Text of article as amended by Acts 1981, 67th Leg., p. 2446, ch. 629, § 1*

**Authority to Lease or Sell**

Sec. 1. (a) Any county in this State having a county hospital which is operated by said county, may lease such hospital, provided the Commissioners Court of said county shall determine by an order entered in the minutes of said Court that it is to the best interest of said county to lease such hospital. A county that operates a county hospital and that has a population of 10,000 or less, according to the most recent federal census, may sell the hospital if the Commissioners Court determines by an order entered in its minutes that:

(1) the responsibilities and expense of operating the hospital are an unjustifiable burden on the taxpayers of the county and result in inadequate health care;

(2) the public interest would be served and health care in the county would be improved if the hospital were operated by another entity; and

(3) the hospital should be sold.

(b) The proposed lease or sale of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

**Notice and Hearing**

Sec. 2. When the Commissioners Court shall determine that it is to the best interest of such county that such hospital be leased or sold, it shall fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform persons of the



time and place of the hearing and of the right of all qualified electors and others interested in the question to appear at such hearing and contend for or protest the proposed lease or sale. The county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

**Petition for Referendum; Conduct of Hearing; Adjudication**

Sec. 3. If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be leased or sold or shall be continued under county operation, then such Commissioners Court shall not finally lease or sell the same unless the proposition to lease or sell such county hospital is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of leasing or selling such hospital. Any person interested may appear before the Court in person or by attorney and contend for or protest the leasing or selling of such county hospital. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital shall be leased or sold. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

**Orders When No Petition Submitted**

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing or selling of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased or sold. Such Court shall thereupon be authorized to sell the

hospital or to lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing or selling such hospital shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease or sales contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be leased or sold or shall be continued under county operation, then such Commissioners Court shall not finally lease or sell the same until the expiration of five (5) years from the date of the election, or if no election is held, from the date the petition is filed, unless the proposition to lease or sell such hospital is sustained by a majority of votes cast at said election.

**Partial Invalidity**

Sec. 5. If any section, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Act shall not be affected thereby, it being the intent of the Legislature in adopting, and of the Governor in approving this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

[Acts 1949, 51st Leg., p. 225, ch. 125. Amended by Acts 1955, 54th Leg., p. 1041, ch. 395, § 1; Acts 1981, 67th Leg., p. 2446, ch. 629, § 1, eff. June 15, 1981.]

*For text of article as amended by Acts 1981, 67th Leg., p. 2365, see art. 4494I, ante*

**Art. 4494m. Sale of County Hospital in Counties of 22,000 to 22,800**

Sec. 1. Any county in this State having a population of not less than twenty-two thousand (22,000) and not more than twenty-two thousand, eight hundred (22,800) inhabitants, according to the last preceding Federal Census, shall have authority to lease or sell any county hospital belonging to said county to be operated as a county hospital by the lessee or purchaser under such terms and conditions as may be satisfactory to the Commissioners Court and/or county hospital board of said county and the lessee or purchaser; provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interest of such county to sell or lease said county hospital or the county hospital board of such county shall by majority vote lease said hospital. A copy of said lease shall be filed with the Commissioners Court of said county. The action of the

Commissioners Court or county hospital board in leasing or selling such hospital shall be evidenced by the order of the Commissioners Court showing in full the terms and conditions of the lease or sale of said hospital.

Sec. 2. Provided, however, the sale of such hospital shall not be confirmed by such Commissioners Court unless and until said proposed sale shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county in reference to such subject. The Commissioners Court of such county upon its own motion may order such an election or such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provision of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Acts 1949, 51st Leg., p. 531, ch. 293.]

**Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County**

**Creation of District**

Sec. 1. Any county having a population of 190,000 or more, and Galveston County, that does not own or operate, or that does own and operate a hospital or hospital system, by itself or jointly with a city, for indigent and needy persons, may be constituted a Hospital District as hereinafter set out, and may take over the hospital or hospital system, either owned separately by a county or jointly with a city, or may provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to the indigent and needy persons residing in said Hospital District; provided, however, that such Hospital District shall not be created unless and until an election is duly held in said county for such purpose, which said election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time said election is ordered by the Commissioners Court. At said election there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a Hospital District shall be created in the county; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

"FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢), on the One Hundred Dollars (\$100.00) valuation"; and

"AGAINST the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation."

If such county or city, either or both of them, has any outstanding bonds theretofore issued for hospital purposes (which by the provisions of Section 4 of this Act are required to be assumed by the Hospital District), then the ballots for such election shall, instead of the foregoing, have printed thereon:

"FOR the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes"; and

"AGAINST the creation of a Hospital District; providing for the levy of a tax not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation; and providing for the assumption by such District of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes."

**Taxes of District; Deposit of Taxes and Other Income**

Sec. 2. The Commissioners Court of any county which has voted to create a Hospital District shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District, a tax of not to exceed Seventy-five Cents (75¢) on the One Hundred Dollars (\$100.00) valuation of all taxable property within the Hospital District, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the Hospital District for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) when requested by the Board of Hospital Managers and approved by the Commissioners Court, for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

The tax so levied shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county. All income of the Hospital District shall be deposited in the district depository. Warrants against Hospital District funds shall not require the signature of the County Clerk.

The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the said Hospital District is established, for the purpose of securing funds to initiate the operation of the Hospital District, and to pay assumed bonds.

Secs. 2a, 2b. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

**El Paso County Hospital District; Assessment of Taxes; Rate**

Sec. 2c. The Commissioners Court of El Paso County on its own motion may order the Assessor

and Collector of Taxes to assess the property in the El Paso County Hospital District at a greater or lesser percentage of its fair cash market value than that used in assessing the property for state and county purposes.

**Bonds of District; Taxes to Pay Bonds and Interest; Sinking Fund**

Sec. 3. The Commissioners Court shall have the power and authority to issue and sell as the obligations of such Hospital District, and in the name and upon the faith and credit of such Hospital District, bonds for the acquisition, purchase, construction, equipment and enlargement of the hospital or hospital system, and for any or all of such purposes; provided, that a sufficient tax shall be levied to create an interest and sinking fund to pay the interest and principal as same matures provided said tax together with any other taxes levied for said District shall not exceed Seventy-five Cents (75c) in any one year. Such bonds shall be executed in the name of the Hospital District and on its behalf by the County Judge of the county within which the Hospital District is created, and countersigned by the County Clerk, and shall be subject to the same requirements in the manner of approval thereof by the Attorney General of the State of Texas and the registration thereof by the Comptroller of Public Accounts of the State of Texas as are by law provided for such approval and registration of bonds of such county; and the approval of such bonds by the Attorney General shall have the same force and effect as is by law given to his approval of bonds of such county. No bonds shall be issued by such hospital district (except refunding bonds) until authorized by a majority vote of the legally qualified property taxpaying voters, residing in such Hospital District, voting at an election called and held in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of the State of Texas (1925), as amended, relating to county bonds. Such election may be called by the Commissioners Court of its own motion, or shall be called by it after request therefor by the Board of Hospital Managers; and the same persons shall be responsible for the conduct of such election and the arrangement of all details thereof as the persons charged therewith in connection with other county-wide elections. The cost of any such election shall be a charge upon the Hospital District and its funds; and the Hospital District shall make provision for the payment thereof before the Commissioners Court shall be required to order such an election.

In the manner hereinabove provided, the bonds of such Hospital District may, without the necessity of any election therefor, be issued for the purpose of refunding and paying off any bonded indebtedness theretofore assumed by such Hospital District and any bonds theretofore issued by such Hospital District; such refunding bonds may be sold and the proceeds thereof applied to the payment of any such outstanding bonds or may be exchanged in whole or

in part for not less than a like amount of said outstanding bonds and interest matured thereon, but unpaid; provided the average interest cost per annum on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, shall not exceed the average interest cost per annum so computed upon the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of such proceeds. In the foregoing computations, any premium or premiums required to be paid upon the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the Hospital District of the refunding bonds.

If the city and the county, or either of them, has voted bonds to provide hospital facilities, but such bonds have not been sold at the date of the creation of the Hospital District, the authority for such bonds shall be canceled, and they shall not be sold.

**County or City Property or Funds; Transfer to District**

Sec. 4. Any lands, buildings or equipment that may be jointly or separately owned by such county and city, and by which medical services or hospital care, including geriatric care, are furnished to the indigent or needy persons of the city and county, shall become the property of the Hospital District; and title thereto shall vest in the Hospital District; provided, however, that whenever any of such property is deemed by the Board of Managers of the Hospital District to be of no further use, presently or in the future, for the purposes for which it was transferred to the Hospital District, the Board of Managers of the Hospital District may, by deed transfer such property, upon any terms deemed suitable by the Board of Managers and the Commissioners Court, back to the city or county from which such property was transferred to the Hospital District upon creation of the Hospital District; and any funds of the city and county, or either, which are the proceeds of any bonds assumed by the Hospital District, as hereby provided, shall become the funds of the Hospital District; and title thereto shall vest in the Hospital District; and there shall vest in the Hospital District and become the funds of the Hospital District the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the city or the county, or either of them, for the support and maintenance of the hospital facilities for the year within which the Hospital District comes into existence, thereby providing such Hospital District with funds with which to maintain and operate such facilities for the remainder of such year. All obligations under contract legally incurred by the city or county, or either of them, for the building of, or the support and maintenance of, hospital facilities, prior to the creation of the said District but outstanding at the time of the

creation of the District, shall be assumed and discharged by it without prejudice to the rights of third parties, provided that the management and control of the property and affairs of the present hospital system shall continue in the Board of Managers of such system until appointment and organization of the Board of Managers of the Hospital District, at which time the Board of Managers of the present hospital system shall turn over all records, property and affairs of said hospital system to the Board of Managers of the Hospital District and shall cease to exist as a hospital system Board of Managers.

Any outstanding bonded indebtedness incurred by the city or county, either or both of them, in the acquisition of such lands, buildings and equipment, or in the construction and equipping of such hospital facilities, together with any other outstanding bonds issued by either of them for hospital purposes, and the proceeds of which are in whole or in part still unspent, shall be assumed by the Hospital District and become the obligation of the Hospital District; and the city or county, either or both of them, that issued such bonds, shall be by the Hospital District relieved of any further liability for the payment thereof, or for providing interest and sinking fund requirements thereon; provided that nothing herein contained shall limit or affect any of the rights of any of the holders of such bonds against the city or the county, as the case may be, in the event of default in the payment of the principal or interest on any of such bonds in accordance with their respective terms.

The Commissioners Court and the city, where a hospital or hospital system is jointly operated, or the Commissioners Court, where the county owns the hospital or hospital system, as the case may be, as soon as the Hospital District is created and authorized at the election hereinabove provided, and there have been appointed and qualified the Board of Hospital Managers hereinafter provided for, shall execute and deliver to the Hospital District, to wit: to its said Board of Hospital Managers, an instrument in writing conveying to said Hospital District the hospital property, including lands, buildings and equipment; and shall transfer to said Hospital District the funds hereinabove provided to become vested in the Hospital District, upon being furnished the certificate of the Chairman of the Board to the fact that a depository for the District's funds has been selected and has qualified; which funds shall, in the hands of the Hospital District and of its Board of Hospital Managers, be used for all or any of the same purposes as, and for no other purposes than, the purposes for which the county or the city transferring such funds could lawfully have used the same had they remained the property and funds of such county or city.

#### Board of Hospital Managers

Sec. 5. The Commissioners Court shall appoint a Board of Hospital Managers, consisting of not less

than five (5) nor more than seven (7) members, who shall serve for a term of two (2) years, with overlapping terms if desired, and with initial appointments to terms of office arranged accordingly, without pay, and whose duties shall be to manage, control and administer the hospital or hospital system of the Hospital District. The Board of Managers shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the hospital or hospital system.

The Board shall appoint a general manager, to be known as the Administrator of the Hospital District. The Administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the Board. The Administrator shall be subject to removal at any time by the Board. The Administrator shall, before entering into the discharge of his duties, execute a bond payable to the District, in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the Board may require. The administrator shall perform all duties which may be required of him by the Board, and shall supervise all of the work and activities of the District, and have general direction of the affairs of the District, within such limitations as may be prescribed by the Board. He shall be a person qualified by training and experience for the position of Administrator.

The Board of Managers shall have the authority to appoint to the staff such doctors and to employ such technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system; provided that no contract or term of employment shall exceed the period of two (2) years.

The Board of Managers, with the approval of the Commissioners Court shall be authorized to contract with any county for care and treatment of such county's sick, diseased and injured persons, and with the State and agencies of the Federal Government for the care and treatment of such persons for whom the State and such agencies of the Federal Government are responsible. Further, under the same conditions, the Board of Managers may enter into such contracts with the State and Federal Government as may be necessary to establish or continue a retirement program for the benefit of its employees.

If care or treatment is given to a resident of a county outside the Hospital District which has not contracted with the Board of Managers for such services, and said non-resident is wholly without financial means except such as are derived from charity, that County shall, upon presentation of a certified statement that care or treatment was necessary for the preservation of human life and was actually performed, be obligated to reimburse the

Hospital District in an amount not to exceed the actual cost of the service rendered.

A majority of the Board of Hospital managers shall constitute a quorum for the transaction of any business. From among its members, the Board shall choose a Chairman, who shall preside; or in his absence a Chairman pro tempore shall preside; and the Administrator or any member of the Board may be appointed Secretary. The Board shall require the Secretary to keep suitable records of all proceedings of each meeting of the Board. Such record shall be read and signed after each meeting by the Chairman or the member presiding, and attested by the Secretary. The Board shall have a seal, on which shall be engraved the name of the Hospital District; and said seal shall be kept by the Secretary and used in authentication of all acts of the Board.

**Board of Hospital Managers in Counties of 650,000 to 900,000**

Sec. 5(a). Notwithstanding the provision of the preceding section, in counties containing a population of more than 650,000, but less than 900,000 according to the last preceding Federal Census, the Commissioners Court shall appoint a Board of Hospital Managers consisting of not less than five (5) nor more than fifteen (15) members who shall serve for a term of two years with overlapping terms if desired, and upon such conditions, and bearing such responsibilities and duties as otherwise set out within this section.

**Retirement System**

Sec. 5a. The Board of Managers may in addition to retirement programs authorized by this Act establish such other retirement program for the benefit of its employees as it deems necessary and advisable.

**Cumulative Powers**

Sec. 5b. The Board of Managers, with the approval of the Commissioners Court, shall have the power:

(a) To construct, condemn and purchase, purchase and acquire, lease, add to, maintain, operate, develop and regulate, sell, exchange and convey any and all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities and services the hospital district may require or may have available to sell, lease or exchange;

(b) To further effectuate such powers, the Board of Managers, with the approval of the Commissioners Court, may cooperate and contract with the United States government, the State of Texas, any municipality or other hospital district, or any department of those governing bodies, or with any privately owned or operated hospital, corporate or otherwise, which privately owned or operated hospital is

situated in the hospital district; provided, in the opinion of the Board of Managers and of the Commissioners Court, such a contract is deemed expedient and advantageous to the hospital district under existing circumstances, and be for such fair and reasonable compensation and on such other terms and for such length of time as may be deemed to further and assist the hospital district in performing its duty to provide medical and hospital care to needy inhabitants of the county.

(c) This amendment to Chapter 266, Acts of the 53rd Legislature, Regular Session, as amended (Article 4494-n, Vernon's Annotated Civil Statutes as amended), shall be considered and construed as more specifically expressing certain existing powers and cumulatively granting certain other powers to hospital districts created or which may be created under such Act.

**Powers of Commissioners Court; Duties of District, County Officers, Employees or Agents**

Sec. 6. The Commissioners Court of any such county shall have the power to prescribe the method and manner of making purchases and expenditures by and for such Hospital District, and also shall be authorized to prescribe all accounting and control procedures, or may delegate any or all such powers to the Board of Managers of such District by the adoption of an appropriate resolution or order to that effect. The Hospital District shall pay all salaries and expenses necessarily incurred by the county or any of its officers and agents in performing any duties which may be prescribed or required under this section. It shall be the duty of any officer, employee or agent of such county to perform and carry out any function or service prescribed by the Commissioners Court hereunder.

**Assistant to Administrator**

Sec. 7. In the event of incapacity, absence or inability of the Administrator to discharge any of the duties required of him, the Board may designate an assistant to the Administrator to discharge any duties or functions required of the Administrator. Such assistant or other persons shall give such bond and have such limitations upon his authority as may be fixed by the order of the Board.

**Reports of Administrator; Budget**

Sec. 8. Once each year, as soon as practicable after the close of the fiscal year, the Administrator of the Hospital District shall report to the Board of Managers, the Commissioners Court, the State Board of Health and the State Comptroller a full sworn statement of all moneys and choses in action received by such Administrator and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the District for the term. Under the direction of the Board of Managers, he shall prepare an annual budget which shall be approved by the Board of Managers and shall then be presented to the Commissioners Court for final ap-

proval. In like manner all budget revisions shall be subject to approval by the Commissioners Court.

#### Disposition of Records

Sec. 8A. (a) Except as provided in Subsection (b) of this section, the commissioners court may authorize the board of managers of a hospital district governed by this Act to transfer, destroy, or otherwise dispose of hospital district records that are:

- (1) more than five years old; and
- (2) determined by the board of managers to be of no further use to the hospital district as official records.

(b) The commissioners court may not authorize the disposal of any medical record. All medical records, and any other records considered by the board of managers as necessary to preserve, may be microfilmed and retained by a hospital district as provided by Chapter 158, Acts of the 64th Legislature, Regular Session, 1975, as amended (Article 6574c, Vernon's Texas Civil Statutes).

#### Eminent Domain

Sec. 9. A Hospital District organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the said District, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided that the said District shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph Numbered 2 in Article 3268, V.C.S., 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said District, the District shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Appeals, or to the Supreme Court.

#### Depository for District; Selection

Sec. 10. Within thirty (30) days after the appointment of the Board of Hospital Managers of any District created under this Act, the said Board shall select a depository for such District in the manner provided by law for the selection of county depositories; and such depository shall be the depository of such District for a period of two (2) years thereafter, until its successor is selected and qualified. In the alternative, the Board may elect to use the depository theretofore selected by the coun-

ty. The Board may extend any contract with a depository to the next month of October, and select a depository for a period of two (2) years thereafter.

#### Inspection of Districts

Sec. 11. All Hospital Districts established or maintained under provisions of this Act shall be subject to inspection by any duly authorized representative of the State Board of Health or any State Board of Charities (or Public Welfare) that may hereafter be created, and of the Commissioners Court of the county, and resident officers shall admit such representatives into all Hospital District facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the Hospital District.

#### Legal Representatives of District

Sec. 12. It shall be the duty of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, charged with the duty of representing the county in civil matters, to represent the Hospital District in all legal matters; provided, however, that the Board of Hospital Managers shall be authorized at its discretion to employ additional legal counsel when the Board deems advisable.

The Hospital District shall contribute sufficient funds to the general fund of the county for the account of the budget of the County Attorney, District Attorney or Criminal District Attorney, as the case may be, to pay all additional salaries and expenses incurred by such officer in performing the duties required of him by such District.

#### Medical and Hospital Care Assumed by District; Delinquent Taxes Owed to Cities and Counties

Sec. 13. No county that has been constituted a Hospital District, and no city therein, shall thereafter levy any tax for hospital purposes; and such Hospital District shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in said Hospital District from the date that taxes are collected for the Hospital District.

That portion of delinquent taxes owed cities and counties on levies for present city and county hospital systems under Acts 48th Legislature, 1943, Chapter 383, page 691,<sup>1</sup> shall continue to be paid to the Hospital District by the city and county as collected, and applied by the Hospital District to the purposes for which such taxes originally were levied.

<sup>1</sup> Article 4494i.

#### Patients; Inquiry as to Ability to Pay; Liability of Relatives

Sec. 14. Whenever a patient has been admitted to the facilities of the Hospital District from the county in which the District is situated, the Administrator shall cause inquiry to be made as to his circumstances, and of the relatives of such patient

legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives, to pay to the treasurer of the Hospital District for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The Administrator shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the Administrator finds that such patient or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the Hospital District. Should there be a dispute as to the ability to pay, or doubt in the mind of the Administrator, the County Court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which appeal shall lie to the District Court by either party to the dispute.

This Act shall apply to Hospital Districts created before the passage hereof, as well as to any such Districts hereafter created, and any such District created by election power to the effective date of this Act is hereby validated, confirmed and ratified.

#### Donations, Gifts and Endowments for District

Sec. 15. Said Board of Managers of the Hospital District is authorized on behalf of said Hospital District to accept donations, gifts, and endowments for the Hospital District, to be held in trust and administered by the Board of Managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by donor, not inconsistent with proper management and objects of Hospital District.

[Acts 1953, 53rd Leg., p. 691, ch. 266. Amended by Acts 1955, 54th Leg., p. 715, ch. 257, § 1; Acts 1959, 56th Leg., p. 587, ch. 271, § 1; Acts 1963, 58th Leg., p. 496, ch. 181, § 1; Acts 1965, 59th Leg., p. 494, ch. 255, § 1; Acts 1967, 60th Leg., p. 34, ch. 15, § 1, eff. March 13, 1967; Acts 1967, 60th Leg., p. 1087, ch. 477, eff. Aug. 23, 1967; Acts 1971, 62nd Leg., p. 1902, ch. 568, § 1, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 713, ch. 306, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1854, ch. 579, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 671, ch. 298, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(s), 6(a)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 589, ch. 237, § 118, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 788, ch. 291, § 60, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 210, ch. 46, § 1, eff. April 26, 1983.]

Acts 1967, 60th Leg., p. 34, ch. 15, § 2, repealed conflicting laws to the extent of conflict and contained a savings clause.

Section 2 of the 1971 amendatory act repealed conflicting laws and contained a severability provision.

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing §§ 2a and 2b of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

#### Art. 4494n-1. Validating Organization and Creation of County-wide Hospital Districts in Counties of 190,000 or More and Galveston County

Sec. 1. The organization and creation of all county-wide hospital districts created or sought to be created by authority of Chapter 266, Acts of the Fifty-third Legislature of 1953 as amended by Chapter 257, Acts of the Fifty-fourth Legislature of 1955 (being Article 4494n, Vernon's Civil Statutes of Texas) and heretofore established or attempted to be established by the Commissioners Court of any county of the State of Texas are hereby ratified, validated and confirmed in all respects to the same extent and to like effect as if duly and legally established in the first instance. All acts of the Commissioners Courts of the counties of such districts in ordering an election or elections submitting to a vote of the qualified property taxpaying voters of the counties the following statutory proposition:

"The creation of a hospital district; providing for the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any City in said County for hospital purposes" are hereby ratified, validated and confirmed. Such election or elections and all acts of the Commissioners Courts in such counties in declaring the results thereof are hereby ratified, validated and confirmed. The fact that by inadvertence or oversight any act was omitted by the Commissioners Court or any official of any such county in ordering an election or elections or in giving sufficient statutory notice thereof or in declaring the results thereof, shall in nowise invalidate any of such proceedings or the creation of the hospital district sought to be created by such proceedings.

Sec. 2. This Act shall apply only to hospital districts created or sought to be created within counties eligible under the provisions of Article IX, Section 4 of the Texas Constitution and the aforementioned Article 4494n, Vernon's Civil Statutes of Texas, and in which an election has been held on the voting proposition specified in Section 1 hereof which resulted in the adoption of said proposition by a majority of the vote of the qualified property taxpaying voters in the county participating in said election.

Sec. 3. This Act shall not apply to any hospital district which is now involved in litigation in any district court of this State, the Court of Civil Appeals, or the Supreme Court of Texas, at the effective date of this Act, in which litigation the validity of the organization or creation of such hospital district is attacked, if such litigation is ultimately determined against the validity of the organization or creation of the hospital district.

[Acts 1959, 56th Leg., p. 10, ch. 5.]

**Art. 4494n-2. Sale and Lease Back of Land, Buildings, Equipment, etc. for Hospital District Purposes**

Sec. 1. The commissioners court of every county wherein a Hospital District exists created by Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953, as amended,<sup>1</sup> is hereby authorized to sell land, buildings, facilities, or equipment or personal property for the purpose of entering into contracts, to lease or to construct, repair, renovate, improve, or enlarge or to rent buildings, land, facilities, equipment, or services from others for any hospital district purposes and to pay the regular monthly utility bills for such land, buildings, facilities, equipment or services so contracted, leased, or rented, such as electricity, gas, and water; and when in the opinion of a majority of the commissioners court of a county such facilities, equipment, and services are essential to the proper administration of such agencies of the county, said court is hereby specifically authorized to pay for same and for the regular monthly utility bills for such officers out of the county's general fund by warrant as in the payment of other obligations of the county.

Sec. 2. Provided that all construction projects originated or initiated under the terms of this Act, shall be let by contract, which contract shall contain the prevailing wage for all mechanics, laborers, and persons employed in the construction of such project. The commissioners court of Tarrant County shall determine and set the prevailing wage which shall be the same prevailing wage set by the commissioners court of Tarrant County on all construction projects involving the expenditure of county funds.

Sec. 3. All actions, proceedings, orders, and contracts for such sale, rental, lease, or utility bills for such purposes as stated in Section 1 hereof, made and entered into by any commissioners courts of this state, pursuant to which such service has been rendered, are hereby validated, confirmed, and declared to be in full force and effect, notwithstanding any irregularity thereof prior to the enactment of this Act.

Sec. 4. Provided further, that upon or prior to the expiration of the number of terms of years as set forth in any such contract, and when in the opinion of a majority of the commissioners court of such county the stated price is a reasonable price within the judgment of a majority of said court, such facilities may be purchased and become the property of said county and be paid for out of the general fund.

[Acts 1969, 61st Leg., 2nd C.S., p. 67, ch. 15, eff. Sept. 19, 1969.]

<sup>1</sup> Article 4494n.

Section 5 of the 1969 Act was a severability provision.

**Art. 4494n-3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000**

Sec. 1. All proceedings and actions had and taken in the creation of any hospital district created under the provisions of Article IX, Section 9 of the Constitution of Texas, with a population of less than 40,000 according to the last preceding federal census, the appointment or election of directors or the governing body of such districts, and all proceedings and actions had and taken by the board of directors or governing body of such districts in organizing, selecting officers, tax elections, voting, authorizing, selling, and issuing bonds of such districts and all proceedings and actions relating to any of the foregoing, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that any of the aforementioned proceedings and actions may not in all respects have been had in accordance with statutory provisions.

Sec. 2. The creation, organization, and the tax election of all of such hospital districts and all proceedings relating thereto are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that same may not in all respects have been accomplished in accordance with statutory provisions.

Sec. 3. All bonds, including tax and revenue bonds, voted or authorized but undelivered bonds, as well as outstanding bonds authorized, approved, sold, or issued of any hospital district, and all elections at which bonds were voted for any purpose, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding the fact that the governing body of such district may have failed to comply with all statutory requirements and notwithstanding that any election held by any such district may not in all respects have been ordered and held in accordance with statutory provisions. When the attorney general has approved such bonds and they have been registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, they shall be binding, legal, valid, and enforceable obligations of any such district, and said bonds shall be incontestable. Provided, however, that, with respect to bonds required by law to be authorized at an election held within any such district, this Act shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the votes cast by the qualified voters in the district, voting thereat, were in favor of the issuance of the bonds.

Sec. 4. This Act shall not be construed as validating any proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity thereof.

Sec. 5. If any word, phrase, sentence, or portion of this Act is for any reason held unconstitutional,



the unconstitutionality thereof shall not affect the remaining words, phrases, sentences, or portions of the Act.

[Acts 1977, 65th Leg., p. 845, ch. 316, eff. May 30, 1977.]

**Art. 4494o. Public Hospital Districts; Counties of 75,000 or Less**

**Establishing of Districts; Powers of Districts**

Sec. 1. The Commissioners Courts may establish one or more Public Hospital Districts in their respective counties in the manner provided by this Act, which said districts shall be empowered to own and operate hospitals and to supply hospital services for the residents of such districts and other persons. Such districts may or may not include villages, towns, and municipal corporations, or any portion thereof, but no land shall at the same time be included in more than one Public Hospital District created hereunder. It is provided, however, that no such district shall be formed unless the assessed valuation of all property in such district shall exceed Twenty-five Million Dollars (\$25,000,000.00), within a county having an assessed valuation of not less than Two Hundred Million Dollars (\$200,000,000.00), nor shall any such district be created in counties having in excess of 75,000 population according to the then next preceding federal census.

**Petition for Election; Tax Levy; Bond Issue**

Sec. 2. When it is proposed to establish a Public Hospital District as above provided, a petition praying for an election therefor, signed by not less than five per cent (5%) of the qualified taxpaying voters of the proposed territory, shall be presented to the Commissioners Court of the county in which the proposed district is situated, stating the boundaries of the proposed district, the public necessity therefor, and designating a name for such district, which shall include the name of the county. Said petition may also incorporate therein a request for the Commissioners Court, in the event an election is ordered for the creation of such district, to submit at the same election the question of levying a tax for the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, in the event same is created, and/or the bonds to be issued for the construction and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection.

**Cash Deposit with Petition; Disposition**

Sec. 3. Said petition shall be accompanied by Two Hundred Dollars (\$200.00) in cash, which shall be deposited with the clerk of said court, and by him held until after the results of the election for the creation of the district and issuance of bonds is officially made known. If said election is in favor of the establishment of said district, then the clerk

shall return said deposit to the petitioners, their agent or attorney. If said election is against the establishment of such district, then the clerk shall pay out of said deposit upon vouchers approved and signed by the County Judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance shall be returned to the petitioners, their agent or attorney.

**Hearing on Petition; Time for Hearing; Notice**

Sec. 4. At the same session when said petition is presented, the court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty (30) days nor more than sixty (60) days from the presentation of the said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and other order of the court thereon for twenty (20) days prior to the election in five public places in said county, one at the courthouse door, and four within the limits of the district.

**Order for Election; Prerequisites; Questions Submitted**

Sec. 5. If at the hearing, the court finds that such petition has been signed by the requisite number of qualified taxpaying voters, correctly describes the boundaries of the proposed district, and otherwise conforms to the provisions of this Act, then the court shall so find and shall enter an order for an election to be held in the proposed district within a time not less than twenty (20) days and not more than thirty (30) days after such order is issued, to determine whether or not such Public Hospital District shall be created and formed; and in the event the petition for the creation of such Public Hospital District was accompanied by a request to submit the question of levying of a tax for the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, in the event same is created and/or bonds to be issued for the construction and/or equipment of hospital buildings and/or the acquisition of sites therefor, and to provide for the interest and sinking fund for such bonds by levying of such taxes as will be necessary in this connection, then such order shall also submit such question of levying a tax and/or issuing bonds according to the terms of said petition. Such order shall contain a description of the metes and bounds of such Public Hospital District to be formed, and shall fix the date of such election. A majority vote of the qualified taxpaying voters in said district voting in said election shall determine the question or questions submitted in said order.

**Canvass of Election Returns; Declaration and Entry of Results**

Sec. 6. Said Commissioners Court shall within ten (10) days after holding such election make a canvass of the returns and declare the results of the election. The court shall then enter an order in the minutes as to the results.

**Board of District Hospital Trustees; Election;  
Powers and Duties**

Sec. 7. Such Public Hospital District shall be governed, administered and controlled by and under the direction of a Board of five Public District Hospital Trustees elected at large from the Public Hospital District by the qualified voters of said district, it being provided that whenever an election is ordered for the creation of such district at the same election at which shall be determined the creation of such district, there shall also be submitted and voted upon the question of who shall be the Public District Hospital Trustees, in the event such district is created. The five candidates for Public District Hospital Trustees receiving the highest number of votes at such election shall be declared the Trustees of such Public District Hospital. Such Trustees so elected, when duly qualified hereunder, shall be the legal and rightful Public District Hospital Trustees for such district within the full meaning and purpose of this law. Such Trustees shall hold office until the next regular election for state and county officers and shall then and thereafter be elected every two years at each general election. Any candidate desiring to be voted upon as such first Trustee shall present a petition to the Commissioners Court not later than three days before the order authorizing the election is issued by the court, and shall be accompanied by a petition of not less than one hundred (100) of the qualified voters in such district, requesting that his name be placed on the ticket as a candidate for such Trustee. Said Board of Trustees shall adopt such rules, regulations, and bylaws as they may deem proper, and they shall have exclusive power to manage and govern said Public District Hospital and as such they shall constitute a body corporate by the name of "\_\_\_\_\_ County Public Hospital District No. \_\_\_\_\_" and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands and may perform other acts for the promotion of health in said district.

**Oath of Trustees**

Sec. 8. Before entering upon his duties, each Trustee shall take and subscribe before the County Judge an oath faithfully to discharge the duties of his office without favor or partiality, and to render a true account of his activities to the court whenever requested to do so. Such oath shall be filed by the clerk of the court and preserved as a part of the district records.

**Bond of Trustees**

Sec. 9. Each Trustee shall give a good and sufficient bond for Five Thousand Dollars (\$5,000.00) payable to the County Judge for the use and benefit of the district, conditioned upon the faithful performance of his duties.

**Compensation of Trustees; Expenses;  
Organization; Quorum; Seal**

Sec. 10. The Trustees shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder. The Trustees shall organize by electing one of their number chairman and one secretary, and such other officers as they may deem fit. Three Trustees shall constitute a quorum which shall be sufficient in all matters pertaining to the business of said district. All proceedings of the Board of Trustees shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. The Board of Trustees shall adopt an official seal.

**Superintendent and Other Officers**

Sec. 11. The Board of Trustees of such Public Hospital District shall appoint a superintendent and such other officers as they may deem necessary and fix the salary or other compensation to be received by each of them. All such appointments shall be for an indefinite time and may be removable at the will of the Board of Trustees. The superintendent shall be the chief administrative officer of the Public District Hospital and shall have control of administrative functions of said hospital. He shall be responsible to the Board of Trustees for the efficient administration of all affairs of the hospital. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the Board of Trustees. The superintendent shall be entitled to attend all meetings of the Board of Trustees and its committees and to take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote. Such Public Hospital District superintendent shall have power, and it shall be his duty:

1. To carry out the orders of the Board of Trustees, and to see that all the laws of the state pertaining to matters within the functions of his department are duly enforced;

2. To keep the Board of Trustees fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of his department, and to recommend to the Board of Trustees what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the Board of Trustees all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the Board of Trustees salaries of the employees of his office and a scale of salaries or wages to be paid for the different classes of service required by the district.

**Additional Bond Issue; Election**

Sec. 12. If the proceeds of the original bond issue shall be insufficient to complete the construc-

tion and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, or if the Trustees determine to provide for additional construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of same, the rate of interest of said bonds and the time for which they are to run. Said court shall thereupon order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the latest annual assessment thereof made for county taxation.

**Changes in Proposed District; Procedure; Notice**

Sec. 13. After the issuance of bonds is authorized the Trustees may make changes in said proposed Public District Hospital, additions, or betterments thereto, extensions thereof, or equipment therefor, which will be of advantage to the Public District Hospital, which changes will not increase the cost of such proposed project beyond the amount of bonds authorized. Such changes may be made by the Trustees by entering on the minutes a notation of such changes. Notice of such change or changes shall be given by publication of such notation with the book and page number of the minutes for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such district is situated.

**Record Book for Bonds; Inspection; Recording Fees**

Sec. 14. Before issuing any bonds hereunder, the court shall provide a well-bound book, in which a record shall be kept by the County Clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate of assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment, and upon the payment of any bond an entry thereof shall be made in said book. Said book shall at all times be open to inspection of all parties interested in said district either as taxpayers or bondholders. The County Clerk shall receive for his service in recording all bonds and other instruments of the district the same fees as provided by law for other like records.

**Bonds; Issuance; Procedure; Denominations; Interest Rate; Majority**

Sec. 15. All bonds issued hereunder shall be issued in the name of the district, signed by the County Judge and attested by the County Clerk, with the seal of the court affixed thereto. Such bonds shall be issued in denominations of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) each, and shall bear interest at not exceeding six per cent (6%) per

annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place, manner and conditions of their payment, and the rate of interest thereon, as may be determined and ordered by the court. No bonds shall be made payable more than thirty (30) years after the date thereof.

**Attorney General; Certification of Validity of Bonds**

Sec. 16. Before any bonds are offered for sale, the district shall forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the court levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of such district as such, including the series of bonds proposed, and the assessed value of property for the purpose of taxation as shown by the latest official assessment of the county, with such other information as the Attorney General may require. Such officer shall carefully examine said bonds, and if he shall find that they are issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such district, he shall so officially certify.

**Registration of Bonds by Comptroller; Prima Facie Evidence; Defenses Against Validity**

Sec. 17. When said bonds have been so approved, they shall be registered by the Comptroller in a book to be kept for that purpose, and the certificate of their approval shall be preserved of record for use in the event of litigation. Thereafter, said bonds shall be held prima facie valid and binding obligations in every action, suit or proceeding in which their validity is brought in question. In every suit to enforce the collection of said bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence as prima facie proof of the validity of such bonds, together with the coupons attached thereto. The only defense that can be offered against the validity of such bonds shall be forgery or fraud.

**Bond of County Judge; Payment of Premium**

Sec. 18. After the Public Hospital District bonds have been registered, the County Judge shall at once execute a good and sufficient bond, payable to the Trustees and approved by them, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. If said bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on said bond, which shall be paid out of the construction and maintenance fund upon presentation of the bill therefor to the Trustees. If there is any controversy as to the reasonableness of the amount claimed as such premium, such controversy may be determined by any court of competent jurisdiction. Said premium may be deducted by the Board of Trustees from the commission allowed the County Judge on the sale of bonds by him.

**Sale of Bonds; Disposition of Proceeds;  
District Funds**

Sec. 19. When the bonds have been registered, the County Judge shall, under the direction of the Commissioners Court, advertise and sell such bonds on the best terms and for the best price possible, not less than the par value and accrued interest. All money received from such sale shall be turned over as received by the County Judge to the County Treasurer and shall be by him placed to the credit of the district in the construction and maintenance fund thereof. The County Treasurer of the county in which such district is situated shall be the treasurer of the district, and all funds in the district shall be paid to him as such treasurer and shall be disbursed by him only by warrants drawn and signed by the chairman of the Board of Trustees, or such other officer of the district as may be selected and designated by the Board of Trustees. The County Treasurer shall maintain in the name of the Public Hospital District such funds as may be created by the Board of Trustees, and into which shall be placed such moneys as the Board of Trustees may by its resolution direct. All such Public Hospital District funds shall be deposited with the county depositories under the same resolutions, contracts and securities as are provided by statute for county depositories, and all interest collected on such hospital funds shall belong to such Public Hospital District.

**Tax Levy to Pay Bonds and Interest; Sinking Fund**

Sec. 20. When bonds have been voted, the court shall annually levy and cause to be assessed and collected taxes upon all property within the district, whether real, personal, or otherwise, and sufficient in amount to pay the interest on such bonds as it falls due, and to redeem such bonds at maturity. Such taxes when so collected shall be placed in the interest and sinking fund.

**Annual Report by Trustees**

Sec. 21. The Trustees shall annually, on or before the first day of June, prepare and file with the court a full detailed report of the condition of the Public District Hospital with an estimate of the probable cost of maintenance, operation, and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and accounts belonging to such district and a list of all lawful demands, debts, and obligations against the district. Such report shall be verified by the Trustees and carefully investigated and considered by the court before any levy of taxes is made under the succeeding section.

**Assessment and Collection of Taxes; Maximum  
Rate; Disposition**

Sec. 22. Following the investigation and consideration of said above report, the Commissioners Court shall cause to be assessed and collected taxes upon all property in the district, whether real, per-

sonal, or otherwise, sufficient to maintain, keep in repair, to preserve and operate the Public District Hospital, and to pay all legal, just, and lawful debts, damages, and obligations against such district. Such levy shall never, in any one year, exceed two-tenths of one per cent ( $\frac{2}{10}$  of 1%) of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund.

**Sale of Bonds Not Required for Purpose for  
Which Voted**

Sec. 23. If any bonds remain which are not required for the purpose for which they were voted, then with the consent of the Commissioners Court duly made of public record, such bonds or a part thereof may be sold and the proceeds of the sale thereof may be placed in the construction and maintenance fund and used for the purpose stated in the section next preceding.

**County Tax Assessor; Powers and Duties; Board  
of Equalization**

Sec. 24. The county tax assessor-collector shall assess and collect taxes for the district.

Secs. 25 to 28. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

**Elections as to Separate Officers for District; Notice**

Sec. 29. After the establishment of a district, and upon the petition of not less than five per cent (5%) of the qualified taxpaying voters thereof, the court may order an election to determine whether or not such district shall have a separate tax assessor and collector. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the said Trustees shall appoint a suitable person as assessor and collector.

**County Treasurer's Duties**

Sec. 30. The County Treasurer shall open an account with the district and keep an accurate account of all money received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two members of the Board of Trustees. He shall carefully preserve on file all orders for the payment of money, and as often as required by the Trustees or the court, he shall render a correct account to them of all matters pertaining to the financial condition of the district.

**Compensation of Treasurer**

Sec. 31. The treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district, and one-eighth of one per cent upon all money by him paid out upon the order of the district. He shall not be entitled to any commissions on any district money received by him from his predecessor in office.

**Payment of Obligations Incurred in Establishing  
District; Sources**

Sec. 32. After the establishment of a Public Hospital District all legal and just expenses, debts, and obligations other than bonds and interest thereon arising and created after the filing of the original petition and necessarily incurred in the creation, establishing, operation, and maintenance of such Public District Hospital shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all money, effects, property, and proceeds received by such district from all sources, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it falls due and the payment of bonds at maturity. Said tax collections shall be placed in and paid out of the interest and sinking fund of such district for such purposes, and such fund may be invested for the benefit of the district in such bonds and securities as the Attorney General may approve. Such funds shall be held for the respective purposes for which they were created, and if money is improperly paid out of either, the Commissioners Court may cause the County Treasurer to make the necessary transfer of such amount in the district accounts to restore the fund so improperly used.

**Powers of Districts**

Sec. 33. All Public Hospital Districts organized under the provisions of this Act shall have the power:

(a) To construct, condemn and purchase, purchase and acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital facilities and systems for the maintenance of hospitals, buildings, structures and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the Board of Trustees and constituted in the same manner and by the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the State of Texas in the acquisition of property rights. It is provided, however, that no Public Hospital District shall have the right of eminent domain and the power of condemnation against any hospital, clinic, or sanatorium operated as a charitable, non-profit establishment or against a hospital, clinic or sanatorium operated by a religious group or organization, or against any privately owned or operated hospital or clinic, corporate or otherwise, in said district;

(b) To lease existing hospitals and equipment and/or other property used in connection therewith, and to pay such rental therefor as the Trustees shall deem proper; to provide hospital service for residents of said district in hospitals located outside

the boundaries of said district, by contract or in any other manner said Trustees may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospital and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper; provided, that it must at all times make adequate provision for the needs of the district, and residents of said district shall have prior rights to the available facilities of said hospitals, at rates set by the District Trustees;

(c) For the purposes aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance and operation of any such hospital, except as herein duly excepted in paragraph (a) of this section;

(d) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the public hospitals thereof, and to issue bonds as herein provided;

(e) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this Act;

(f) To sue and be sued in any court of competent jurisdiction; provided, that said Public Hospital District shall not be liable for negligence for any act of any officer, agent or employee of said district; and provided that all suits against the Public Hospital District shall be brought in the county in which the Public Hospital District is located;

(g) To make contracts, employ superintendents, attorneys and other technical or professional assistance and all other employees; to print and publish information or literature and to do all other things necessary to carry out the provisions of this Act.

**Contracts Exceeding \$2000; Competitive  
Bidding; Bond of Contractor**

Sec. 34. Any contract of any nature whatsoever entered into by the Board of Trustees on behalf of said Public Hospital District in excess of Two Thousand Dollars (\$2,000.00) shall be let to the lowest bidder after advertising the same in one or more newspapers of general circulation in this state once a week for four consecutive weeks, and by posting notices thereof for at least twenty-five (25) days in four public places in the county, one at the courthouse door and at least two within the district. Any person, firm, or corporation desiring to bid on any such contract shall, upon application to the Trustees, be furnished with a copy of the plans and

specifications or other data necessary in making said bid. All bids shall be in writing and sealed and delivered to the chairman of the Board of Trustees, with a certified check for at least five per cent (5%) of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any bid may be rejected if deemed too high. The contractor shall give bond in the amount of the contract price, payable to the Trustees, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract, and that in default thereof he will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the Board of Trustees.

[Acts 1957, 55th Leg., p. 406, ch. 199. Amended by Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(t), 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing §§ 25 to 28 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 4494p. Optional Hospital District Law of 1957**

**Short Title**

Sec. 1. This Act shall be known and may be cited as the Optional Hospital District Law of 1957.

**Purpose**

Sec. 2. The purpose of this Act is to provide a method for establishment and administration of county-wide hospital districts, in addition to the method provided in Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended;<sup>1</sup> and this Act shall in no way be considered as an amendment to any existing hospital district law nor shall it in any way be construed or considered as a repeal of any existing laws, but shall be cumulative of any and all existing laws providing for the creation and management of hospital districts. Any county may elect under which Act it desires to create its hospital district, and when it has so elected it shall be governed by the specific law under which it was so created unless and until changed by an election as provided in Section 18 of this Act.

<sup>1</sup> Article 4494n.

**Creation of District**

Sec. 3. (a) Any county authorized to establish a hospital district pursuant to Section 4 of Article IX of the Constitution of Texas, that does not own or operate, or that does own and operate a hospital or hospital system, by itself or jointly with a city, for indigent and needy persons, may be constituted a hospital district as hereinafter set out, and may take over the hospital or hospital system, either owned separately by a county or jointly with a city, or may provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to the indigent and needy persons residing in the hospital district; provided, however, that such hospital district shall not be created unless and until an

election is duly held in the county for such purpose, which election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property tax-paying voters, to be held not less than thirty days from the time the election is ordered by the Commissioners Court.

(b) At the time the order for the holding of such election is entered by the Commissioners Court, the Commissioners Court shall determine the amount of tax needed for the operation and maintenance of such hospital system and the retirement of any outstanding bonded indebtedness which is to be assumed by such district not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) assessed valuation.

(c) At the election there shall be submitted to the qualified property taxpaying voters the proposition of whether or not a hospital district shall be created in the county; and a majority of the qualified property taxpaying voters participating in said election voting in favor of the proposition shall be necessary. The ballots shall have printed thereon:

“FOR the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount determined by order of the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount determined by order of the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation.”

If such county or city, either or both of them, has any outstanding bonds theretofore issued for hospital purposes (which by the provisions of Section 6 of this Act are required to be assumed by the hospital district), then the ballots for such election shall, instead of the foregoing, have printed thereon:

“FOR the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount of tax determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes”; and

“AGAINST the creation of a hospital district under the Optional Hospital District Law of 1957; providing for the levy of a tax not to exceed (the amount of tax determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation; and providing for the assumption by such district of all outstanding bonds heretofore issued by \_\_\_\_\_ County, and by any city in said county for hospital purposes.”

**Taxes of District; Deposit of Taxes and Other Income**

Sec. 4. (a) The Commissioners Court of any county which has voted to create a hospital district shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the district, a tax of not to exceed the amount determined by the Commissioners Court in calling the election and so stated on the ballot in which the district was approved, on the One Hundred Dollars (\$100) valuation of all taxable property within the hospital district, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the hospital district for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

(b) The tax so levied shall be collected on all property subject to hospital district taxation by the assessor and collector of taxes for the county. All income of the hospital district shall be deposited in the district depository. Warrants against hospital district funds shall not require the signature of the county clerk.

(c) The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the hospital district is established, for the purpose of securing funds to initiate the operation of the hospital district, and to pay assumed bonds.

(d) After the creation of such district the tax levy so approved in the creation of the district shall not be increased unless and until an election is duly held in the county for such purpose, which election may be initiated by the Commissioners Court upon its own motion or upon a petition of one hundred (100) resident qualified property taxpaying voters, to be held not less than thirty (30) days from the time the election is ordered by the Commissioners Court. In calling the election the Commissioners Court shall determine the amount of increase in the tax levy needed for the proper maintenance of such hospital system, provided the increase together with the existing levy for the district shall not exceed seventy-five cents (75¢) in any one year. There shall be submitted to the qualified property taxpaying voters the proposition of whether or not the tax levy for the hospital district shall be increased, and a majority of the qualified property taxpaying voters participating in the election voting in favor of the proposition shall be necessary. The ballot shall have printed thereon:

“FOR the increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST the increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation.”

(e) Increases in such hospital district tax levy may be had in the above manner from time to time so long as the total levy never exceeds seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation.

**Bonds of District; Taxes to Pay Bonds and Interest; Sinking Funds**

Sec. 5. (a) The Commissioners Court shall have the power and authority to issue and sell as the obligations of such hospital district, and in the name and upon the faith and credit of such hospital district, bonds for the acquisition, purchase, construction, equipment and enlargement of the hospital or hospital system, and for any or all of such purposes; provided, that a sufficient tax shall be levied to create an interest and sinking fund to pay the interest and principal as same matures, but such tax together with any other taxes levied for the district shall not exceed seventy-five cents (75¢) in any one year. Such bonds shall be executed in the name of the hospital district and on its behalf by the county judge of the county within which the hospital district is created, and counter-signed by the county clerk, and shall be subject to the same requirements in the manner of approval thereof by the Attorney General of the State of Texas and the registration thereof by the Comptroller of Public Accounts of the State of Texas as are by law provided for such approval and registration of bonds of such county; and the approval of such bonds by the Attorney General shall have the same force and effect as is by law given to his approval of bonds of such county.

(b) No bonds shall be issued by such hospital district (except refunding bonds) until authorized by a majority vote of the legally qualified property taxpaying voters, residing in such hospital district, voting at an election called and held in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of the State of Texas (1925), as amended,<sup>1</sup> relating to county bonds. Such election may be called by the Commissioners Court at any time it deems advisable except that no election shall be held within two (2) years after a previous election. The same persons shall be responsible for the conduct of such election and the arrangement of all details thereof as the persons charged therewith in connection with other county-wide elections. The cost of any such election shall be a charge upon the hospital district and its funds; and the hospital district shall make provision for the payment thereof before the Commissioners Court shall be required to order such an election.

(c) In the manner hereinabove provided, the bonds of the hospital district may, without the necessity of any election therefor, be issued for the

purpose of refunding and paying off any bonded indebtedness theretofore assumed by the hospital district and any bonds theretofore issued by the hospital district. Such refunding bonds may be sold and the proceeds thereof applied to the payment of any such outstanding bonds or may be exchanged in whole or in part for not less than a like amount of said outstanding bonds and interest matured thereon, but unpaid; provided the average interest cost per annum on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, shall not exceed the average interest cost per annum so computed upon the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of such proceeds. In the foregoing computations, any premium or premiums required to be paid upon the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the hospital district of the refunding bonds.

(d) If the city and the county, or either of them, has voted bonds to provide hospital facilities, but such bonds have not been sold at the date of the creation of the hospital district, the authority for such bonds shall be canceled, and they shall not be sold.

<sup>1</sup> Article 701 et seq.

#### County or City Property or Funds; Transfer to District

Sec. 6. (a) Any lands, buildings or equipment that may be jointly or separately owned by such county and city, and by which medical services or hospital care, including geriatric care, are furnished to the indigent or needy persons of the city and county, shall become the property of the hospital district, and title thereto shall vest in the hospital district; and any funds of the city and county, or either, which are the proceeds of any bonds assumed by the hospital district, as hereby provided, shall become the funds of the hospital district, and title thereto shall vest in the hospital district; and there shall vest in the hospital district and become the funds of the hospital district the unspent portions of any funds theretofore set up or appropriated by budget or otherwise by the city or the county, or either of them, for the support and maintenance of the hospital facilities for the year within which the hospital district comes into existence, thereby providing such hospital district with funds with which to maintain and operate such facilities for the remainder of such year. All obligations under contract legally incurred by the city or county, or either of them, for the building of, or the support and maintenance of, hospital facilities, prior to the creation of the district but outstanding at the time of the creation of the district, shall be assumed and discharged by it without prejudice to the rights of third parties. As soon as practicable after the

declaration of the result of the election, the board of managers of the existing hospital system shall turn over all records, property and affairs of the hospital system to the board of managers of the hospital district and shall cease to exist as a hospital system board of managers.

(b) Any outstanding bonded indebtedness incurred by the city or county, either or both of them, in the acquisition of lands, buildings and equipment for such hospital system, or in the construction and equipping of such hospital facilities, together with any other outstanding bonds issued by either of them for hospital purposes, and the proceeds of which are in whole or in part still unspent, shall be assumed by the hospital district and become the obligation of the hospital district; and the city or county, either or both of them, that issued such bonds, shall be by the hospital district relieved of any further liability for the payment thereof, or for providing interest and sinking fund requirements thereon; provided that nothing herein contained shall limit or affect any of the rights of any of the holders of such bonds against the city or the county, as the case may be, in the event of default in the payment of the principal or interest on any of such bonds in accordance with their respective terms.

(c) As soon as the hospital district is created and authorized at the election hereinabove provided, the Commissioners Court acting for the county and the city governing board acting for the city shall execute and deliver to the board of managers of the hospital district an instrument in writing conveying to the hospital district the hospital property, including lands, buildings and equipment owned by the county or the city or jointly owned by the county and the city; and shall transfer to the hospital district the funds hereinabove provided to become vested in the hospital district, upon being furnished the certificate of the chairman of the board to the fact that a depository for the district's funds has been selected and has qualified; which funds shall, in the hands of the hospital district and of its board of managers, be used for all or any of the same purposes as, and for no other purposes than, the purposes for which the county or the city transferring such funds could lawfully have used the same had they remained the property and funds of such county or city.

#### Board of Managers

Sec. 7. (a) The Commissioners Court is hereby designated as the board of managers of the hospital district with the county judge as chairman thereof and they shall serve in this capacity without any compensation other than that provided by law for county judges and commissioners, and whose duty shall be to manage, control and administer the hospital or hospital system of the hospital district. The board of managers shall have the power and authority to sue and be sued and to promulgate rules and regulations for the operation of the hospital or hospital system.



(b) The board shall appoint a general manager, to be known as the administrator of the hospital district. The administrator shall hold office for a term not exceeding two (2) years, and shall receive such compensation as may be fixed by the board. The administrator shall be subject to removal at any time by the board. The administrator shall, before entering into the discharge of his duties, execute a bond payable to the district, in the amount of not less than Ten Thousand Dollars (\$10,000), conditioned that he shall well and faithfully perform the duties required of him, and containing such other conditions as the board may require. The administrator shall perform all duties which may be required of him by the board, and shall supervise all of the work and activities of the district, and have general direction of the affairs of the district, within such limitations as may be prescribed by the board. He shall be a person qualified by training and experience for the position of administrator.

(c) The board of managers shall have the authority to employ such doctors, technicians, nurses and other employees of every kind and character as may be deemed advisable for the efficient operation of the hospital or hospital system; provided that no contract of employment shall exceed the period of two years.

(d) The Commissioners Court as the board of managers of such district may include the employees of such district in any county employees' pension or retirement program now in existence or which may be created in the future for the benefit of such district's employees.

(e) The county clerk shall act as secretary to the board of managers and shall keep suitable records of all proceedings of each meeting of the board. The seal of the Commissioners Court of such county shall be the seal of the district and used in the authentication of all acts of the board.

#### **Powers of Commissioners Court; Duties of District, County Officers, Employees or Agents**

Sec. 8. The Commissioners Court shall have the power to prescribe the method and manner of making purchases and expenditures by and for the hospital district, and also shall be authorized to prescribe all accounting and control procedures. The hospital district shall pay all salaries and expenses necessarily incurred by the county or any of its officers and agents in performing any duties which may be prescribed or required under this section. It shall be the duty of any officer, employee or agent of such county to perform and carry out any function or service prescribed by the Commissioners Court hereunder.

#### **Assistant to Administrator**

Sec. 9. In the event of incapacity, absence or inability of the administrator to discharge any of the duties required of him, the board may designate an assistant to the administrator to discharge any duties or functions required of the administrator.

Such assistant or other persons shall give such bond and have such limitations upon his authority as may be fixed by the order of the board.

#### **Reports of Administrator; Budget**

Sec. 10. Once each year, as soon as practicable after the close of the fiscal year, the administrator of the hospital district shall report to the Commissioners Court, the State Board of Health and the State Comptroller a full sworn statement of all moneys and choses in action received by such administrator and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the district for the term. He shall prepare an annual budget which shall be subject to approval by the Commissioners Court. In like manner all budget revisions shall be subject to approval by the Commissioners Court.

#### **Eminent Domain**

Sec. 11. A hospital district organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the district, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by general law with respect to condemnation; provided that the district shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph numbered 2 in Article 3268, Revised Civil Statutes, 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Appeals, or to the Supreme Court.

#### **Depository for District; Selection**

Sec. 12. Within thirty (30) days after the creation of any district under this Act, the board of managers shall select a depository for the district in the manner provided by law for the selection of county depositories; and such depository shall be the depository of the district for a period of two (2) years thereafter, until its successor is selected and qualified. In the alternative, the board may elect to use the depository theretofore selected by the county.

#### **Inspection of Districts**

Sec. 13. All hospital districts established or maintained under the provisions of this Act shall be subject to inspection by any duly authorized repre-

sentative of the State Board of Health or any other state board hereafter created or designated to exercise supervision over hospitals, and resident officers shall admit such representatives into all hospital district facilities and give them access on demand to all records, reports, books, papers, and accounts pertaining to the hospital district.

#### Legal Representative of District

Sec. 14. It shall be the duty of the county attorney, district attorney or criminal district attorney, as the case may be, charged with the duty of representing the county in civil matters, to represent the hospital district in all legal matters; provided, however, that the board of managers shall be authorized at its discretion to employ additional legal counsel when the board deems advisable.

The hospital district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney or criminal district attorney, as the case may be, to pay all additional salaries and expenses incurred by such officer in performing the duties required of him by the district.

#### Medical and Hospital Care Assumed by District; Delinquent Taxes Owed to Cities and Counties

Sec. 15. (a) No county that has been constituted a hospital district, and no city therein, shall thereafter levy any tax for hospital purposes; and the hospital district shall be deemed to have assumed full responsibility for the furnishing of medical and hospital care for the needy and indigent persons residing in the hospital district.

(b) That portion of delinquent taxes owed cities and counties on levies for separate or joint city and county hospital systems, or for the payment of bonds issued by such systems, shall continue to be paid to the hospital district by the city and county as collected, and applied by the hospital district to the purposes for which such taxes originally were levied.

#### Patients; Inquiry as to Ability to Pay

Sec. 16. (a) The Commissioners Court as the board of managers for such hospital system shall by order duly entered in the record of the hospital district set forth in detail its definition of an indigent or needy person so as to determine who is qualified for admission to the facilities of the hospital district. Such order shall also state in detail under what basis any person shall be admitted on an emergency basis without regard to indigency and how long and on what basis such person shall be permitted to stay in such district facilities.

(b) The board shall have the right to set up such requirements of proof of indigency as it sees fit, including affidavits of inability to pay, and may employ such personnel as necessary for the purpose of handling admissions and determining the eligibility of admissions.

(c) Any person who makes a false statement for the purpose of obtaining admission to the hospital district facilities and who is able to pay for such hospital care shall be liable for such care and shall also be guilty of a misdemeanor and punishable by a fine not to exceed Two Hundred Dollars (\$200).

#### Donations, Gifts and Endowments for District; Payments by the State

Sec. 17. (a) The board of managers of the hospital district is authorized on behalf of the district to accept donations, gifts, and endowments for the hospital district, to be held in trust and administered by the board of managers for such purposes and under such directions, limitations, and provisions as may be prescribed in writing by the donor, not inconsistent with proper management and objects of the hospital district.

(b) The board of managers is expressly authorized to contract with the State for the receipt of any payments or grants which may be provided by the State for the care or treatment of hospital patients, and to receive any payments or grants which may be made by the State for the care and treatment of patients in the facilities of the hospital district.

#### Conversion of District

Sec. 18. (a) Any hospital district heretofore or hereafter created in accordance with Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended,<sup>1</sup> may be converted into a district subject to the provisions of this Act, or any district created in accordance with this Act may be converted into a district subject to the provisions of the said Chapter 266, in the following manner. Upon petition to the Commissioners Court by qualified property taxpaying voters of the district equal in number to five per cent (5%) of the property taxpayers of the county as shown by the current assessment rolls of the county, requesting the calling of an election on the question of conversion, the Commissioners Court within twenty (20) days after receipt of the petition shall order such election, to be held not less than thirty (30) days nor more than ninety (90) days from the time the election is ordered by the Commissioners Court. At the election there shall be submitted to the qualified property taxpaying voters of the district the proposition of whether or not the district is to be converted, and a majority of the qualified property taxpaying voters participating in the election shall determine the result thereof.

(b) If the election is on the question of conversion of a district created in accordance with this Act, the ballot shall have printed thereon:

"FOR conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100 valuation"; and

“AGAINST conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation.”

If the election is on the question of conversion of a district created in accordance with the said Chapter 266, at the time the order for holding such election is entered the Commissioners Court shall determine the amount of tax needed for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed by the district originally created (but excluding any bonds issued by the district); (2) providing for the operation and maintenance of the hospital or hospital system; and (3) making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor. If there are no outstanding bonds issued by the district, the ballot shall have printed thereon:

“FOR conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation.”

If there are outstanding bonds issued by the district, the ballot shall have printed thereon:

“FOR conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation”; and

“AGAINST conversion of the hospital district from a district operated under Chapter 266, Acts of the Fifty-third Legislature, Regular Session, as amended, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed seventy-five cents (75¢) on the One Hundred Dollars (\$100) valuation until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to

exceed (the amount determined by the Commissioners Court in its order calling the election) on the One Hundred Dollars (\$100) valuation.”

(c) If the proposition fails to carry at the election, no further election on the proposition shall be held for a period of two (2) years. If a majority of the qualified taxpaying voters participating in the election vote in favor of the proposition, the conversion shall become effective thirty (30) days after declaration of the result of the election. The identity of the district shall not be affected by the conversion, and the district shall be liable for all outstanding debts and obligations as fully as when originally assumed or incurred by it. However, any bonds voted by a district originally created under Chapter 266 which have not been issued on the date of the election for conversion shall not be issued and the authority for such bonds shall be canceled. Upon conversion of a district from one operated under Chapter 266 to one operated under this Act, the district shall not have the power to levy a tax in excess of the amount determined by the Commissioners Court in its order calling the election for any purposes other than providing a sinking fund for payment of interest on and principal of unpaid bonds issued by the district prior to the conversion.

(d) At any time after five (5) years from the date of a conversion, a further election on the question of reconversion may be held in the manner herein provided for the original conversion.

<sup>1</sup> Article 4494n.

[Acts 1957, 55th Leg., p. 1398, ch. 482. Amended by Acts 1979, 66th Leg., p. 2328, ch. 841, § 4(u), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 789, ch. 291, § 61, eff. Sept. 1, 1981.]

**Art. 4494q. Particular Hospital Districts**

[The hospital districts listed below have been created by special acts.]

**HOSPITAL DISTRICTS**

Name	Creation
Amarillo, City of	Acts 1957, 55th Leg., p. 298, ch. 136, amended by Acts 1971, 62nd Leg., p. 1172, ch. 275; Acts 1975, 64th Leg., p. 1178, ch. 439.
Angelina County	Acts 1977, 65th Leg., p. 1480, ch. 603.
Angleton-Danbury	Acts 1967, 60th Leg., p. 208, ch. 120, amended by Acts 1971, 62nd Leg., p. 1166, ch. 271.
Anson	Acts 1973, 63rd Leg., p. 1555, ch. 562.
Archer County	Acts 1963, 58th Leg., p. 349, ch. 133.
Atascosa County, Poteet	Acts 1965, 59th Leg., p. 1339, ch. 609.

Name	Creation	Name	Creation
Bailey County	Acts 1969, 61st Leg., p. 253, ch. 100, amended by Acts 1973, 63rd Leg., p. 3, ch. 3.	(County Commissioners Precincts Nos. 1, 2, 3)	Pre-Acts 1973, 63rd Leg., p. 466, ch. 203.
Blanco Memorial	Acts 1967, 60th Leg., p. 830, ch. 349, amended by Acts 1969, 61st Leg., p. 1078, ch. 354.	(County Commissioners Precinct No. 4)	Const. Art. 9, § 8.
Booker County	Acts 1963, 58th Leg., p. 999, ch. 411, amended by Acts 1973, 63rd Leg., p. 1402, ch. 541.		Acts 1959, 56th Leg., 1st C.S., p. 22, ch. 9, amended by Acts 1961, 57th Leg., p. 114, ch. 61 and Acts 1961, 57th Leg., p. 798, ch. 365, repealed by Acts 1973, 63rd Leg., p. 465, ch. 202, § 24 (see, now, DeLeon).
Brazoria, West Columbia	Acts 1963, 58th Leg., p. 808, ch. 310.	Concho County	Acts 1971, 62nd Leg., p. 2680, ch. 877.
Brazoria County Community	Acts 1979, 66th Leg., p. 935, ch. 427, amended by Acts 1983, 68th Leg., p. 5583, ch. 1054.	Corrigan	Acts 1971, 62nd Leg., p. 1420, ch. 396, amended by Acts 1983, 68th Leg., p. 296, ch. 62.
Brooks County	Acts 1963, 58th Leg., p. 1358, ch. 516.	Cuero, De Witt County	Acts 1965, 59th Leg., p. 625, ch. 310.
Burleson County	Acts 1977, 65th Leg., p. 1807, ch. 726.	Dallam-Hartley Counties	Acts 1979, 66th Leg., p. 241, ch. 128.
Calhoun County	Acts 1981, 67th Leg., p. 486, ch. 205.	Damon	Acts 1963, 58th Leg., p. 808, ch. 310.
Cameron County	Acts 1969, 61st Leg., p. 1934, ch. 646.	Darrouzett	Acts 1973, 63rd Leg., p. 1390, ch. 539.
Caprock	Acts 1963, 58th Leg., p. 642, ch. 238.	Deaf Smith County	Acts 1971, 62nd Leg., p. 663, ch. 59.
Castro County	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, ch. 424.	DeLeon	Acts 1973, 63rd Leg., p. 456, ch. 202.
Childress County	Acts 1965, 59th Leg., p. 1483, ch. 647.	Denton County	Acts 1969, 61st Leg., p. 677, ch. 230.
Chillicothe	Acts 1979, 66th Leg., p. 117, ch. 74.	De Witt County, Cuero	Acts 1965, 59th Leg., p. 625, ch. 310.
Cisco	Acts 1965, 59th Leg., p. 81, ch. 30, amended by Acts 1981, 67th Leg., p. 2534, ch. 673.	Dickens County	Acts 1969, 61st Leg., p. 2607, ch. 865.
Cochran Memorial	Acts 1967, 60th Leg., p. 1113, ch. 494.	Donley County	Acts 1969, 61st Leg., p. 2035, ch. 699, amended by Acts 1973, 63rd Leg., p. 10, ch. 8.
Collingsworth County	Acts 1967, 60th Leg., p. 578, ch. 262.	Earth-Springlelake	Acts 1967, 60th Leg., p. 283, ch. 134, amended by Acts 1969, 61st Leg., p. 12, ch. 5, § 1.
Colorado City	Acts 1967, 60th Leg., p. 1065, ch. 466, amended by Acts 1973, 63rd Leg., p. 820, ch. 371.	East Coke County	Acts 1969, 61st Leg., p. 1485, ch. 444, amended by Acts 1977, 65th Leg., p. 662, ch. 249.
Comanche County (County Commissioners Precincts Nos. 1, 2, 3)	Acts 1973, 63rd Leg., p. 466, ch. 203.	East Wise County	Acts 1969, 61st Leg., p. 1538, ch. 467.
		Edna	Acts 1967, 60th Leg., p. 355, ch. 172, repealed by Acts 1979, 66th Leg., p. 598, ch. 275, § 24 (see, now, Jackson).
		Electra	Acts 1973, 63rd Leg., p. 1348, ch. 513.

Name	Creation	Name	Creation
Elgin	Acts 1979, 66th Leg., p. 6, ch. 6.	Higgins	Acts 1975, 64th Leg., p. 2008, ch. 666.
Fannin County	Acts 1969, 61st Leg., p. 1641, ch. 513.	Hood County	Acts 1971, 62nd Leg., p. 2594, ch. 852, amended by Acts 1977, 65th Leg., p. 312, ch. 145.
Farwell	Acts 1975, 64th Leg., p. 169, ch. 73.	Hopkins County	Const. Art. 9, § 11. Acts 1961, 57th Leg., 1st C.S., p. 165, ch. 43, amended by Acts 1965, 59th Leg., p. 18, ch. 9.
Fisher County	Acts 1973, 63rd Leg., p. 1236, ch. 448, amended by Acts 1975, 64th Leg., p. 807, ch. 313.	Hunt County	Acts 1965, 59th Leg., p. 730, ch. 344, repealed by Acts 1967, 60th Leg., p. 230, ch. 125, § 20.
Foard County	Acts 1969, 61st Leg., p. 2088, ch. 717. Acts 1983, 68th Leg., p. 4262, ch. 680.	Jackson County	Acts 1979, 66th Leg., p. 586, ch. 275.
Follett	Acts 1975, 64th Leg., p. 2020, ch. 668.	Jasper	Acts 1963, 58th Leg., p. 96, ch. 56, amended by Acts 1963, 58th Leg., p. 198, ch. 109.
Gainesville	Acts 1975, 64th Leg., p. 489, ch. 211.	Jefferson County	Const. Art. 9, § 5. Acts 1959, 56th Leg., p. 987, ch. 462. Acts 1963, 58th Leg., p. 1199, ch. 479, repealed by Acts 1967, 60th Leg., p. 1120, ch. 495, § 20.
Garza	Acts 1967, 60th Leg., p. 1132, ch. 502.	Karnes County	Acts 1969, 61st Leg., p. 1764, ch. 591, amended by Acts 1973, 63rd Leg., p. 147, ch. 78; Acts 1981, 67th Leg., p. 994, ch. 375.
Goliad County	Acts 1981, 67th Leg., p. 2287, ch. 560.	Kimble County	Acts 1971, 62nd Leg., p. 2662, ch. 873.
Gonzales County	Acts 1975, 64th Leg., p. 446, ch. 191.	Kleberg County	Acts 1977, 65th Leg., p. 1359, ch. 540.
Grapeland	Acts 1971, 62nd Leg., p. 1628, ch. 455.	Knox County	Acts 1967, 60th Leg., p. 546, ch. 241.
Gray County	Acts 1965, 59th Leg., p. 919, ch. 454.	Lamar County	Const. Art. 9, § 6. Acts 1959, 56th Leg., p. 917, ch. 422, amended by Acts 1961, 57th Leg., p. 19, ch. 10; Acts 1967, 60th Leg., p. 1078, ch. 472.
Greenville	Acts 1967, 60th Leg., p. 230, ch. 125, amended by Acts 1969, 61st Leg., p. 2554, ch. 853; Acts 1981, 67th Leg., p. 2470, ch. 642.	Lavaca	Acts 1975, 64th Leg., p. 23, ch. 16, amended by Acts 1983, 68th Leg., p. 436, ch. 89.
Groveton	Acts 1971, 62nd Leg., p. 2689, ch. 878.	Lipscomb	Acts 1975, 64th Leg., p. 2014, ch. 667.
Hamlin	Acts 1973, 63rd Leg., p. 1545, ch. 561.	Livingston	Acts 1971, 62nd Leg., p. 1430, ch. 397, amended by Acts 1983, 68th Leg., p. 4470, ch. 721.
Hansford County	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, ch. 424. Acts 1971, 62nd Leg., p. 2650, ch. 872.	Lockney General	Acts 1973, 63rd Leg., p. 110, ch. 58.
Hardeman County	Acts 1979, 66th Leg., p. 462, ch. 214.	Lubbock County	Acts 1967, 60th Leg., p. 1095, ch. 484.
Harrison County	Acts 1969, 61st Leg., p. 1022, ch. 333.	Lynn County	Acts 1967, 60th Leg., p. 122, ch. 66.
Haskell County	Acts 1967, 60th Leg., p. 1177, ch. 528.		
Hemphill County	Acts 1979, 66th Leg., p. 917, ch. 424.		
Henderson County	Acts 1971, 62nd Leg., p. 2669, ch. 874.		
Hidalgo County	Const. Art. 9, § 7. Acts 1959, 56th Leg., p. 1027, ch. 475.		

Name	Creation	Name	Creation
Mabank-Kemp	Acts 1973, 63rd Leg., p. 26, ch. 22, amended by Acts 1977, 65th Leg., p. 2137, ch. 854.	Nocona	Acts 1971, 62nd Leg., p. 2637, ch. 868.
Marion County	Acts 1967, 60th Leg., p. 394, ch. 184.	North Cherokee County	Acts 1967, 60th Leg., p. 471, ch. 215.
Martin County	Acts 1967, 60th Leg., p. 1774, ch. 674.	North Jefferson County	Acts 1967, 60th Leg., p. 1120, ch. 495.
Mason County	Acts 1983, 68th Leg., p. 5540, ch. 1046.	North Runnels County	Acts 1969, 61st Leg., p. 601, ch. 206.
Matagorda County	Acts 1965, 59th Leg., p. 106, ch. 41.	North Wheeler County	Acts 1963, 58th Leg., p. 703, ch. 260.
Mathis	Acts 1965, 59th Leg., p. 945, ch. 460.	Ochiltree County	Const. Art. 9, § 11. Acts 1961, 57th Leg., p. 193, ch. 103, amended by Acts 1963, 58th Leg., p. 484, ch. 173; Acts 1965, 59th Leg., p. 121, ch. 49; Acts 1967, 60th Leg., p. 963, ch. 424.
Mathis	Acts 1965, 59th Leg., p. 945, ch. 460.	Olton	Acts 1969, 61st Leg., p. 2151, ch. 746.
Maverick County	Acts 1965, 59th Leg., p. 360, ch. 172, amended by Acts 1981, 67th Leg., p. 347, ch. 136.	Palo Pinto County	Acts 1965, 59th Leg., p. 201, ch. 84, amended by Acts 1965, 59th Leg., p. 1140, ch. 536; Acts 1983, 68th Leg., p. 1149, ch. 259.
McCamey County	Acts 1967, 60th Leg., p. 385, ch. 183.	Parker County	Acts 1965, 59th Leg., p. 93, ch. 35, amended by Acts 1975, 64th Leg., p. 1186, ch. 444; Acts 1981, 67th Leg., p. 2081, ch. 472.
Menard County	Acts 1975, 64th Leg., p. 2001, ch. 665, amended by Acts 1977, p. 1751, ch. 700.	Polk County	Acts 1967, 60th Leg., p. 1229, ch. 558.
Merkel	Acts 1967, 60th Leg., p. 170, ch. 90.	Poteet, Atascosa County	Acts 1965, 59th Leg., p. 1339, ch. 609.
Mid-Crosby County	Acts 1963, 58th Leg., p. 337, ch. 129.	Presidio County	Acts 1965, 59th Leg., p. 1455, ch. 643.
Midland County	Acts 1977, 65th Leg., p. 232, ch. 112, amended by Acts 1979, 66th Leg., p. 1012, ch. 446.	Ranger	Acts 1969, 61st Leg., p. 238, ch. 93.
Montgomery County	Acts 1977, 65th Leg., p. 678, ch. 258, amended by Acts 1981, 67th Leg., p. 2088, ch. 479.	Rankin County	Acts 1967, 60th Leg., p. 375, ch. 182.
Moore County	Acts 1969, 61st Leg., p. 859, ch. 287.	Reagan	Acts 1977, 65th Leg., p. 45, ch. 29.
Motley County	Acts 1965, 59th Leg., p. 965, ch. 465, amended by Acts 1967, 60th Leg., p. 724, ch. 304.	Red River County	Acts 1971, 62nd Leg., p. 1566, ch. 424.
Moulton	Acts 1975, 64th Leg., p. 1988, ch. 662.	Rising Star	Acts 1967, 60th Leg., p. 996, ch. 432.
Muenster	Acts 1965, 59th Leg., p. 984, ch. 477, amended by Acts 1967, 60th Leg., p. 1206, ch. 541; Acts 1975, 64th Leg., p. 498, ch. 212.	Rufugio County Memorial	Acts 1977, 65th Leg., p. 11, ch. 6, amended by Acts 1981, 67th Leg., p. 2413, ch. 614.
Nacogdoches County	Acts 1967, 60th Leg., p. 987, ch. 431, amended by Acts 1977, 65th Leg., p. 318, ch. 151; Acts 1983, 68th Leg., p. 1545, ch. 293.	Sabine County	Acts 1975, 64th Leg., p. 1829, ch. 565, amended by Acts 1977, 65th Leg., p. 1177, ch. 450.
Nixon	Acts 1965, 59th Leg., p. 1461, ch. 644, amended by Acts 1975, 64th Leg., p. 830, ch. 321.	San Augustine City-County	Acts 1971, 62nd Leg., p. 8, ch. 5.
		Schleicher County	Acts 1967, 60th Leg., p. 73, ch. 38, amended by Acts 1973, 63rd Leg., p. 853, ch. 387.

Name	Creation
Seminole .....	Acts 1971, 62nd Leg., p. 854, ch. 102.
Shackelford County .....	Acts 1977, 65th Leg., p. 298, ch. 140.
Sinton-Odem .....	Acts 1965, 59th Leg., p. 954, ch. 461.
South Eastland County .....	Acts 1969, 61st Leg., p. 1720, ch. 569, amended by Acts 1971, 62nd Leg., p. 893, ch. 122.
South Limestone .....	Acts 1969, 61st Leg., p. 1903, ch. 638.
South Randall County .....	Acts 1971, 62nd Leg., p. 1017, ch. 200.
South Wheeler County .....	Acts 1963, 58th Leg., p. 711, ch. 261.
Stamford .....	Acts 1965, 59th Leg., p. 255, ch. 108, amended by Acts 1973, 63rd Leg., p. 1567, ch. 563.
Starr County .....	Acts 1973, 63rd Leg., p. 243, ch. 118, amended by Acts 1977, 65th Leg., p. 35, ch. 18.
Stonewall County .....	Acts 1963, 58th Leg., p. 89, ch. 54.
Stratford .....	Acts 1969, 61st Leg., p. 1552, ch. 470.
Sugar Land Community .....	Acts 1979, 66th Leg., p. 128, ch. 76.
Sutton County .....	Acts 1983, 68th Leg., p. 5556, ch. 1047.
Sweeny .....	Acts 1963, 58th Leg., p. 361, ch. 135, amended by Acts 1967, 60th Leg., p. 862, ch. 367; Acts 1973, 63rd Leg., p. 212, ch. 95.
Swisher .....	Acts 1965, 59th Leg., p. 41, ch. 16.
Taft .....	Acts 1965, 59th Leg., p. 1236, ch. 567, amended by Acts 1973, 63rd Leg., p. 1386, ch. 534.
Teague .....	Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 39; Acts 1975, 64th Leg., p. 1224, ch. 457. Acts 1983, 68th Leg., p. 5585, ch. 1055.
Terry .....	Acts 1965, 59th Leg., p. 1502, ch. 653, amended by Acts 1979, 66th Leg., p. 2204, ch. 838.
Texhoma Memorial .....	Acts 1967, 60th Leg., p. 954, ch. 422.
Titus County .....	Acts 1963, 58th Leg., p. 771, ch. 298, amended by Acts 1973, 63rd Leg., p. 368, ch. 165; Acts 1981, 67th Leg., p. 387, ch. 156; Acts 1983, 68th Leg., p. 5169, ch. 939.

Name	Creation
Trinity Memorial .....	Acts 1981, 67th Leg., p. 680, ch. 265.
Tyler County .....	Acts 1963, 58th Leg., p. 201, ch. 110.
Uvalde County .....	Acts 1965, 59th Leg., p. 152, ch. 64.
Val Verde County .....	Acts 1975, 64th Leg., p. 1977, ch. 658, amended by Acts 1983, 68th Leg., p. 5708, ch. 1087.
Van Zandt County .....	Acts 1971, 62nd Leg., p. 2622, ch. 861.
Walker County .....	Acts 1971, 62nd Leg., p. 2583, ch. 848, amended by Acts 1977, 65th Leg., p. 1325, ch. 527.
West Coke County .....	Acts 1963, 58th Leg., p. 825, ch. 315, amended by Acts 1967, 60th Leg., p. 679, ch. 283; Acts 1977, 65th Leg., p. 662, ch. 248; Acts 1979, 66th Leg., p. 1014, ch. 448.
West Columbia-Brazoria .....	Acts 1963, 58th Leg., p. 808, ch. 310.
West Columbian-Damon .....	Acts 1967, 60th Leg., p. 941, ch. 415, amended by Acts 1981, 67th Leg., p. 2092, ch. 482.
West Grayson .....	Acts 1967, 60th Leg., p. 94, ch. 46.
Wichita County .....	Const. Art. 9, § 5. Acts 1961, 57th Leg., p. 731, ch. 343, amended by Acts 1963, 58th Leg., p. 1276, ch. 491. Acts 1979, 66th Leg., p. 1691, ch. 701.
Wilbarger County .....	Acts 1965, 59th Leg., p. 9, ch. 6, amended by Acts 1973, 63rd Leg., p. 6, ch. 5; Acts 1977, 65th Leg., p. 1303, ch. 513.
Willacy County .....	Acts 1969, 61st Leg., p. 1133, ch. 367, repealed by Acts 1971, 62nd Leg., p. 1280, ch. 323, § 24. Acts 1971, 62nd Leg., p. 1270, ch. 323.
Wilson County Memorial .....	Acts 1977, 65th Leg., p. 1293, ch. 511, amended by Acts 1979, 66th Leg., p. 1123, ch. 535; Acts 1981, 67th Leg., p. 22, ch. 18.
Wood County Central .....	Acts 1967, 60th Leg., p. 705, ch. 293, amended by Acts 1979, 66th Leg., p. 378, ch. 172; Acts 1981, 67th Leg., p. 1848, ch. 430.

Name	Creation
Yoakum .....	Acts 1965, 59th Leg., p. 651, ch. 317.

#### Art. 4494r. County Hospital Authority Act

##### Creation; Title

Sec. 1. County Hospital Authorities without taxing power may be created as hereinafter provided. This law shall be known as the "County Hospital Authority Act."

##### Definitions

Sec. 2. As used in this law, "County" means any county in the State of Texas; "Governing Body" means the Commissioners Court of a county; "Authority" means a County Hospital Authority created under this Act; "Board" or "Board of Directors" means the board of directors of the Authority; "bond" or "bonds" means bonds or notes; "Bond Resolution" means the resolution authorizing the issuance of revenue bonds; "Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority; "Trustee" means the trustee under the Trust Indenture; "Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.<sup>1</sup>

<sup>1</sup> Classified as art. 4437e-2.

##### Ordinance Creating Authority; Territory; Body Politic and Corporate; Powers

Sec. 3. When the Governing Body of a county shall find that it is to the best interest of the County and its inhabitants to create a County Hospital Authority, it shall pass an order creating the Authority and designating the name by which it shall be known. The Authority shall comprise only the territory included within the boundaries of such County and shall be a body politic and corporate and a political subdivision of the State. It shall have the power of perpetual succession, have a seal, may sue and be sued and may make, amend and repeal its bylaws.

##### Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the order creating the Authority adopted by the Governing Body of the County, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the County, and

they shall serve until their successors are appointed as hereinafter provided. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the County. The Trust Indenture may also provide that, in the event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the County for terms not to exceed three (3) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such County shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

##### Officers; Quorum; Committees; Manager or Executive Director; Sale, Lease, or Closure; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional non-voting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management



agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may sell, lease, or close the Hospital as otherwise provided by law and may employ legal counsel.

**Construction, Operation and Equipment of Hospitals;  
Location; Sale of Real Property**

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital must be located within the County creating the Authority.

(b) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority or (2) any agreement entered into either prior to or after the effective date of this Section 6(b) between the Authority and a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes). The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c-12, Vernon's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction in a newspaper with general circulation in the County creating the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(b) is intended to affect or amend the powers granted to the Authority by the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes).

**Revenue Bonds**

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

**Procedure for Bond Issue; Requisites; Maturity;  
Sale; Registration**

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k-2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

**Bond Resolution; Publication; Referendum**

Sec. 9. (a) Before authorizing the issuance of bonds, other than refunding bonds, the Board of Directors shall cause a notice to be issued stating that it intends to adopt a resolution (herein called "Bond Resolution") authorizing the issuance of the bonds, the maximum amount thereof, and the maximum maturity thereof. The notice shall be published once each week for two (2) consecutive weeks in a newspaper or newspapers having general circulation in the Authority, the first such publication shall be at least fourteen (14) days prior to the date set for adopting the Bond Resolution.

(b) If, prior to the day set for the adoption of the Bond Resolution, there is presented to the secretary or president of the Board of Directors a petition signed by not less than ten per cent (10%) of the qualified voters residing within the boundaries of the County comprising the Authority, who own taxable property in the Authority and who have duly rendered the same for taxation to the County in which such property is located or situated, requesting an election on the proposition for the issuance of the bonds, the bonds shall not be issued unless an election is held and a majority vote is in favor of the bonds. Such election shall be called and held in accordance with the procedure prescribed in Chapter 1, Title 22, Revised Civil Statutes of 1925, as amended, with the Board of Directors, president and secretary performing the functions therein assigned to the governing body of the County, the County Judge and County Clerk respectively. If no such petition is filed the bonds may be issued without an election. It is provided, however, that the Board of Directors may call such election on its own motion without the filing of the referendum petition.

**Junior Lien Bonds; Parity Bonds**

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohib-

ited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

#### Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years' interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

#### Refunding Outstanding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature<sup>1</sup> or other applicable law.

<sup>1</sup> Article 717k.

#### Approval of Bonds by Attorney General; Registration; Incontestability; Negotiability

Sec. 13. Bonds issued under this Act and the record relating to their issuance shall be submitted to the Attorney General of Texas and if he finds that they have been issued in accordance with this law and constitute valid and binding obligations of the Authority and are secured as recited therein he shall approve them, and they shall be registered by Comptroller of Public Accounts of the State of Texas who shall certify such registration thereon. Thereafter they shall be incontestable. The bonds shall be negotiable and shall contain the following provision:

"The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

#### Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. Unless the Hospital is being leased, the Hospital shall be operated by the Authority without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and main-

tain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e-2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

#### Depositories

Sec. 15. The Authority may select a depository or depositories according to the procedures provided by law for selection of county depositories or it may award its depository contract to the same depository or depositories selected by the County and on the same terms.

Sec. 16. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

#### Eminent Domain

Sec. 17. For the purpose of carrying out any power conferred by this Act, Authority shall have the right to acquire the fee simple title to land and other property and easements by condemnation in the manner provided by Title 52, Revised Civil Statutes as amended, relating to eminent domain. Authority is hereby declared to be a municipal corporation within the meaning of Article 3268 of said Title 52. The amount of and character or interest in land, other property and easements thus to be acquired shall be determined by the Board of Directors.

#### Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Counties, shall control, insofar as applicable the investment of

funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bond may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

#### Donations, Gifts and Endowments

Sec. 19. The Board of Directors is authorized to accept donations, gifts and endowments to be held and administered as may be required by the respective donors, to the extent that such requirements would not contravene law.

#### Legal and Authorized Investments

Sec. 20. All bonds of the Authority shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1963, 58th Leg., p. 324, ch. 122. Amended by Acts 1975, 64th Leg., p. 1907, ch. 613, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1604, ch. 679, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1606, ch. 680, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2366, ch. 583, § 8, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act provided:

"If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

Section 2 of Acts 1979, 66th Leg., p. 1605, ch. 679, provided:

"If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act, and such remaining portions shall remain in full force and effect."

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 16 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

#### Art. 4494r-1. Issuing and Refunding Revenue Bonds

Sec. 1. All hospital districts heretofore or hereafter created pursuant to Article IX, Section 9, of the Constitution are hereby authorized to issue, and to refund any previously issued, revenue bonds for purchasing, constructing, acquiring, repairing, equipping or renovating buildings and improvements for hospital purposes, and for acquiring sites therefor, such bonds to be payable from and secured by a pledge of all or any part of the revenues of the district to be derived from the operation of its

hospital or hospitals, and such bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its properties.

Sec. 2. Such bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of revenue bonds by County Hospital Authorities in Sections 8 to 13, both inclusive, and with effect specified in Section 20, of the County Hospital Authority Act, Chapter 122, Acts 1963, 58th Legislature (compiled as Article 4494r, Vernon's Texas Civil Statutes).

[Acts 1967, 60th Leg., p. 681, ch. 285, eff. May 25, 1967.]

#### Art. 4494r-2. Issuance of Revenue Bonds in Counties of 200,000 or More

##### Authorization; Ad Valorem Tax

Sec. 1. The commissioners court of every county containing a population of 200,000 or more, according to the last preceding federal census, wherein there exists a hospital district which has been created by law pursuant to any Section of Article IX of the Texas Constitution shall be authorized and have the power to issue revenue bonds for the purpose of providing funds to acquire, purchase, construct, repair, renovate, improve, enlarge, and/or equip any hospital facilities, and to acquire any real or personal property in connection therewith, for and on behalf of said hospital district. Provided however, that there shall be no authority to issue such revenue bonds on behalf of a hospital district for the purchase of nursing homes for long term care. Such commissioners court shall be authorized to issue said revenue bonds to be payable from and secured by liens on and pledges of all or any part of the revenues and income of every nature derived by the hospital district from the operation and/or ownership of its hospital facilities (exclusive of ad valorem taxes). Also, the commissioners court shall be authorized to pledge to the payment of said bonds all or any part of any grant, donation, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise. Said bonds may be additionally secured by mortgages and deeds of trust on any real property on which any hospital facilities of the hospital district are or will be located, and any real or personal property incident or appurtenant to said facilities, and the commissioners court may authorize the execution and delivery of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence same. Said bonds may be issued to mature serially or otherwise not to exceed 40 years from their date. In the authorization of any such bonds, the commissioners court may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other types of bonds, under such terms or conditions as may be set forth in the order authorizing the issuance of said bonds, all within the discretion of the commissioners court. Said bonds, and any interest coupons appertaining

thereto, shall be negotiable instruments (provided that such bonds may be issued registrable as to principal alone or as to both principal and interest), and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at any rate or rates, all as shall be determined and provided by the commissioners court in the order authorizing the issuance of said bonds. If so permitted in the bond order, any required part of the proceeds from the sale of the bonds may be used for paying interest thereon during the period of the construction of any hospital facilities to be provided through the issuance of said bonds, and for the payment of operation and maintenance expenses of said facilities to the extent, and for the period of time, specified in said bond order, and also for the creation of reserves for the payment of the principal of and interest on the bonds; and such moneys may be invested, until needed, to the extent, and in the manner provided, in said bond order. The commissioners court or the board of hospital managers or directors of the hospital district shall be authorized to fix and collect charges for the occupancy or use of any of said hospital facilities, and the services thereof, in such amounts and in such manner as may be determined by such commissioners court or board; and such charges shall be fixed and collected in such amounts as will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with said bonds, and, to the extent required by the bond order, to provide for payment of all or any part of the operation, maintenance, and other expenses of the hospital facilities. The commissioners court or the board of hospital managers or directors of the hospital district shall make provision in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district. In preparing the budget, the commissioners court or board may take into consideration the estimated excess revenues and income from hospital facilities that will be available for paying operation and maintenance expenses after providing for all principal, interest, and reserve requirements in connection with said bonds. To the extent that such excess revenues and income are not available at any time to make payment of all operation and maintenance expenses of the hospital district, ad valorem taxes of the hospital district shall be used to make such payment, and the proceeds of an annual ad valorem tax may be pledged for such payment in the order authorizing the issuance of said bonds. If such annual ad valorem tax is thus pledged it shall be the duty of the commissioners court, during each year while any of said bonds are outstanding, to compute and ascertain a rate and amount of ad valorem tax which will be sufficient to raise and produce the money required to make the aforesaid payment of

operation and maintenance expenses to the extent required; and said tax shall be based on the latest approved tax rolls of the hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied, and ordered to be levied, against all taxable property in the hospital district, for each year while any of said bonds are outstanding; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required. Said rate and amount of ad valorem tax shall be levied and ordered to be levied against all taxable property within the hospital district subject to hospital district taxation for each year while any of said bonds are outstanding; and said tax shall be assessed and collected each such year and used for such purposes to the extent so required.

#### Refunding or Refinancing

Sec. 2. Any revenue bonds issued by any such commissioners court under this Act, and any revenue bonds issued by any such commissioners court under any other Texas statute and payable from revenues from any hospital facilities, may be refunded or otherwise refinanced by such commissioners court, and in such case all pertinent and appropriate provisions of this Act shall be fully applicable to such refunding bonds. In refunding or otherwise refinancing any such bonds the commissioners court may, in the same authorizing proceedings, refund or refinance bonds issued pursuant to this Act and bonds issued pursuant to any other such Texas statute and combine all said refunding bonds and any other additional new bonds to be issued pursuant thereto into one or more issues or series of bonds, and may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, or other type of bonds. All refunding bonds shall be issued and delivered under such terms and conditions as may be set forth in the authorizing proceedings.

#### Submission to Attorney General; Approval and Registration

Sec. 3. All bonds issued pursuant to this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such bonds have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

#### Local and Authorized Investments

Sec. 4. All bonds issued pursuant to this Act shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, small business

investment corporations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies and bodies politic. Said bonds also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

#### Authority of Hospital District Governing Body

Sec. 5. In every case where a hospital district created by law pursuant to Article IX of the Texas Constitution does not have its ad valorem taxes levied for and on its behalf by the commissioners court of the county in which the hospital district is located, then, notwithstanding any provisions of this Act to the contrary, the board of directors or other governing body of the hospital district shall have all of the authority, powers, and duties provided for a commissioners court under this Act.

#### Cumulative and Prevailing Effects

Sec. 6. This Act shall be cumulative of all other laws on the subject but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that any commissioners court shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1969, 61st Leg., p. 128, ch. 42, eff. April 1, 1969. Amended by Acts 1971, 62nd Leg., p. 1297, ch. 339, § 1, eff. May 24, 1971.]

#### Art. 4494r-2.1. Advisory Elections in Issuance of Revenue Bonds

The commissioners court of each county which is authorized by law to issue revenue bonds for and on behalf of a hospital district in the county shall have the option, within its discretion and on its own motion, of calling an advisory election for the purpose of ascertaining whether or not a majority of the resident, qualified electors of the hospital district voting at an election held for such purpose

favor the issuance of any such revenue bonds. In the event a commissioners court determines to exercise such option, it is authorized to call an election for such purpose, to be held in accordance with the Texas Election Code, except as hereinafter provided. The order of election shall set forth the date of the election, the proposition to be submitted and voted on, the polling places, the hours during which the polls will be open, and any other matters deemed necessary or advisable by the commissioners court. The expenses of holding the election shall be paid from hospital district funds. Notice of the election shall be given by publishing a substantial copy of the election order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the hospital district. The commissioners court shall canvass the returns and declare the results of the election; but the election shall be advisory only and shall not affect the authority of the commissioners court to issue revenue bonds for and on behalf of the hospital district under any applicable law if no election is required thereby.

[Acts 1975, 64th Leg., p. 952, ch. 359, § 1, eff. June 19, 1975.]

#### Art. 4494r-3. County Hospital Revenue Bonds; Issue; Refunding

Sec. 1. All counties of this state are hereby authorized to issue, and to refund any previously issued, revenue bonds for purchasing, constructing, acquiring, repairing, equipping or renovating buildings and improvements for county hospital purposes, and for acquiring sites therefor, such bonds to be payable from and secured by a pledge of all or any part of the revenues of the county to be derived from the operation of its hospital or hospitals, and such bonds may be additionally secured by a mortgage or deed of trust lien on any part or all of its hospital properties.

Sec. 2. Such bonds shall be issued in the manner and in accordance with the procedures and requirements specified for the issuance of revenue bonds by County Hospital Authorities in Sections 8 to 13, both inclusive, and with effect specified in Section 20, of the County Hospital Authority Act, Chapter 122, Acts, 1963, 58th Legislature (compiled as Article 4494r, Vernon's Texas Civil Statutes).

Sec. 3. The powers granted under this Act shall be cumulative and in addition to all other powers of counties presently or hereafter in effect.

[Acts 1969, 61st Leg., p. 1958, ch. 658, eff. June 12, 1969.]

#### Art. 4494r-4. Adoption of Tax Rolls by Hospital Districts; Board of Equalization; Assessment and Collection of Taxes

Sec. 1. That a hospital district organized pursuant to the provisions of Article IX, Section 9, of the Constitution of the State of Texas, may appoint its own assessor and collector of taxes for the hospital district.

Sec. 2. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[Acts 1971, 62nd Leg., p. 1954, ch. 595, eff. June 2, 1971. Amended Acts 1979, 66th Leg., p. 2315, ch. 841, §§ 4(c), 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 2 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

**Art. 4494r-5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More**

**Applicability of Act**

Sec. 1. This Act shall be applicable to counties now or hereafter containing a population of 1,000,000 or more according to the last preceding federal census, wherein there exists a county-wide hospital district whose taxes are levied and collected by the commissioners court and which has teaching hospital facilities that are affiliated with a state-owned medical school, such counties hereinafter referred to as "authorized counties."

**Revenue Anticipation Agreements Authorized**

Sec. 2. The commissioners court of any authorized county is hereby authorized to enter into and execute with any bank or banks or other corporations, partnerships, persons, financial institutions, or lending institutions revenue anticipation agreements in accordance with this Act.

**Advances and Repayments: Revenue Anticipation Agreements**

Sec. 3. Upon a finding and determination by the commissioners court of an authorized county that the projected revenues and tax collections of and for the hospital district will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses, the commissioners court may execute a revenue anticipation agreement by which the other contracting party (or parties) agrees to advance to the district, and the authorized county and the district agree to repay (from the sources hereinbelow specified), funds necessary for the operation and maintenance of the district's hospital facilities during the term of the revenue anticipation agreement. The revenue anticipation agreement may be upon such terms as the parties may agree, subject to the following limitations:

(a) The term of the revenue anticipation agreement shall not exceed two years.

(b) Advances made to the district during the term of the agreement shall not be made more frequently than once each month and each shall not be greater in amount than the difference between (i) the accumulated and unpaid operating and maintenance expenses of the district, and (ii) the revenues and income of the district, including tax revenues, actually received by the district to the date of the

advance and lawfully available for the purpose of paying such expenses. The party or parties making the advances may conclusively rely on certifications made by authorized officers of the district as to the facts specified in this subsection.

(c) The advances under the revenue anticipation agreement may bear interest at a rate or rates not exceeding the rate permitted by law for revenue bonds of the district, shall mature and become due and payable on a date not later than the last day of the term of the revenue anticipation agreement, shall be subject to prepayment without penalty at any time before their maturity date, and they shall not be refunded or in any manner refinanced or extended. The agreement may provide that the rates or rate of interest on the advances may be determined at the time made by reference to such determinative factors and formulae as the parties may agree.

(d) If, in any month during the term of the agreement while advances are outstanding, revenues, including tax revenues, are received and are not required to pay and are not lawfully committed to the payment of other obligations and expenses of the district, the commissioners court shall apply the same upon receipt to the payment or prepayment of any advances at the time outstanding and unpaid under the revenue anticipation agreement, and no advances shall be made under a subsequent revenue anticipation agreement until all advances made under the prior agreement have been paid in full, retired, and canceled.

(e) Advances made under the revenue anticipation agreement shall be and are hereby directed to be secured by and payable, either or both, (1) from a pledge of and lien upon revenues of the district derived from the operation and maintenance of its hospital facilities, and/or (2) from tax revenues when collected, levied for the purpose of operating and maintaining the district's facilities for the year during which the advances are made. Upon default in the payment or repayment of any advances made under the terms of the revenue anticipation agreement when due or when required to be prepaid under the terms of this Act, any district court may be petitioned by mandamus or otherwise to enforce the agreement and prepayment as required by this Act.

**Use of Advances**

Sec. 4. Funds received from advances made pursuant to revenue anticipation agreements authorized by this Act shall be used solely for the purposes authorized by this Act. However, it shall not be a defense to repayment of advances that the funds have been used for a purpose not authorized hereby. The auditor of the affairs of the hospital district shall concurrently with the regular audit thereof audit the use of said funds and shall certify to the commissioners court whether or not the funds have been used for proper operating and maintenance purposes as authorized hereby.

**Bonds or Notes; Ad Valorem Taxes**

Sec. 5. (a) The commissioners court of an authorized county is authorized to include in any revenue anticipation agreement provisions pursuant to which the authorized county will agree to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds (which also may be designated as notes) evidencing the obligation of the authorized county and the hospital district to repay the advances made pursuant to the agreement and in accordance therewith and with this Act. Such bonds or notes may be delivered upon such terms and may contain such provisions not inconsistent with Section 3 of this Act as may be prescribed in the revenue anticipation agreement.

(b) The provisions hereof relating to advances shall apply to bonds or notes evidencing the obligation to repay the same issued under this section. It is provided, however, that if such hospital district was created pursuant to the authority granted to the legislature by Article IX, Section 4, of the Texas Constitution and the creation of such hospital district was approved at an election held in such hospital district as required by Article IX, Section 4, of the Texas Constitution or if such hospital district was created pursuant to any other constitutional provision which would permit the levy and pledge of taxes as hereinafter authorized, then regardless of any restrictions in any other law of this state the commissioners court also is authorized in addition to the mandatory security required in Section 3(e) hereof to pay and secure the bonds or notes issued under this section from and by annual ad valorem taxes levied and to be levied on all taxable property in such hospital district, and such annual ad valorem taxes may be pledged to the payment of the principal of and interest on the bonds or notes to the extent required therein and in the agreement. If such annual ad valorem taxes are thus pledged it shall be the duty of the commissioners court annually to levy a tax on all taxable property in the hospital district sufficient or to the extent necessary to pay the principal of and the interest on the bonds or notes when due, but the rate of the tax, if any, for each year may be fixed after giving consideration to the amount of money estimated to be received from revenues pledged under Section 3 hereof which may be available for the payment of such principal and interest, all to the extent and in the manner provided in the revenue anticipation agreement, but provided further that such annual ad valorem tax together with all other annual ad valorem taxes levied in the hospital district shall never exceed a maximum annual rate of 75 cents on the \$100 valuation of all taxable property within such hospital district. Further, if such annual ad valorem taxes are thus pledged, it shall be the duty of the commissioners court during each year while any of the bonds or notes or interest thereon is outstanding and unpaid to compute and ascertain a rate and amount of ad valorem tax, if any, which will be sufficient to raise and produce the money required

to make the aforesaid payment to the extent required; and said tax shall be based on the latest approved tax rolls of such hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied and ordered to be levied subject to the maximum limitation prescribed above against all taxable property in such hospital district for each year while any of the bonds or notes or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required.

(c) Upon the issuance, sale, and delivery of bonds or notes under the authority of this section, such bonds or notes shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms and conditions for all purposes. Such bonds or notes shall constitute "investment securities" under the Uniform Commercial Code of Texas. Any such bonds or notes shall be legal and authorized security for public funds of this state and its political subdivisions and shall be legal and authorized investments by all banks, savings banks, savings and loan associations, and insurance companies of all types.

**Cumulative Effect; Conflicting Provisions**

Sec. 6. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the execution of revenue anticipation agreements and the issuance of bonds or notes to evidence obligations to repay advances made thereunder and the performance of the other acts and procedures authorized hereby without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued pursuant to the authority of this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control.

[Acts 1975, 64th Leg., p. 653, ch. 272, eff. May 20, 1975.]

**Art. 4494s. Parking Stations Near Hospitals in Counties of 900,000 or More****Counties of 900,000; Power to Construct and Operate Parking Station; Lease of Station**

Sec. 1. Any Hospital District located in a county which had a population in excess of 900,000 according to the most recent Federal Census, upon a finding by the Commissioners Court of the county in which such Hospital District is located that it is to the best interest of the Hospital District and its inhabitants, shall have the power to construct, enlarge, furnish, equip and operate a parking station or stations in the vicinity of any hospital within such Districts. Any such Hospital District is further authorized from time to time to lease said parking

stations to a person or corporation on such terms as the Commissioners Court of such Hospital District shall deem appropriate.

#### Definitions

Sec. 2. As used in this law,

"Parking Station" means a lot or area or surface or subsurface structure for the parking of automotive vehicles, together with equipment used in connection with the maintenance and operation thereof, and the site therefor;

"Bond Order" means the order authorizing the issuance of revenue bonds;

"Trust Indenture" means the indenture pledging revenues to secure the revenue bonds issued by any such Hospital District;

"Trustee" means the trustee under the Trust Indenture.

#### Revenue Bonds; Pledge of Revenues

Sec. 3. The Commissioners Court of the county in which any such Hospital District is located may issue negotiable revenue bonds on behalf of any such Hospital District to provide funds for the construction, enlargement, furnishing or equipping said parking stations. Such bonds shall be payable from and secured by a pledge of the net revenues to be derived from the operation of such parking stations and any other revenue resulting from the ownership of such parking station properties including rentals received from leasing all or part of said parking stations.

#### Order Authorizing Bonds; Maturity; Interest Cost

Sec. 4. The bonds shall be authorized by order adopted by a majority vote of a quorum of such Commissioners Courts, on behalf of such Hospital Districts (without the prerequisite of an election) and shall be signed by the County Judge, countersigned by the County Clerk and registered by the County Treasurer. The seal of the Commissioners Court authorizing such bonds shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by such Commissioners Court to be the most advantageous reasonably obtainable, provided that the interest cost to the Hospital District, including the discount, if any, calculated by use of standard bond interest tables currently in use by insurance companies and investment houses does not exceed six per cent (6%) per annum, and within the discretion of such Commissioners Court, may be made callable prior to maturity at such times and prices as may be prescribed in the order authorizing the bonds.

#### Bonds Constituting Junior Liens on Net Revenues; Parity Bonds

Sec. 5. Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the Bond Order or Trust Indenture. Parity bonds may

be issued under conditions specified in the Bond Order or Trust Indenture.

#### Setting Aside Money for Interest and Operating Expenses

Sec. 6. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by such Commissioners Court to be required for operating expenses until the parking station or stations become sufficiently operative, may be set aside out of the proceeds from the sale of the bonds.

#### Refunding Bonds

Sec. 7. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied to the payment of outstanding bonds.

#### Approval by Attorney General; Registration

Sec. 8. Bonds issued under this Act and the record relating to their issuance shall be submitted to the Attorney General of Texas and if he finds that they have been issued in accordance with this law and constitute valid and binding special obligations of any such Hospital District and are secured as recited therein he shall approve them, and they shall be registered by the Comptroller of Public Accounts of the State of Texas who shall certify such registration thereon. Thereafter they shall be incontestable. The bonds shall be negotiable and shall contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

#### Rentals or Rates for Services; Procedures for Operation of Stations

Sec. 9. It shall be the duty of any such Hospital District to charge sufficient rentals or rates for services rendered by the parking stations so that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the parking stations, to pay the principal of and interest on the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Order or Trust Indenture. The Bond Order or Trust Indenture may prescribe systems, methods, routines and procedures under or in accordance with which the parking stations shall be operated.

[Acts 1965, 59th Leg., p. 613, ch. 304.]

## CHAPTER SIX. MEDICINE

### Art.

4495, 4495a. Repealed.

4495b. Medical Practice Act.

4496 to 4498b. Repealed.

4498c. State Rural Medical Education Board.



**Art.**

4499 to 4505. Repealed.  
 4505a. Soliciting Patients.  
 4505b. Advertising.  
 4505c. Witness Shall Testify.  
 4506. Repealed.  
 4506a. Revocation and Suspension of License for Drug-Related Felony Conviction.  
 4507 to 4512a. Repealed.

**Arts. 4495, 4495a. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981**

Section 3 of the 1981 repealing act provides:

"(a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government.

"(b) A person holding office as a member of the board on the effective date of this Act continues to hold office for the term for which the member was originally appointed or until a successor is appointed and qualified. The initial appointments of the public members of the board shall be made so that one appointee serves a term that expires April 13, 1983, one appointee serves a term that expires April 13, 1985, and one appointee serves a term that expires April 13, 1987. Thereafter, at the expiration of the term of each member of the board appointed, a successor shall be appointed. The terms of office of all succeeding members expire April 13 of odd-numbered years. Members shall continue to hold office until a successor is appointed and qualified. In order to permit an orderly accomplishment of the requirements of Subsection (c) of Section 2.05 of the Medical Practice Act [art. 4495b], the governor shall not appoint nor cause to be appointed more than two physicians with the degree of doctor of osteopathic medicine (D.O.) to be members of the board prior to May 13, 1982, unless a vacancy on the board occurs sooner for those whose terms expire April 13, 1983, or thereafter. On or after that date or event, and no later than the time the appointments are to be made on or after April 13, 1983, the governor shall implement Subsection (c) of Section 2.05 of the Medical Practice Act.

"(c) All licenses which were procured legally and issued legally by the board are hereby validated and subject to no retroactive action.

"(d) All statutory references to physicians or persons licensed to practice medicine as defined by Article 4510, Revised Civil Statutes of Texas, 1925, shall be construed to have reference to this Act.

"(e) All rules and regulations adopted and promulgated by the board shall be continued until amended or repealed. The rules and regulations that are in force on the effective date of this Act are validated and are repealed only to the extent of any conflict.

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act.

"(g) Where applicable, the definitions in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), apply to the Medical Practice Act.

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years."

See, now, art. 4495b, §§ 2.01 et seq., 5.10.

**Art. 4495b. Medical Practice Act****SUBCHAPTER A. GENERAL PROVISIONS****Short Title**

Sec. 1.01. This Act may be cited as the Medical Practice Act.

**Findings and Purposes**

Sec. 1.02. The legislature makes the following declarations:

(1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of policy it is considered necessary to protect the public interest through the specific formulation of this Act to regulate the granting of that privilege and its subsequent use and control;

(2) the Texas State Board of Medical Examiners should remain the primary means of licensing, regulating, and disciplining the individual physicians and surgeons who are licensed to practice medicine;

(3) the current system relating to licensing physicians and surgeons is basically a sound, workable system and should be continued;

(4) the separate laws regulating the practice of medicine should be brought together under one Act; this Act is not intended to make substantive changes or alter prior judicial interpretation unless the subject matter in this Act is substantively changed or new matter is expressly added or old matter expressly deleted;

(5) this Act is to continue the Texas State Board of Medical Examiners, previously established under the laws of this state, as an independent agency of the executive branch of government;

(6) the acts that created the Texas State Board of Medical Examiners and that regulate the practice of medicine and related subjects have been enacted as separate articles of the Revised Civil Statutes of Texas, 1925, as amended; this Act is to comply with the Texas Sunset Act and to modernize and make the laws relating to the practice of medicine more accessible and understandable in such a manner as to make no substantive changes in prior laws or interpretation of those laws unless expressly so done by this Act;

(7) consistent with the objectives of the above, one purpose of this Act is to make the laws regulating physicians and surgeons more accessible and understandable by:

(A) rearranging those laws into a more logical order;

(B) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(C) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions;

(D) bringing together in one Act multiple articles; and

(E) restating the law in more modern language where possible;

(8) the individual physician should be given the greatest opportunity to exercise his best independent professional judgment in deciding what medical acts can be safely delegated; therefore, rules of the board regulating delegation should have the purpose of promoting such exercise of professional judgment and decision by not containing, except as absolutely necessary, global prohibitions or restrictions on delegation of medical acts; and

(9) recognizing that hospitals, facilities, institutions, or programs and state agencies and political subdivisions which own or operate hospitals, facilities, or institutions or administer programs are responsible for determining medical staff appointments or the qualifications of physicians for such programs, and further recognizing that all persons licensed under this Act have met certain basic educational requirements, been examined by the board, and passed the same qualifying examination which applies the same standards to all who desire to practice medicine, irrespective of academic medical degree, it is the intent of the legislature to prohibit differentiation solely on the basis of the academic medical degree held by a person licensed under this Act in determining such medical staff appointments or such qualifications. To this end a hospital, institution, or program that is licensed by this state, that is operated by the state or a political subdivision of the state, or that receives state financial assistance, directly or indirectly, shall not differentiate solely on the basis of the academic medical degree held by a person licensed under this Act. Such hospitals, institutions, programs, and state agencies or political subdivisions shall, however, be free to adopt reasonable rules, regulations, and requirements relating to qualifications for medical staff appointments, reappointments, termination of appointments, the delineation of clinical privileges, or the curtailment of clinical privileges of those who are appointed to such medical staff or permitted to participate in educational programs so long as such rules, regulations, and requirements are determined upon a reasonable basis, such as professional and ethical qualifications of the physician, upon standards that are reasonable, applied untainted by irrelevant considerations, supported by sufficient evidence, free of arbitrariness, capriciousness, or unreasonableness and do not differentiate solely upon the academic medical degree held by such physician. The provisions contained herein relating to the academic medical degree shall not be applicable to any medical school or college, any programs of a medical school or college, or to any office or offices of physicians singularly or in groups in the conduct of their profession.

#### Definitions

Sec. 1.03. In this Act:

(1) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(2) "Board" means the Texas State Board of Medical Examiners.

(3) "Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital, nursing home, or other health-care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the society, hospital, nursing home, or other health-care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health-care services.

(4) "Open Meetings Law" means Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(5) "Open Records Law" means Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(6) "Person" means an individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(7) "Physician" and "surgeon" shall be construed as synonymous, and the terms "practitioners," "practitioners of medicine," and "practice of medicine," as used in this Act, shall be construed to refer to and include physicians and surgeons.

(8) "Practicing medicine." A person shall be considered to be practicing medicine within this Act:

(A) who shall publicly profess to be a physician or surgeon and shall diagnose, 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; or

(B) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(9) "State" means any state, territory, or insular possession of the United States and the District of Columbia.

(10) "Texas Sunset Act" means Chapter 735, Acts of the 65th Legislature, Regular Session, 1977 (Article 5429k, Vernon's Texas Civil Statutes).

(11) Any term, word, word of art, or phrase that is used in this Act and not otherwise defined in this Act has the meaning as is consistent with the common law.

SUBCHAPTER B. BOARD OF MEDICAL  
EXAMINERS

Board

Sec. 2.01. There is continued and recreated as an independent administrative agency of the executive branch of government the Texas State Board of Medical Examiners with powers to regulate the practice of medicine and with other duties as shall be assigned to the board.

Members, Terms

Sec. 2.02. The board is composed of 15 members whose terms of office are six years or until a successor is appointed and qualified. Terms of office shall be staggered so that five terms expire biennially.

Appointment to Board

Sec. 2.03. Members of the board shall be appointed by the governor and confirmed by the senate. Any vacancy on the board shall be filled by appointment of the governor. Any appointment made shall be without regard to race, creed, sex, religion, age, or national origin, except that a person younger than 18 years of age is not eligible for appointment.

Removal from Office

Sec. 2.04. (a) It is a ground for removal from the board if, during a member's service on the board, the member fails to meet the qualifications set forth in this Act for members of the board. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(b) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement is grounds for removal of the member from the board and the removal creates a vacancy on the board.

Qualifications of Board Members

Sec. 2.05. (a) Board members shall be residents of Texas.

(b) Nine members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.); and

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment.

(c) Three members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a

reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment.

(d) Three members of the board must be public representatives who are not licensed to practice medicine, who are not financially involved in any organization subject to the regulation of the board, and who are not providers of health care. "Provider of health care" means:

(1) an individual who is a direct provider of health care (including but not limited to a dentist, registered nurse, licensed vocational nurse, chiropractor, podiatrist, physician assistant, psychologist, athletic trainer, physical therapist, social psychotherapist, pharmacist, optometrist, hospital administrator, or nursing home administrator) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including but not limited to hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations) in which such care is provided and, when required by law or otherwise, the individual has received professional or other training in the provision of such care or in such administration and is licensed or certified or holds himself out for such provision or administration;

(2) one who is an indirect provider of health care in that the individual holds a fiduciary position with or has a fiduciary interest in an entity described below in this subdivision; for purposes of this subdivision, a fiduciary position or interest as applied to any entity means a position or interest with respect to such entity affected with the character of a trust, including members of boards of directors and officers, majority shareholders, or agents, and receivers (either directly or through their spouses) of more than one-tenth of their annual income from any one or combination of fees or other compensation for research into or instruction in the provision of health-care entities (or associations or organizations composed of such entities) engaged (or comprised of individuals who are engaged) in the provision of health care or in the provision of health care and entities (or association or organizations composed of such entities engaged in producing drugs or other such articles);

(3) one who is a member of the immediate family of an individual described in this subsection; for purposes of this subsection "immediate family" as applied to any individual includes only his parents, spouse, children, brothers, and sisters who reside in the same household;

(4) one who is engaged in or employed by an entity issuing any policy or contract of individual or group health insurance or hospital or medical service benefits; or

(5) one who is employed by, on the board of directors of, or holds elective office by or under the authority of any unit of federal, state, or local government or any organization that receives a significant part of its funding from any such unit of federal, state, or local government.

(e) The public representatives must have been residents of Texas for at least five years immediately preceding their appointment.

(f) A person currently serving as president, vice-president, secretary, or treasurer of a statewide organization incorporated for the purpose of representing the entire profession licensed to practice medicine in the State of Texas or an employee of such an organization may not serve as a member of the board. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

(g) A person required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a trade or professional association in the regulated profession may not act as a member of the board.

(h) A person is ineligible for appointment to the board if, at the time of appointment, the person is a stockholder, paid full-time faculty member, or a member of the board of trustees of a medical school.

(i) All board members must take the official oath.

#### Compensation of Board Members

Sec. 2.06. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. If the General Appropriations Act does not prescribe the amount of the per diem, the per diem shall consist of actual expenses for meals, lodging, and transportation plus \$100.

#### Meetings of Board

Sec. 2.07. At the first meeting of the board after each biennial appointment, the board shall elect from its members a president, vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties. Regular meetings shall be held at least twice a year at times and places as the board shall consider most convenient for applicants and board members. Special meetings may be held in accordance with rules adopted by the board.

#### Quorum, Voting

Sec. 2.08. A majority of the appointed members of the board shall constitute a quorum for all purposes, except for those activities of the board related to examining the credentials of applicants as outlined in Subsection (m) of Section 2.09 of this Act.

#### Powers and Duties of Board

Sec. 2.09. (a) The board shall have, in addition to other powers and duties contained in this Act, the powers and duties prescribed by this section. The board may make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. The board may not establish a fee schedule for medical services.

(b) The board may act under its rules through an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act.

(c) The board may make rules and establish fees as are reasonable relating to the granting and extension of expiration dates of temporary licenses.

(d) The board shall preserve a record of its proceedings which shall be a public record. The board shall also maintain records showing the name, age, place, and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the years and schools from which degrees were granted. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained in the record. A certified copy of those permanent records, with the hand and seal of the secretary-treasurer of the board, shall be admitted in evidence in all courts.

(e) The board shall employ, compensate, and provide administrators, clerks, employees, consultants, professionals, and other persons as may be found necessary, in its opinion, to carry out the provisions of this Act. The board shall be authorized and shall reimburse the above persons for actual and necessary expenses, including investigation expenses, travel, and other incidental expenses, incurred in the performance of official duties as determined by the board.

(f) An employee of the board may not be employed or paid any fee for services rendered by a statewide organization incorporated for the purpose of representing the entire profession licensed to practice medicine in the State of Texas or related within the second degree by affinity or within the third degree by consanguinity to a person who is employed or paid any fee for services rendered by such an organization. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel of the board.

(h) The board may receive criminal records or reports from any law enforcement agency or source pertaining to its licensees or any applicant for license. The board shall submit to the Department of Public Safety a complete set of fingerprints of every applicant for a license, and the Department of Public Safety shall cause them to be classified and checked against those in their fingerprint files and shall forthwith certify their findings concerning the criminal record of the applicant or shall report the lack of a criminal record, as the case may be, to the board. All criminal records and reports received from the Department of Public Safety shall be for the exclusive use of the board and shall be privileged and shall not be released or otherwise disclosed to any person or agency by the board except on court order. Any applicant for licensure or any licensee whose license is subject to revocation, cancellation, or suspension because of adverse information contained in the criminal records or reports shall be afforded the opportunity for a hearing before the board prior to any action on the application for license or revocation, cancellation, or suspension of license.

(i) The board shall have the power to appoint committees from its own membership and to make rules and regulations not inconsistent with this Act as may be necessary for the performance of its duties. The duties of any of the committees appointed from the board membership shall be to consider matters pertaining to the enforcement of this Act and the regulations promulgated in accordance with this Act as shall be referred to the committees, and they shall make recommendations to the board with respect to those matters. The board shall have the power, and may delegate that power to any committee, to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records, and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. There shall be appointed not less than one member of the board who meets the qualifications of Subsection (c) of Section 2.05 of this Act, and one member of the board who meets the qualifications of Subsection (d) of Section 2.05 of this Act, on all committees of the board. Should a member appointed to a committee as provided for in this subsection decline to accept or not be qualified under this Act to serve on the committee the position on the committee may be filled from any other member of the board regardless of qualification. In the event a member of the board who meets the qualifications of Subsection (c) or (d) of Section 2.05 of this Act is not elected to an office which would make the member a member of the executive committee of the board as provided for in this Act, then the board shall cause to be appointed additional members of that committee so that at least one member serves on the committee who meets the qualifications of Subsection (c) of Section 2.05 of this Act and at least one member serves on the committee who meets the

qualifications of Subsection (d) of Section 2.05 of this Act.

(j) The board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. The action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

(k) The board shall establish by rule a reasonable charge for those fees not specifically determined but authorized by this Act. The board may not waive collection of any fee or penalty. The board shall place all fees received under authority of this Act, not otherwise specified, into the medical licensing fund. The board is authorized and shall by annual budget determine the manner of handling the funds and the purpose, consistent with this Act, for which the same may be used. The budgeted expenses authorized by the board shall not be a charge upon the general revenue of the state nor paid from the general revenue.

(l) The board shall be represented in court proceedings by the attorney general. The board shall assist the local prosecuting officers of any county in the enforcement of all laws of the state prohibiting the unlawful practice of medicine, this Act, and other matters; provided that all of the prosecutions shall, unless otherwise provided, be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

(m) When the board is required to examine the academic and professional credentials of an applicant for licensure or to examine the applicant orally or in writing, a public member appointed to the board may not participate in the preparation of the examination process. However, the public members shall be given notice of and may be present at all of the examination processes and deliberation concerning the results thereof and may participate in the development and establishment of the procedures and criteria for such examination process.

(n) The board is subject to the Administrative Procedure Act except as provided otherwise by this Act, and in such event this Act will control.

(o) The board is subject to the Open Meetings Law and Open Records Law except as provided by this Act, and in such event this Act will control.

(p) The board shall disseminate at least twice a year and at other times determined necessary by the board to all licensed physicians who are practicing in the State of Texas and, upon request, to the general public information as is of significant interest to the physicians in Texas, including board activities and functions, pertinent changes in this Act or board rules and regulations, and attorney general opinions.

(q) The board shall prepare the following:

(1) an alphabetical listing of the names of the licensees;

(2) an alphabetical listing of the names of the licensees by the county in which the licensee's principal place of practice is located;

(3) a summary of the board's functions;

(4) a copy of this Act and a listing of other laws relating to the practice of medicine;

(5) a copy of the board's rules; and

(6) other information considered appropriate by the board.

(r) The board on request shall distribute a copy of information prepared under Subsection (g) of this section to the requesting person. The board shall distribute on request copies of the information to the public libraries in this state.

(s) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board on request shall make the information available to the general public and appropriate state agencies.

(t) The board shall on request of a licensee issue certification on endorsement of its license to other states and charge a reasonable fee for the issuance.

(u) The board shall cause to be developed an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the board in a nonentry-level position. The intraagency posting shall be made at least 10 days before any public posting.

(v) The board shall cause to be developed a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the board must be based on the system established under this subsection.

### SUBCHAPTER C. LICENSURE

#### Registration of Practitioners and Interns

Sec. 3.01. (a) All persons now lawfully qualified to practice medicine in this state, or who are hereafter licensed for the practice of medicine by the board, shall be registered as practitioners with the board on or before the first day of January and thereafter shall register in like manner annually, on or before the first day of January of each succeeding year. Each person so registered with the board shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee established by the board which fee shall accompany the application of each person for registration. The payment shall be made to the board. Every person so registered shall file with the board a written application for annual registration, setting forth his name and mailing address, the place or places where the applicant is engaged in the prac-

tice of medicine, and other necessary information prescribed by the board.

(b) Any person desiring to serve in this state as an intern, resident, or fellow in graduate medical education programs herein described who is not otherwise licensed by the board shall register with the board within 30 days after beginning service as an intern, resident, or fellow, and annually thereafter, and shall pay the fee as the board may determine to be reasonable. Upon registration, a permit shall be issued annually to the interns, residents, and fellows participating in graduate medical education programs at hospitals and other medical institutions approved by the board on request of the hospitals or medical institutions as provided by rules of the board. The fees shall be deposited in the medical registration fund. Registration as an intern, resident, or fellow does not authorize the performance of medical acts except as the acts are performed as a part of graduate medical education programs and under the supervision of a licensed practitioner of medicine.

(c) Failure of any licensee to pay the annual license renewal fee on or before the 90th day after the date it is due automatically cancels his licensure. Any licensee whose license has been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty in an amount as the board may determine to be reasonable. After expiration of the license year for which the license fee was not paid, no license shall be reinstated except upon application and satisfaction of other conditions as the board may establish and payment of delinquent fees and a penalty to be assessed by the board.

(d) Practicing medicine as defined in this Act without an annual registration receipt for the current year as provided in this Act has the same force and effect as and is subject to all penalties of practicing medicine without a license.

(e) On receipt of an application, accompanied by the proper registration fee, the board, after ascertaining, either from the records of the board or from other sources considered by it to be reliable, that the applicant is a licensed practitioner of medicine in this state, shall issue to the applicant an annual registration receipt certifying that the applicant has filed the application and has paid the registration fee for the year in question. The filing of the application, the payment of the registration fee, and the issuance of the receipt shall not entitle the holder to practice medicine in Texas unless he has in fact been previously licensed as a practitioner by the board, as prescribed by law, and unless the license to practice medicine is in full force and effect. In any prosecution for the unlawful practice of medicine the receipt showing payment of the annual registration fee required by this Act may not

be treated as evidence that the holder is lawfully entitled to practice medicine.

(f) In performing its duties as provided in this Act, the board may act through the secretary-treasurer of the board. The secretary-treasurer is entitled to a salary to be fixed by the legislature in its General Appropriations Act for the performance of duties under this Act. The secretary-treasurer of the board shall file a surety bond with the board. The bond shall be in an amount not less than \$10,000, be in compliance with the insurance laws of the state, and be payable to the state for the use of the state if the secretary-treasurer does not faithfully discharge the duties of the office. The board shall pay the premium on the bond. The salary shall be paid out of said medical registration fund and shall not be in any way a charge upon the general revenue of the state.

(g) The annual registration fee shall apply to all persons licensed by the board, whether or not they are practicing within the borders of this state.

(h) The secretary-treasurer shall determine the eligibility of each applicant for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. If the secretary-treasurer cannot determine the eligibility of an applicant, then a committee of the board shall determine eligibility of the applicant. If the committee of the board cannot determine the eligibility of an applicant, then the board shall determine eligibility of the applicant. If a physician's application is denied by the secretary-treasurer, the applicant may request within 20 days of receipt of denial that a committee of the board determine his eligibility. If a physician's application is denied by the committee of the board, then the applicant may request within 20 days of denial a hearing to appeal the committee's decision. The board shall decide at the next regular board meeting the final administrative decision as to licensure. This hearing is not a contested case under the Administrative Procedure Act, but the applicant is entitled to legal counsel of his choice and may appeal the decision of the board to a district court under Section 19 of the Administrative Procedure Act. The denied applicant is entitled to know in writing why he was denied, but all reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law.

(i) The board must notify each delinquent licensee of his impending license cancellation by registered or certified mail sent to the licensee's address listed with the board not less than 30 days prior to the cancellation. This requirement shall be waived when the licensee has requested in writing that his or her license be canceled.

#### Renewals

Sec. 3.02. (a) On application on forms provided by the board for this purpose and receipt of renewal

fees, licenses shall be renewed annually by the board.

(b) The board by rule may adopt a system under which registrations expire on various dates during the year. The date for license cancellation due to nonpayment shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

#### Reciprocal Agreements

Sec. 3.03. (a) The board, at its sole discretion and upon payment by an applicant of a fee prescribed by the board under this Act, may grant a license to practice medicine to any reputable physician who is a graduate of a reputable medical college and who:

(1) is a licensee of another state or Canadian province having requirements for physician registration and practice substantially equivalent to those established by the laws of this state; or

(2) is qualified by an examination for a certificate to practice medicine under a commission in the uniformed services of the United States.

(b) An application for a license under this section must be in writing and upon a form prescribed by the board. The application must be accompanied by:

(1) a diploma or photograph of a diploma awarded to the applicant by a reputable medical college and a certified transcript or a certificate, license, or commission issued to the applicant by the Medical Corps of the uniformed services of the United States;

(2) a license or a certified copy of a license to practice medicine lawfully issued to the applicant, on examination, by some other state or a Canadian province that requires in its examination the same general degree of fitness required by this state and that grants the same reciprocal privileges to persons licensed by the board; or

(3) a certification made by an executive officer of the uniformed services of the United States, the president or secretary of the board that issued the license, or a duly constituted registration office of the state or Canadian province that issued the certificate or license, reciting that the accompanying certificate or license has not been canceled, suspended, or revoked except by honorable discharge from the Medical Corps of the uniformed services of the United States and reciting that the statement of the qualifications made in the application for medical license in Texas is true and correct.

(c) Applicants for a license under this section must subscribe to an oath in writing before an officer authorized by law to administer oaths. The

written oath must be a part of the application. The application must state that:

(1) the license, certificate, or authority under which the applicant practiced medicine in the state or Canadian province from which the applicant is removed or in the uniformed service in which the applicant served was at the time of the removal or completion of service in full force and not canceled, suspended, or revoked;

(2) the applicant is the identical person to whom the certificate, license, or commission and the diploma were issued;

(3) no proceeding has been instituted against the applicant for the cancellation, suspension, or revocation of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; and

(4) no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony.

(d) A "reputable physician" means one who would be eligible for examination by the board. A "reputable medical school or college" means a medical school or college that was approved by the board at the time the applicant's degree was conferred.

(e) In addition to other licensure requirements, the board may require by rule and regulation that graduates of medical schools located outside of the United States and Canada, or the schools themselves, provide additional information to the board concerning the medical school attended prior to approval.

(f) The board may refuse to issue a license to an applicant who graduated from a medical school outside of the United States and Canada if it finds that the applicant does not possess the requisite qualifications to provide the same standard of medical care as provided by a licensed physician in this state.

(g) In addition to the requirements prescribed by this section, the board may require applicants to comply with other requirements that the board considers appropriate.

#### Qualification of Licensee

Sec. 3.04. (a) An applicant, to be eligible for the examination and issuance of license, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas for credit on a bachelor of arts degree or a bachelor of science degree;

WTSC Civil Statutes—9

(4) is a graduate of a medical school or college that was approved by the board at the time the degree was conferred; and

(5) has successfully completed a one year program of graduate medical training approved by the board. In addition to other licensure requirements, the board may require by rule and regulation that graduates of medical schools located outside the United States and Canada comply with other requirements that the board considers appropriate, including but not limited to additional graduate medical training in the United States, except those who qualify for licensure in Section 5.04 of this Act. However, the applicant shall be eligible for examination prior to complying with Subdivision (5) of Subsection (a) of this section but shall not be eligible for the issuance of an unrestricted license until the requirements of this subsection have been satisfied.

(b) Applications for examination must be made in writing, verified by affidavit, filed with the board on forms prescribed by the board, and accompanied by a fee as the board determines to be reasonable.

#### Examination

Sec. 3.05. (a) All examinations for license to practice medicine shall be conducted in writing in the English language and in a manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify the applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined and license granted or refused. Examinations shall be conducted on and cover those subjects generally taught by medical schools, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools or colleges of medicine approved by the board, and the examinations shall also be conducted on and cover the subject of medical jurisprudence. On satisfactory examination conducted as required by this Act under rules of the board, applicants shall be granted licenses to practice medicine. All questions and answers, with the grades attached, shall be preserved for one year in the executive office of the board or such other repository as the board by rule may direct. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the board. The board in its discretion may give the examination for license in two parts.

(b) In addition to the requirements prescribed by this Act, the board may require applicants to comply with other requirements that the board considers appropriate and establish reasonable fees for examination.



(c) All applicants for license to practice medicine in this state not otherwise licensed under the provisions of law must successfully pass an examination by the board. The board is authorized to adopt and enforce all rules of procedure not inconsistent with statutory requirements. All applicants shall be given due notice of the date and place of the examination; provided that the partial examinations provided for in this Act shall not be disturbed by this section. If any applicant, because of failure to pass the required examination, is refused a license, the applicant, at a time as the board may fix, shall be permitted to take a subsequent examination upon any subjects required in the original examination as the board may prescribe on the payment of a fee as the board may determine to be reasonable. In the event satisfactory grades shall be made on the subjects prescribed and taken on the reexamination, the board may grant the applicant a license to practice medicine. The board shall determine the credit to be given examinees on answers turned in on the subjects of complete and partial examination, and its decision is final.

(d) Examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the professional character and fitness of applicants are exempted from the Open Meetings Law and the Open Records Law. The records, however, shall be disclosed to individual applicants upon written request, unless the person supplying the information to the board requests that it not be disclosed.

(e) Within 30 days after the day on which an examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within four weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination, the board shall notify the examinee of the reason for the delay before the 90th day.

(f) If requested in writing by a person who fails the examination administered under this Act, the board shall furnish the person with a summarized analysis of the person's performance on the examination consisting of the person's score on each portion of the examination.

#### Construction

Sec. 3.06. (a) Nothing in this Act shall be construed so as to discriminate against a school or system of medical practice or to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministrations to the sick or suffering by prayer or pastoral counseling without the use of any drug or material substance represented as being medically effective.

(b) This Act does not apply to:

(1) dentists, duly qualified and registered under the laws of this state who confine their practice strictly to dentistry;

(2) duly licensed optometrists who confine their practice strictly to optometry as defined by law;

(3) duly licensed chiropractors who confine their practice strictly to chiropractic as defined by law;

(4) registered or professional nurses and licensed vocational nurses registered or licensed under the laws of this state who confine their practice strictly within the provisions of such applicable licensing Acts and the laws of this state;

(5) duly licensed podiatrists who confine their practice strictly to podiatry as defined by law;

(6) duly licensed or certified psychologists who confine their activities or practice strictly to psychology as defined by law;

(7) duly licensed physical therapists who confine their activities or practice strictly to physical therapy and who are not in violation of any law relating to physical therapy practice;

(8) commissioned or contract surgeons of the uniformed services of the United States or in the Public Health Service in the performance of their duties and not engaged in private practice;

(9) any person furnishing medical assistance in case of an emergency or disaster situation if no charge is made for the medical assistance;

(10) a student in training in a medical school approved by the board while performing the duties assigned in the course of training, providing the duties are performed under the supervision of a licensed practitioner, except that medical residents, interns, and fellows shall be required to register and be subject to the other applicable provisions of this Act;

(11) legally qualified physicians of other states called in consultation but who have no office in Texas and who appoint no place in this state for seeing, examining, or treating patients; or

(12) any other activities that the board may designate as exempt from the application of this Act.

(c) Nothing in this Act shall be construed to prohibit any person from providing nutritional advice or giving advice concerning proper nutrition. However, this subsection confers no authority to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or physical or mental conditions or to state that any product might cure any disease, disorder, or condition in violation of any provision of law. In this subsection, the terms "providing nutritional advice" and "giving advice concerning proper nutrition" mean the giving of information as to the use and role of food and food ingredients, including dietary supplements.

(d) This Act shall be so construed that:

(1) a person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons acting under the physician's supervision any medical act which a reasonable and prudent physician would find is within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed by the person to whom the medical act is delegated and the act is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts. The board may determine whether or not an act constitutes the practice of medicine, not inconsistent with this Act, and may determine whether any medical act may or may not be properly or safely delegated by physicians;

(2) a person licensed to practice medicine is authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to the dangerous drugs. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the dangerous drugs;

(3) a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, if the provision is provided through a facility licensed by the State Board of Pharmacy pursuant to applicable law, as ordered by the physician, which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules

that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, as ordered by the physician that are used or required to meet the needs of the patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of pharmacy, and laws relating to the practice of professional nursing. The orders may not be inconsistent with this Act and may not be used for the performance of acts and duties that require the exercise of independent medical judgment. In this subdivision, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address.

(5)(A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purposes.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry, an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as long as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is

immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(6) Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(e) Nothing in this Act shall be construed to prohibit or discourage any person from providing or seeking advice or information pertaining to that person's own self-treatment or self-care, nor shall any portion of this Act be construed to prohibit the dissemination of information pertaining to self-care. However, this subsection confers no authority to practice medicine.

#### Unlawful and Prohibited Practices; Penalties

Sec. 3.07. (a) A person practicing medicine in violation of this Act commits an offense. Except as provided by this section, an offense under this section is a Class A misdemeanor. If it be shown in the trial of a violation of this Act that the person has once before been convicted of a violation of this Act, on conviction the person shall be punished for a third degree felony. Each day of violation constitutes a separate offense. On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of his licensure under this Act.

(b) Whoever makes any false statement in his application for examination or licensure by the board or who makes any false statement under oath to obtain a license or to secure the registration of a license to practice medicine shall be guilty of tampering with a government record or perjury under the penal code and punished on conviction accordingly.

(c) A physician or surgeon may not 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. A physician or surgeon may not accept or agree to accept any payment, fee, reward, or anything of value for securing, soliciting, or drumming for patients or patronage for any physician or surgeon. Whoever violates any provision of this section commits a Class A misdemeanor. Each payment, reward, or fee or agreement to pay or accept a reward or fee is a separate offense. The preceding shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of professional service in a superior manner and that is not readily subject to verification.

(d) Any person who is required to register annually to practice medicine in this state and who fails or refuses to apply for and pay the annual registration fee as provided for in this Act and who practices medicine is an illegal practitioner and shall, on conviction, be punished in the same manner as for the offense of practicing medicine without a license.

(e) It shall be unlawful for any individual, partnership, trust, association, or corporation by the use of any letters, words, or terms as an affix on stationery or on advertisements, or in any other manner, to indicate that the individual, partnership, trust, association, or corporation is entitled to practice medicine if the individual or entity is not licensed to do so.

(f) It shall be unlawful for any person to do any act described in Subdivision (1), (8), (9), (10), (11), (12), (13), or (15) of Section 3.08 of this Act.

(g) A violation of this Act or a rule or regulation of the board for which a specific other penalty is not provided is a Class A misdemeanor.

(h) If any person licensed to practice medicine has had any charges filed against him when his license was not in force or was suspended, revoked, or canceled, or if any penalties have been incurred by the practitioner during that period, any reinstatement of the license in no way abates the prosecution or penalties.

(i) A person to whom a physician has delegated a medical act to perform is not guilty of practicing medicine without a license unless the person acts with knowledge that the delegation and action thereunder is a violation of this Act.

#### Grounds for Refusal to Admit Persons to Examination and to Issue License and Renewal License

Sec. 3.08. The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person for any of the following reasons:

(1) submission of a false or misleading statement, document, or certificate to the board in an application for examination or licensure; the presentation to the board of any license, certificate, or diploma that was illegally or fraudulently obtained; the practice of fraud or deception in taking or passing an examination;

(2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;

(3) intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients;

(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for action by the board under this section;

(B) failing to keep complete and accurate records of purchases and disposals of drugs listed in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513). A physician shall keep records of his purchases and disposals of these drugs to include without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person. A failure to keep the records for a reasonable time is grounds for revoking, canceling, suspending, or probating the license of any practitioner of medicine. The board or its representative may enter and inspect a physician's place(s) of practice during reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the prescription drugs on hand;

(C) writing prescriptions for or dispensing to a person known to be a habitual user of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was a habitual user of the narcotic drugs, controlled substances, or dangerous drugs. This provision does not apply to those persons being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person being so treated;

(D) writing false or fictitious prescriptions for dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(E) prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(F) prescribing, administering, or dispensing in a manner not consistent with public health and welfare dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes), controlled substances scheduled in the Texas Controlled Substances Act (Article 4476-15, Vernon's

Texas Civil Statutes), or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513);

(G) persistently and flagrantly overcharging or overtreating patients;

(H) failing to supervise adequately the activities of those acting under the supervision of the physician; or

(I) delegating professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts;

(5) violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice;

(6) use of any advertising statement that is false, misleading, or deceptive;

(7) advertising professional superiority or the performance of professional service in a superior manner if the advertising is not readily subject to verification;

(8) purchase, sale, barter, or use or any offer to purchase, sell, barter, or use any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma;

(10) using any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(11) impersonating or acting as proxy for another in any examination required by this Act for a medical license; or engaging in conduct which subverts or attempts to subvert any examination process required by this Act for a medical license. Conduct which subverts or attempts to subvert the medical licensing examination process includes, but is not limited to: (A) conduct which violates the security of the examination materials, as prescribed by board rules; (B) conduct which violates the standard of test administration, as prescribed by board rules; (C) conduct which violates the accreditation process, as prescribed by board rules;

(12) impersonating a licensed practitioner or permitting or allowing another to use his license or certificate to practice medicine in this state for the purpose of diagnosing, treating, or offering to treat sick, injured, or afflicted human beings;

(13) employing, directly or indirectly, any person whose license to practice medicine has been suspended or association in the practice of medicine with any person or persons whose license to practice

medicine has been suspended or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere;

(14) performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion;

(15) aiding or abetting, directly or indirectly, the practice of medicine by any person, partnership, association, or corporation not duly licensed to practice medicine by the board;

(16) inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subdivision the board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by the board. If the physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why he should not be required to submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the board shall be taken under the Administrative Procedure Act;

(17) judgment by a court of competent jurisdiction that a person licensed to practice medicine is of unsound mind;

(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

(19) being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it. The action does not constitute state action on the part of the association, society, or hospital medical staff;

(20) repeated or recurring meritorious health-care liability claims that in the opinion of the board

evidence professional incompetence likely to injure the public; or

(21) suspension, revocation, or restriction by another state of a license to practice medicine, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the state taking the action is conclusive evidence of it.

**Loss or Destruction of License; Change of Name of Licensee; Duplicate License**

Sec. 3.09. (a) If any license issued under this Act is lost or destroyed, the holder of the license may present an application for a duplicate license to the board, on a form to be prescribed by the board, together with an affidavit of the loss or destruction, stating that the applicant is the same person to whom the license was issued, and other information concerning its loss or destruction as the board requires and shall, upon payment of a fee as the board may determine to be reasonable, be granted a duplicate license.

(b) The board may issue a new license if the licensee has changed his name.

**Fees**

Sec. 3.10. (a) All annual registration fees collected by the board shall be placed in the State Treasury to the credit of the medical registration fund. The fees deposited to this special fund shall be credited to the appropriations of the board and shall be expended only for items set out in the General Appropriations Act, this Act, or other applicable statutes, to be used by the board and under its direction in the enforcement of this Act, the prohibition of the unlawful practice of medicine, and the dissemination of information to prevent the violation of the laws and to aid in the prosecution of those who violate the laws. All distributions from the fund may be made only upon written approval of the secretary-treasurer of the board or his designated representative, and the comptroller shall upon requisition of the board from time to time draw warrants upon the State Treasurer for the amounts specified in the requisition.

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

- (1) for processing and granting a license by reciprocity to a licensee of another state . \$500
- (2) for processing an application and administration of a partial examination for licensure ..... \$500
- (3) for processing an application and administration of a complete examination for licensure ..... \$500
- (4) for processing an application and issuance of a temporary license ..... \$100
- (5) for processing an application and issuance of a duplicate license ..... \$100
- (6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license ..... \$500

(7) for processing an application and issuance of an annual registration of a licensee . \$100

(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs ..... \$100

(9) for processing an application and issuance of an endorsement to other state medical boards ..... \$100.

(c) The board may set and collect a sales charge for making copies of any paper of record in the office of the board and for any printed material published by the board. The charges shall be in amounts considered sufficient to reimburse the board for the actual expense.

(d) The State Auditor shall audit the financial transactions of the board during each fiscal year.

(e) On or before the first day of January each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

**SUBCHAPTER D. DISCIPLINARY ACTION**

**Grounds for Cancellation, Revocation, Suspension, and Probation of License**

Sec. 4.01. Except for practitioners convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license. On proof that a practitioner of medicine has been initially convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

**Initiation of Charges**

Sec. 4.02. Proceedings, unless otherwise specified, under this Act and charges against a licensee may be instituted by the board on its own initiative or by any person. Charges must be in writing and

on sworn affidavit filed with the board detailing the nature of the charges. The president or his designee shall set a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served on the respondent or the respondent's counsel.

#### Notice

Sec. 4.03. (a) Service of process notifying the respondent of the time and place of a hearing and the nature of the charges against the person shall be made in person or by mail. Notice shall be sufficient if made in person or if sent by registered or certified mail to the person charged at the address shown in the board files or on his most recent application for registration or renewal, no later than 10 days before the hearing.

(b) If service of notice as prescribed by Subsection (a) of this section is impossible or cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in Texas of the person, if known. If the licensee is not currently practicing in Texas as evidenced by information in the board files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than 10 days after the date of the last publication of notice.

#### Investigation

Sec. 4.04. All investigations shall be conducted by the board or persons authorized by the board to conduct them. The board may commission investigators as peace officers for the purpose of enforcing this Act. However, investigators of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers.

#### Hearings, Rules

Sec. 4.05. (a) All hearings conducted under this subchapter by the board shall comply with the provisions of the Administrative Procedure Act and the board's rules. The board may delegate the authority to conduct hearings under this subchapter to a hearing committee comprised of not less than three members appointed by the board. The composition of such committee shall be consistent with the provisions of Sections 2.08 and 2.09 of this Act. Any individual or individuals conducting a hearing under this subchapter are empowered to administer oaths and receive evidence at the hearing and shall report the hearing as prescribed by board rules.

(b) The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(c) The board shall, after the hearing, determine the charges upon their merits.

(d) All complaints, adverse reports, and investigation files and reports received or gathered by the board relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the complaining party consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

(e) The board in its discretion may accept the voluntary surrender of a license. No license may be returned unless the board determines, under rules established by it, that the licensee is competent to resume practice.

#### Right to Counsel

Sec. 4.06. In all hearings under this subchapter, the respondent shall have the right to appear either personally or by counsel or both.

#### Criminal Prosecutions Not Barred

Sec. 4.07. Nothing in this Act shall be construed to bar criminal prosecutions for violations of this Act or any regulation promulgated under this Act.

#### Status of Licensure Pending Appeal

Sec. 4.08. The decision of the board on any disciplinary matter may not be enjoined or stayed except on application to the appropriate court after notice to the board. A person may not practice medicine or deliver health-care services in violation of any disciplinary order or action of the board while the appeal is pending unless otherwise stayed by the district court in which venue of the appeal lies. A stay may not be granted if the licensee's continued practice presents any danger to the public. A stay may not be granted for longer than 120 days.

#### Judicial Review

Sec. 4.09. (a) Any person whose license to practice medicine has been canceled, revoked, suspended, or otherwise disciplined by the board may, within 30 days after the decision complained of is final and appealable, take an appeal to any of the district courts in the licensee's county of residence, if the county of residence is at the time of the hearing in Texas. Otherwise, the appeal shall be taken to one of the district courts of Travis County.

(b) The proceedings on appeal shall be under the substantial evidence rule as provided for in the Administrative Procedure Act.

#### Petition for Reinstatement

Sec. 4.10. Upon application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended,

but the application, in the case of revocation, may not be made prior to one year after the revocation was issued or became final and must be made upon payment of the fees as established by the board and in the manner and form and under the conditions as the board may require. Further, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended.

#### Probation

Sec. 4.11. (a) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C.A. Section 801 et seq. (Public Law 91-513), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period.

(b) The board may at any time while the probationer remains on probation hold a hearing and, upon majority vote, rescind the probation and enforce the board's original action.

(c) The hearing to rescind the probation shall be governed by the same provisions as are set forth in this subchapter for other charges.

#### Methods of Discipline

Sec. 4.12. Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it may enter an order imposing one or more of the following:

- (1) deny the person's application for a license or other authorization to practice medicine;
- (2) administer a public or private reprimand;
- (3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine;
- (4) revoke the person's license or other authorization to practice medicine;
- (5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;
- (6) require the person to participate in a program of education or counseling prescribed by the board;
- (7) require the person to practice under the direction of a physician designated by the board for a specified period of time; or
- (8) require the person to perform public service considered appropriate by the board.

#### Temporary Suspension of License

Sec. 4.13. If the executive committee of the board determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute an immediate danger to the public, the executive committee of the board may temporarily suspend the license of that person without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

#### Report of Board Actions

Sec. 4.14. The board shall report within 30 days the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, any entity responsible for the administration of Medicare and Medicaid in this state, and the complainant.

### SUBCHAPTER E. OTHER PROVISIONS

#### Certification of Certain Organizations

Sec. 5.01. (a) The board shall, on a form adopted by the board and under the rules promulgated by the board, approve and certify any health organization formed solely by persons licensed by the board upon application by the organization and presentation of satisfactory proof to the board that the organization:



(1) is a nonprofit corporation under the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes);

(2) is organized for any or all of the following purposes: the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, and related areas; the supporting of medical education in medical schools through grants and scholarships; the improving and developing of the capabilities of individuals and institutions studying, teaching, and practicing medicine; the delivery of health care to the public; and the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community; and

(3) shall be organized and incorporated by persons licensed by the board and that the directors and trustees of the organization and their successors in office shall be persons licensed by the board and actively engaged in the practice of medicine.

(b) The board may, at its discretion, refuse to approve and certify any such health organization making application to the board if in the board's determination the applying nonprofit corporation is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of this Act.

#### Supervision of Physician Assistants

Sec. 5.02. (a) The board by rule shall adopt standards to regulate the extent to which a physician licensed by the board may delegate his responsibilities as a physician to a physician assistant. The standards shall take into consideration:

(1) the skill of the physician assistant to whom the physician is to delegate the responsibility;

(2) the skill of the physician who is to delegate the responsibility;

(3) the nature of the responsibility delegated;

(4) the extent and nature of the supervision that the physician is to give to the physician assistant to whom the responsibility is delegated;

(5) the risks to the patient who is the subject of the delegated responsibility; and

(6) other factors considered relevant by the board.

(b) A physician licensed by the board shall comply with the standards adopted by the board as provided by this section.

(c)(1) The physician assistants advisory committee is established.

(2) The physician assistants advisory committee consists of not more than six physician assistants appointed by the board. A member of the advisory committee serves for a term of one year expiring on May 1 of each year.

(3) The advisory committee shall advise the board on matters relating to physician assistants. In order to assure that the advisory committee is able to exercise properly its advisory powers, the board shall provide the advisory committee with timely notice of all board meetings and a copy of the minutes of all board meetings. In addition, the board may not adopt any rule relating to the practice of physician assistants that is not an emergency matter unless the proposed rule has been submitted to the advisory committee for review and comment at least 30 days prior to the adoption of the rule.

#### District Review Committees

Sec. 5.03. (a) In this section:

(1) "Committee" means a district review committee created under Subchapter C<sup>1</sup> of the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).

(2) "District" means the district established pursuant to the Medical Liability and Insurance Improvement Act of Texas.

(b) The number of and geographic area composed of various counties shall be designated by the board. The board, after a public hearing, may revise the number of districts and the composition of the various counties as it considers appropriate. In the event of change of the number or the composition of the various counties, the board shall follow the same procedure as applied to the initial designations.

(c) Each committee is composed of three persons appointed by the governor from among persons who have resided and practiced medicine in the district for more than three years before their appointment.

(d) Each member of each committee shall be appointed by the governor, after designation of the districts, for a term of six years, except the terms of the initial members. Each member shall hold office for the term appointed as long as qualified and until the appointment and qualification of his successor.

(e) Vacancies in the membership of a committee shall be filled by the governor by appointment for the unexpired term in the manner provided for making other appointments to a committee.

(f) Each member of the committee is entitled to receive a per diem as provided for board members for actual duty.

(g) Each member of a committee is subject to law and the rules of the board as if he were a member of the board, except members are not subject to the provisions of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(h) The board may adopt, amend, or repeal rules as may be reasonably necessary to carry into effect the provisions of this section relating to:

(1) per diem and expenses of members;

(2) matters to be heard by or considered by the committees;

(3) the conduct of any hearings and the authority the board may delegate to the committees; and

(4) other matters relating to the committee's actions, duties, and responsibilities as may be reasonable.

(i) A committee may not exercise final authority over the disposition of a complaint against a person licensed by the board and may not issue a final order or rule. The board must make final disposition of complaints against persons licensed by it and shall have the sole authority to issue final orders and rules.

<sup>1</sup> Repealed.

#### Foreign Medical School Students

Sec. 5.04. (a) Notwithstanding any other provision of law, an individual who has been a student of a foreign medical school is eligible for licensure to practice medicine in this state if he:

(1) has studied medicine in a reputable medical school as defined by the board located outside the United States;

(2) has completed all of the didactic work of the foreign medical school;

(3) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education under the direction of the medical school in the United States;

(4) has attained a passing score on the Educational Council for Foreign Medical Graduates examination, or other examination, if required by the board; and

(5) has passed the examination required by the board of all applicants for license.

(b) Satisfaction of the requirements of Subsection (a) of this section are in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other requirements shall be a condition of licensure to practice medicine in this state.

(c) Satisfaction of the requirements specified in Subsection (a) of this section shall be in lieu of certification by the Educational Council for Foreign Medical Graduates, and the certification is not a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Subsection (a) of this section.

(d) A hospital that is licensed by this state, that is operated by the state or a political subdivision of the state, or that receives state financial assistance, directly or indirectly, may not require an individual

who has been a student of a foreign medical school to satisfy any requirements other than those contained in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section prior to commencing an internship or residency.

(e) A document granted by a medical school located outside the United States issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which the training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (3) of Subsection (a) of this section, be considered the equivalent of a degree of doctor of medicine or doctor of osteopathy for purposes of licensure.

#### Reports and Data From Insurers

Sec. 5.05. (a) Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data described in Subsections (b) and (c) of this section at the time prescribed. The report or data shall be provided with respect to a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide medical or health-care services, and with respect to settlement of a claim or lawsuit made on behalf of the insured. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance or is insured by a nonadmitted carrier the information required to be reported in Subsections (b) and (c) of this section shall be the responsibility of the physician.

(b) The following report or data shall be furnished to the board within 90 days after receipt by the insurer of the complaint from the insured:

- (1) the name of the insured;
- (2) the policy number;
- (3) the policy limits;
- (4) a copy of the complaint;
- (5) a copy of the answer; and

(6) other pertinent data and information within the knowledge of the insurer as the board may require.

(c) The following report or data and information shall be furnished to the board within 90 days from a judgment, dismissal, or settlement of suit involving the insured or settlement of any claim on behalf of the insured without the filing of a lawsuit:

- (1) the date of a judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party;
- (3) the amount of the settlement or judgment against the insured; and

(4) other pertinent information within the knowledge of the insurer as the board may require.

(d) There shall be no liability on the part of and no cause of action of any nature arises against an insurer reporting under this section, its agents or employees, or the board or its employees or representatives for any action taken by them pursuant to this section.

(e) In the trial of a suit against a physician based on his conduct in providing or failing to provide medical or health-care services, no report or data submitted to the board under this section nor the fact that the report or data has been submitted to the board may be offered in evidence or in any manner used in the trial of the case.

#### Reporting by Medical Peer Review Committee or Physicians

Sec. 5.06. (a) Any medical peer review committee in this state and any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state may report relevant facts to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee or the physician, they have knowledge relating to the physician that reasonably raises a question with respect to his competency.

(b) A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may report in writing to the board the name of the member, together with the pertinent information relating to the action.

(c) The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board does not, in itself, preclude any action by a hospital or other health-care facility or professional society composed primarily of physicians to suspend, restrict, or revoke the privileges or membership of the physician.

(d) On a determination by the board that a report submitted by a medical peer review committee is without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this section and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.

(e)(1) Reports, information, or records received and maintained by the board pursuant to this section and Section 5.05 of this Act, including any material received or developed by the board during an investigation or hearing, are strictly confidential and subject to the provisions of Subdivision (4) of

this subsection. However, the board may disclose this confidential information only:

(A) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(B) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(C) pursuant to an order of a court of competent jurisdiction; or

(D) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(2) Orders of the board relating to disciplinary action against a physician are not confidential.

(3) In no event may records and reports received, maintained, or developed by the board, or disclosed by the board to others, pursuant to this article, be available for discovery or court subpoena or introduced into evidence in a medical professional liability suit or other action for damages arising out of the provision of or failure to provide medical or health-care services.

(4) A person who unlawfully discloses this confidential information possessed by the board commits a Class A misdemeanor.

(f) The following persons are immune from civil liability:

(1) a person reporting to or furnishing information to a medical peer review committee;

(2) a member, employee, or agent of the medical peer review committee who assists in the organization, investigation, or preparation of information or who makes a report on other information available to the board pursuant to this subsection; and

(3) any member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

(g) The reporting or assistance provided for in this section does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

#### Report of Felony Convictions

Sec. 5.07. Within 30 days after the conviction of a person known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense

committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

#### Physician-Patient Communication

Sec. 5.08. (a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician.

(e) The privilege of confidentiality may be claimed by the patient or physician acting on the patient's behalf.

(f) The physician may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(g) Exceptions to confidentiality or privilege in court or administrative proceedings exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and any criminal or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on his behalf submits a written consent to the release of any confidential information, as provided in Subsection (j) of this section;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on his behalf if the patient is attempting to recover monetary damages for any physical or mental condition including death of the patient. Any information is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction over the subject

matter, pursuant to rules of procedure specified for the matters;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to this Act, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under Subdivision (1) of Subsection (g) of this section or those patients who have submitted written consent to the release of their medical records as provided by Subsection (j) of this section;

(6) in any criminal investigation of a physician in which the board is participating or assisting in the investigation or proceeding by providing certain medical records obtained from the physician, provided that the board shall protect the identity of any patient whose medical records are provided in the investigation or proceeding, except for those patients covered under Subdivision (1) of Subsection (g) of this section or those patients who have submitted written consent to the release of their medical records as provided by Subsection (j) of this section. This subsection does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient;

(7) in an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under:

(A) the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes);

(B) the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes);

(C) Section 9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes);

(D) Section 2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes); or

(8) in any criminal prosecution where the patient is a victim, witness, or defendant. Records are not discoverable until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion thereof. Such determination shall not constitute a determination as to the admissibility of such records or communications or any portion thereof.

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only to the following:

(1) governmental agencies if the disclosures are required or authorized by law;

(2) medical or law enforcement personnel if the physician determines that there is a probability of imminent physical injury to the patient, to himself, or to others, or if there is a probability of immediate mental or emotional injury to the patient;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but the personnel may not identify, directly or indirectly, a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the medical records reflecting charges and specific services rendered when necessary in the collection of fees for medical services provided by a physician or physicians or professional associations or other entities qualified to render or arrange for medical services;

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

(6) individuals, corporations, or governmental agencies involved in the payment or collection of fees for medical services rendered by a physician;

(7) other physicians and personnel under the direction of the physician who are participating in the diagnosis, evaluation, or treatment of the patient; or

(8) in any official legislative inquiry regarding state hospitals or state schools, provided that no information or records which identify a patient or client shall be released for any purpose unless proper consent to the release is given by the patient, and only records created by the state hospital or school or its employees shall be included under this subsection.

(i) Exceptions to the confidentiality privilege in this Act are not affected by any statute enacted before the effective date of this Act.

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes); the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes); Section 9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes); Section 2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes); Chapter 5, Texas Probate Code;<sup>1</sup> and Chapter 11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

(2) The patient, or other person authorized to consent, has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(3) Any person who receives information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(k) A physician shall furnish copies of medical records requested, or a summary or narrative of the records, pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician may delete confidential information about another person who has not consented to the release. The information shall be furnished by the physician within a reasonable period of time and reasonable fees for furnishing the information shall be paid by the patient or someone on his behalf. In this subsection, "medical records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(l) A person aggrieved by a violation of this section relating to the unauthorized release of confidential and privileged communications may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the District Court of Travis County, for appropriate injunctive relief, and the petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this section relating to the unauthorized release of confidential and privileged communications may prove a cause of action for civil damages.

(m) "Patient" for the purposes of this section means any person who consults or is seen by a person licensed to practice medicine to receive medical care.

<sup>1</sup> Probate Code, § 72 et seq.

#### Repeal

*By order of the Texas Supreme Court dated November 23, 1982, effective September 1, 1983, adopting the Texas Rules of Evidence, § 5.08 of this article is deemed to be repealed insofar as it relates to civil actions by the Rules of Practice Act, Acts 1939, 46th Leg., p. 201, § 1, classified as art. 1731a, § 1.*

#### Authority to Supply Drugs

Sec. 5.09. (a) A person licensed to practice medicine under this Act is authorized to supply the needs of his patients with any drugs or remedies as are necessary to meet the patients' immediate needs; provided, however, this section does not permit the

physician to operate a retail pharmacy without first complying with the Texas Pharmacy Act.<sup>1</sup>

(b) A licensed physician who practices medicine in a rural area in which there is no pharmacy may maintain a supply of dangerous drugs in the office of the physician to be dispensed in the course of treating the physician's patients and may be reimbursed for the cost of supplying those drugs without obtaining a license under the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes). Such physicians shall comply with all appropriate labeling sections applicable to this class of drugs under the Texas Pharmacy Act, and oversee compliance with packaging and recordkeeping sections applicable to this class of drugs. For the purposes of this subsection:

(1) the term "rural area" means an area in which there is no pharmacy within a 15-mile radius of the physician's office, and is within:

(A) a county with a total population of 5,000 or less according to the most recent federal census; or

(B) a city or town, incorporated or unincorporated, with a population of less than 2,500, according to the most recent federal census, but shall not include a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.

(2) the term "reimbursed for cost" shall mean an additional charge separate from that made for the physician's professional services which include the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service but not including a separate fee for the act of dispensing the drug product itself.

<sup>1</sup> Article 4542a-1.

#### Application of Sunset Act

Sec. 5.10. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 1993.

[Acts 1981, 67th Leg., 1st C.S., p. 1, ch. 1, § 1, eff. Aug. 5, 1981. Amended by Acts 1983, 68th Leg., p. 2970, ch. 511, §§ 1, 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3207, ch. 552, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4980, ch. 890, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5292, ch. 974, §§ 1 to 10, eff. Aug. 29, 1983.]

Sections 3 to 5 of the 1981 Act provide:

"Sec. 3. (a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government.

"(b) A person holding office as a member of the board on the effective date of this Act continues to hold office for the term for which the member was originally appointed or until a successor is appointed and qualified. The initial appointments of the public members of the board shall be made so that one appointee serves a term that expires April 13, 1983, one appointee serves a term that expires April 13, 1985, and one appointee serves a term that expires April 13, 1987. Thereafter, at the expiration of the term of each member of the board appointed, a successor shall be appointed. The terms of office of all succeeding members expire April 13

of odd-numbered years. Members shall continue to hold office until a successor is appointed and qualified. In order to permit an orderly accomplishment of the requirements of Subsection (c) of Section 2.05 of the Medical Practice Act, the governor shall not appoint nor cause to be appointed more than two physicians with the degree of doctor of osteopathic medicine (D.O.) to be members of the board prior to May 13, 1982, unless a vacancy on the board occurs sooner for those whose terms expire April 13, 1983, or thereafter. On or after that date or event, and no later than the time the appointments are to be made on or after April 13, 1983, the governor shall implement Subsection (c) of Section 2.05 of the Medical Practice Act.

"(c) All licenses which were procured legally and issued legally by the board are hereby validated and subject to no retroactive action.

"(d) All statutory references to physicians or persons licensed to practice medicine as defined by Article 4510, Revised Civil Statutes of Texas, 1925, shall be construed to have reference to this Act.

"(e) All rules and regulations adopted and promulgated by the board shall be continued until amended or repealed. The rules and regulations that are in force on the effective date of this Act are validated and are repealed only to the extent of any conflict.

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act.

"(g) Where applicable, the definitions in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), apply to the Medical Practice Act.

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years.

"Sec. 4. The requirements of Subsections (u) and (v) of Section 2.09, Medical Practice Act, that the Texas State Board of Medical Examiners develop a career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (v) of Section 2.09 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983.

"Sec. 5. If any provision of this Act or its application to any person or circumstance is held invalid or unconstitutional, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision and does not affect, impair, invalidate, or nullify the remainder of this Act. The effect shall be confined to the provision of the Act so adjudged to be invalid or unconstitutional and to this end the provisions of this Act are declared to be severable."

Section 6(c) of the 1981 Act provides:

"No substantive changes in prior law or interpretation of prior law have been intended unless expressly done so in this Act. Consistent with this intention, unless expressly provided otherwise in this Act, any previous judicial opinion, attorney general's opinion, board practice, or interpretation is not to be considered modified or declared inapplicable."

#### Arts. 4496 to 4498b. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

See, now, art. 4495b.

For provisions as to rules and regulations adopted prior to repeal of these articles, see note under art. 4495b.

**Art. 4498c. State Rural Medical Education Board**

**Creation**

Sec. 1. There is hereby established and created the State Rural Medical Education Board, which shall have the general powers and duties authorized and imposed by the provisions of this Act.

**Application of Sunset Act**

Sec. 1a. The State Rural Medical Education Board is subject to the Texas Sunset Act,<sup>1</sup> but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

<sup>1</sup> Article 5429k.

**Members; Appointment; Qualifications; Terms of Office; Vacancies; Oath of Office; Commission**

Sec. 2. The State Rural Medical Education Board shall consist of six (6) members, who shall be appointed by the Governor with the advice and consent of the Senate, and who shall have the following qualifications: Three (3) of the members shall be legally qualified practicing physicians, who shall have had not less than five (5) years experience in the actual practice of medicine within the State of Texas in rural areas as defined by this Act, of good professional standing and graduates of recognized medical colleges; three (3) of whose members shall consist of citizens of this State who have maintained residence for a period of not less than five (5) years in a rural area as defined by this Act.

The terms of office of members of said Board shall be for six (6) years except the terms of office of members appointed to the initial Board shall be two for two years, two for four years and two for six years. The initial appointments shall be made to insure that there shall always be an equal number of said Board members with the same term of both qualifications as described above. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. The members of the State Rural Medical Education Board shall qualify by taking a Constitutional Oath of office before an officer authorized to administer oaths with this State, and, upon presentation of such oath of office, together with a certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

**Election of Officers; Majority Vote**

Sec. 3. The Board shall meet within 30 days after the effective date of this Act and elect a Chairman, Vice Chairman, and Secretary from among its members. The vote of the majority of

Board members is sufficient for passage of any business or proposal which comes before the Board.

**Per Diem; Reimbursement for Expenses**

Sec. 4. A member of the Board is not entitled to a salary for duties performed as a member of the Board. However, a member is entitled to \$25 for each day he is in attendance at meetings or hearings or on authorized business of the Board, including time spent in traveling to and from the place of the meeting, hearing or other authorized business, and is entitled to a reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the Executive Secretary.

**Powers and Duties**

Sec. 5. The State Rural Medical Education Board shall have the following powers and duties:

(a) The Chairman, or in his absence the Vice-Chairman, shall preside at all meetings of the Board. In the absence of both the Chairman and the Vice-Chairman from any meeting of the Board, the members of the Board present may select one of their number to serve as Chairman for the meeting.

(b) The Board shall have regular meetings at times specified by a majority vote of the Board.

(c) The Chairman may call special meetings at any time. He shall call a special meeting on written request signed by at least three members of the Board.

(d) A majority of the Board constitutes a quorum to transact business.

(e) To make rules and regulations for its government and that of its officers and employees; and to prescribe the duties of its officers, consultants and employees.

(f) To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes. The director shall keep the books, records and accounts of the Board and shall prepare and countersign all checks, vouchers and warrants drawn upon the funds of the Board; and the same shall be signed by the Chairman of the Board. The Director shall also be the Treasurer of the Board and shall keep and account for all funds of the Board, and shall execute and file with the Board a surety bond in the sum of \$20,000, payable to the State of Texas, and conditioned upon the faithful performance of his duties, said premium to be paid out of funds of the Board.

**Loans, Grants or Scholarships; Applications; Purpose; Investigation and Examination; Rules and Regulations; Terms and Conditions**

Sec. 6. It shall be the duty of the Board to receive and pass upon, allow or disallow all applications for loans, grants or scholarships made by students who are bona fide citizens and residents of

the State of Texas and who have a desire to become physicians, and who are acceptable for enrollment in a qualified medical school. The purpose of such loans, grants or scholarships shall be to enable such applicants to obtain a standard medical education which will qualify them to become licensed, practicing physicians and surgeons within the State of Texas. It shall be the duty of the Board to make a careful and full investigation of the ability, character and qualifications of each applicant and to determine his fitness to become a recipient of such loan or scholarship, and for that purpose the Board may propound such examination to each applicant which it deems proper, and said Board may prescribe such rules and regulations as it deems necessary and proper to carry out the purposes and intentions of this Act. The investigation of the applicant shall include an investigation of the ability of the applicant, who is unable to pay, or of the parents of such applicant, to pay his own tuition at such a medical school and the Board in granting such loans and scholarships shall give preference to qualified applicants, or whose parents are unable to pay the applicant's tuition at such a medical school.

The said Board shall have authority to grant to each applicant deemed by the Board to be qualified to receive the same, a loan, grant or scholarship for the purpose of acquiring a medical education as herein provided for, upon such terms and conditions to be imposed by the Board as provided for in this Act. The Board shall, except in those cases which it deems proper, make every effort to grant loans to applicants rather than grants or scholarships. Before awarding funds, the Board may review candidates for loans, grants or scholarships to determine their intent concerning the location of future practice.

**Amount and Proportioning of Loans, Grants and Scholarships; Repayment; Credit for Rural Practice; Default**

Sec. 7. Applicants who are granted loans, grants or scholarships by the Board shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the Board. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the Board. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with ten (10) percent interest from the date of each payment by the State on such loan, grant or scholarship or

by satisfaction of other conditions of the Board or this Act. If the applicant practices his profession in a rural area as defined by this Act the Board is authorized and shall credit one-fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the Board. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 100 percent of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

**Priority for Texas Residents**

Sec. 7A. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

**Contract of Applicant; Terms and Conditions; Form; Signature; Removal of Disabilities; Suits**

Sec. 8. Each applicant before being granted a loan, grant or scholarship shall enter into a contract with the Board, which shall be deemed a contract within the State of Texas, agreeing to the terms and conditions upon which the loan or scholarship shall be granted to him, which said contract shall include such terms and provisions as will carry out the full purpose and intent of this Act, and the form thereof shall be prepared and approved by the Attorney General of this State, and shall be signed by the Chairman of the Board, countersigned by the Secretary, and shall be signed by the applicant. For the purposes of this Act the disabilities and minorityhood of all applicants granted loans or scholarships hereunder shall be and the same are hereby removed and said applicants are declared to be full lawful age for the purpose of entering into the contract hereinabove provided for, and such contract so executed by any applicant is hereby declared to be a valid and binding contract the same as though the said applicant were of the full age of twenty-one (21) years and upward. The Board is hereby vested with the full and complete authority and power to sue in its own name any applicant for any balance due the Board upon any such contract.

**Contracts for Admission with Medical Colleges or Schools**

Sec. 9. It shall be the duty of the Board to contact and make inquiry of such of the medical colleges or schools as herein provided as it deems



proper, and make such arrangements and enter into such contracts, within the limitations as to cost as herein provided, for the admission of students granted loans or scholarships by the Board, such contracts to be approved by the Attorney General of this State, and money obligations of such contracts so made by the Board with any such college shall be paid for out of the funds to be provided by law for such purposes, and all students granted loans, grants or scholarships shall attend the medical school with which the Board has entered a contract, or any accredited medical school or college in which said applicant may obtain admission, and which is approved by the Board.

#### Cancellation of Contracts

Sec. 10. The Board shall promulgate and adopt rules and regulations for the cancellation of any contract made between it and any applicant for loans or scholarships upon such cause deemed sufficient by the Board. And the Board shall have authority to cancel such contracts which it may lawfully cancel made with any of the colleges or schools as herein provided.

#### Requisition; Warrant; Payment by Treasurer out of Appropriated Funds

Sec. 11. All payments of funds or loans or scholarships hereunder shall be made by requisition of the Board signed by the Chairman and the Secretary directed to the Comptroller of the Public Accounts, who shall thereupon issue a warrant on the Treasury of the State of Texas for the amount fixed in the requisition and payable to the person designated thereon, which said warrant upon presentation shall be paid by the Treasurer out of any funds appropriated by the Legislature for the purpose provided for under this Act.

#### Contracts for Life Insurance

Sec. 12. The Board may contract with any insurance company or companies licensed to do business in Texas for issuance on the life of any applicant an amount sufficient to retire the principal and interest owed under a loan made under the provisions of this Act, the costs of the insurance shall be paid by the student borrower. No contract for insurance provided for in this section may be approved except by the Board during a regular meeting attended by a quorum of the total Board membership.

#### Extension of Time for Beginning Repayment

Sec. 13. The Board may extend the time for beginning repayment for unusual or financial hardships with approval of the Attorney General.

#### Suit on Default

Sec. 14. Upon any default as provided for herein the Board shall turn the same over to the Attorney General for prosecution and suit for the remaining sum shall be instituted by the Attorney General, or any county or district attorney acting for him, in the

county of the person's residence, the county in which is located the institution at which the person was last enrolled, or in Travis County, unless the Attorney General finds reasonable justification for delaying suit and so advises the Board in writing.

#### Advisory Committees

Sec. 15. The Board may appoint advisory committees from outside its members as it deems necessary to assist in achieving the purposes of this Act.

#### Contracts with State and Federal Agencies, Corporations, Etc.

Sec. 16. In achieving the goals outlined in this Act and the performance of functions assigned to it, the Board may contract with any other State governmental agency as authorized by law, with any agency of the United States, and with corporations, associations, partnerships, and individuals.

#### Gifts, Grants or Donations; Acceptance; Deposit; Expenditure

Sec. 17. The Board may accept gifts, grants or donations of real or personal property from any individual, group, association, or corporation or the United States, subject to limitations or conditions set by law. The gifts, grants, or donations of money shall be deposited in the Texas Rural Medical Education Board fund, separately accounted for, and expended in accordance with the specific purposes for which given and under such conditions as are imposed by the donor and as provided by law.

#### Audit

Sec. 18. All transactions under this Act are subject to audit by the State Auditor.

#### Annual Report

Sec. 19. The board shall make a report of the operation of the State Rural Medical Education Board to the Governor annually and to the Legislature not later than December 1, prior to the Regular Session of the Legislature.

#### Rural Area

Sec. 20. Rural areas as defined in this Act shall mean residence in or intention to practice in a county of the State of Texas which according to the last preceding Federal Census had a population of less than 30,000.

[Acts 1973, 63rd Leg., p. 782, ch. 348, eff. June 12, 1973. Amended by Acts 1977, 65th Leg., p. 130, ch. 60, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.154, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4330, ch. 691, §§ 1 to 3, eff. Aug. 29, 1983.]

Section 4 of the 1983 amendatory act provides:

"This Act applies to loans, grants, or scholarships granted by the State Rural Medical Education Board on or after the effective date of this Act."

**Arts. 4499 to 4505. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981**

See, now, art. 4495b, § 3.01 et seq.

**Art. 4505a. Soliciting Patients**

Sec. 1. No masseur, optometrist, or any other person who practices 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 masseur, optometrist, or any other person who practices 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.

Sec. 2. This Article does not apply to a practitioner of medicine subject to regulation under the Medical Practice Act.<sup>1</sup>

[1925 P.C. Amended by Acts 1981, 67th Leg., 1st C.S., p. 34, ch. 1, § 2, eff. Aug. 5, 1981.]

<sup>1</sup> Article 4495b.

**Art. 4505b. 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.

[1925 P.C.]

**Art. 4505c. 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.

[1925 P.C.]

**Art. 4506. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981**

See, now, art. 4495b, § 4.01 et seq.

For effect of 1981 repealing act on pending proceedings to cancel, suspend, or revoke a license, see note under art. 4495b.

**Art. 4506a. Revocation and Suspension of License for Drug-Related Felony Conviction.**

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances

Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Acts 1981, 67th Leg., p. 102, ch. 52, § 2, eff. Sept. 1, 1981.]

**Arts. 4507, 4508. Repealed by Acts 1953, 53rd Leg., p. 1029, ch. 426, § 8**

**Arts. 4509 to 4512a. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981**

For construction of statutory references to physicians or persons licensed to practice medicine as defined by art. 4510, see note under art. 4495b.

See, now, art. 4495b.

**CHAPTER SIX 1/2. ABORTION**

Art.

4512.1 to 4512.4. Unconstitutional.

4512.5. Destroying Unborn Child.

4512.6. Unconstitutional.

4512.7. Right Not to Perform Abortions.

*This Chapter 6 1/2, consisting of articles 4512.1 to 4512.6, was transferred from Vernon's Ann.P.C., Title 15, Chapter 9 (articles 1191 to 1196) by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399, enacting the new Texas Penal Code.*

**Arts. 4512.1 to 4512.4. Unconstitutional**

The United States Supreme Court in *Roe v. Wade* (1973) 93 S.Ct. 705, 410 U.S. 113, 35 L.Ed.2d 147, held that arts. 4512.1 to 4512.4 and 4512.6 violated the due process clause of the Fourteenth Amendment protecting right to privacy against state action.

**Art. 4512.5. 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.

[1925 P.C.]

**Art. 4512.6. Unconstitutional**

See note under arts. 4512.1 to 4512.4.

**Art. 4512.7. Right Not to Perform Abortions****Personnel Not Required to Participate in Abortion Procedures**

Sec. 1. A physician, nurse, staff member, or employee of a hospital or other health care facility who objects to performing or participating, directly or indirectly, in an abortion procedure may not be required to perform or participate, directly or indirectly, in an abortion procedure.

**Private Hospitals Not Required to Make Facilities Available**

Sec. 2. A private hospital or private health care facility may not be required to make its facilities available for the performance of an abortion unless a physician determines that the life of the mother is immediately endangered.

**Discrimination Prohibited**

Sec. 3. A hospital or health care facility may not discriminate in any manner against a physician, nurse, staff member, or employee or against an applicant for such positions, who refuses to perform or participate in an abortion procedure. No physician, nurse, staff person, or employee shall be discriminated against for their willingness to participate in abortion procedures at other facilities. An educational institution may not discriminate against applicants for admission or employment as students, interns, or residents because of their attitudes concerning abortion.

**Remedies**

Sec. 4. A person whose rights under this Act are violated may sue a hospital, health care facility, or educational institution in district court in the county where the hospital, facility, or institution is located to enjoin further violations of this Act and for such affirmative relief as may be appropriate, including, but not limited to, admission or reinstatement of employment with back pay plus 10 percent interest, and any other relief necessary to ensure compliance with the provisions of this Act.

Acts 1977, 65th Leg., p. 1870, ch. 745, eff. Aug. 29, 1977.

**CHAPTER SIX A. CHIROPRACTORS****Art.**

4512a-1 to 4512a-18. Unconstitutional.

4512b. Practice of Chiropractic.

4512b(1). Peer Review.

4512b(2). Civil Immunity, Official Acts.

**Arts. 4512a-1 to 4512a-18. Unconstitutional**

These articles, derived from Acts 1943, 48th Leg., p. 627, ch. 359, regulating the practice of chiropractic were unconstitutional as being violative of Const. art. 16, § 31, as according a preference to chiropractic system of healing art by failure to require same educational qualifications of chiropractors as are required of medical practitioners by Medical Practice Act, or to require chiropractors to pass satisfactory examinations on same subjects as all others similarly situated, and prohibiting licensed medical practitioners from employing chiropractic system of treating diseases

and disorders without passing examination required by Chiropractic Act. See Ex parte Halsted (1944) 147 Cr.R. 453, 182 S.W.2d 479.

For law covering the practice of chiropractic, see art. 4512b.

**Art. 4512b. Practice of Chiropractic****Acts Constituting Practice of Chiropractic**

Sec. 1. Any person shall be regarded as practicing chiropractic within the meaning of this Act who shall employ objective or subjective means without the use of drugs, surgery, X-ray therapy or radium therapy for the purpose of ascertaining the alignment of the vertebrae of the human spine, and the practice of adjusting the vertebrae to correct any subluxation or misalignment thereof, and charge therefor, directly or indirectly, money or other compensation; or who shall hold himself out to the public as a chiropractor or shall use either the term "chiropractor," "chiropractic," "doctor of chiropractic," or any derivative of any of the above in connection with his name.

**Expenses; Audits**

Sec. 2. (a) The Texas Board of Chiropractic Examiners hereinafter provided for shall defray all expenses under this Act from fees provided in this Act, and no appropriation shall ever be made from the State Treasury for any expenditures made necessary by this Act; and all fees remaining in the "Chiropractic Examiners Fund" at the end of any fiscal year in excess of Twenty Thousand Dollars (\$20,000) shall be transferred into the General Fund of the State of Texas.

(b) The state auditor shall audit the financial transactions of the board in each fiscal biennium.

**Texas Board of Chiropractic Examiners Created; Personnel and Terms; Application of Sunset Act**

Sec. 3. (a) A Board to be known as "The Texas Board of Chiropractic Examiners" is hereby created. No member of said Board shall be a member of the faculty or Board of Trustees of any chiropractic school; and all appointments to said Board shall be subject to the confirmation of the Senate. The Texas Board of Chiropractic Examiners, which hereinafter may be referred to as "The Board," shall be composed of nine (9) members, appointed by the Governor, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) Six (6) members must be reputable practicing chiropractors who have resided in this State for a period of five (5) years preceding their appointment. Three (3) members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a ten percent (10%) interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) Five (5) members of the Board shall constitute a quorum. No school shall ever have a majority representation on the Board. No member of said Board shall be a stockholder, or have any financial interest whatsoever in any chiropractic school or college.

(d) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry.

(e) A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(g) The members of the Texas Board of Chiropractic Examiners shall be divided into three (3) classes, one, two and three, and their respective terms of office shall be determined by the Governor at the time of the first appointments hereunder. Members hold office for six (6) years and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only.

(h) The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

**Information of Consumer Interest; Informational Sign in Licensee's Place of Business**

Sec. 3a. (a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(b) There shall at all times be prominently displayed in the place of business of each licensee

regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

**Grounds for Removal From Board; Validity of Actions**

Sec. 3b. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of Section 3 of this Act for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (b) of Section 3 of this Act for appointment to the Board;

(3) violates a prohibition established by Subsection (d), (e), or (f) of Section 3 of this Act; or

(4) does not attend at least one-half of the regularly scheduled meetings held by the Board in a calendar year, excluding meetings held while the person was not a member of the Board.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

**Oath; Officers; Rules, Regulations, By-Laws, and Guidelines; Bond of Secretary-Treasurer; Accounting; Intraagency Career Ladder Program; Performance Evaluations**

Sec. 4. (a) Each member of the Texas Board of Chiropractic Examiners shall qualify by taking the Constitutional Oath. At the first meeting of said Board after each biennial appointment, the Board shall elect a president, a vice-president and a secretary-treasurer from its members. Regular meetings shall be held to examine applicants and for the transaction of business at least twice a year at such time and place as may be determined by the Board. Special meetings may be held on a call of three (3) members of the Board. The Board may prescribe rules, regulations and bylaws in harmony with the provisions of this Act for its own proceedings and government for the examination of applicants for license to practice chiropractic. The secretary-treasurer shall make and file a surety bond in favor of the Texas Board of Chiropractic Examiners in the sum of not less than Five Thousand Dollars (\$5,000) conditioned that he will faithfully discharge the duties of his office.

(b) The Board/commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) If the appropriate standing committees of both houses of the Legislature acting under Subsec-

tion (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board/commission receives the committee's statements.

(d) The Board shall adopt guidelines for educational preparation and acceptable practices for all aspects of the practice of chiropractic.

(e) On or before January 1 of each year, the Board shall file with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the Board in the preceding year.

(f) The Board shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job-opening with the Board in a nonentry level position. The intraagency posting shall be made at least ten (10) days before any public posting is made.

(g) The Board shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the Board shall be based on the system established under this subsection.

#### **Committees of Board; Duties; Rules and Regulations**

Sec. 4a. The Texas Board of Chiropractic Examiners shall have the power to appoint committees from its own membership, and to make such rules and regulations not inconsistent with this law as may be necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of this Act.

The duties of any such committees appointed from the Texas Board of Chiropractic Examiners membership shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith as shall be referred to such committees, and they shall make recommendations to the Texas Board of Chiropractic Examiners with respect thereto.

#### **Procedure and Hearings; Injunction Against Violations; Cancellation of License**

Sec. 4b. The Texas Board of Chiropractic Examiners shall have the power, and may delegate the said power to any committee, to issue subpoenas, and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction. The Texas Board of Chiropractic Examiners shall not be bound by strict rules of evidence or procedure, in the conduct of its proceedings and hearings, but the determination shall be founded on sufficient legal evidence to sustain it. The Texas

Board of Chiropractic Examiners shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

Before entering any order cancelling or suspending a license to practice chiropractic, the Board shall hold a hearing in accordance with the procedure set out in Article 4512b. Section 14, Vernon's Revised Civil Statutes of Texas, as amended.

#### **Records**

Sec. 5. The Board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place, and duration of residence of each applicant, the time spent in the study of chiropractic in respective chiropractic schools, together with such other information as the Board may desire to record. Said register shall also show whether applicants were rejected or licensed and shall be prima-facie evidence of all matters contained therein. The secretary of the Board shall on May 1st of each year transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said Board or the Secretary of State, shall be admitted in evidence in all courts.

#### **Practice Without License Prohibited**

Sec. 5a. A person may not practice chiropractic without being licensed to do so by The Texas Board of Chiropractic Examiners.

Secs. 6, 7. Repealed by Acts 1981, 67th Leg., p. 2963, ch. 781, § 5, eff. Sept. 1, 1981.

#### **Annual Registration**

Sec. 8. It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as provided by this Act on or before the first day of January each year to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereafter provided for, a fee fixed by the Texas Board of Chiropractic Examiners, which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post office address, his place of residence, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate. Upon receipt of such

application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee and the issuance of such receipt shall not entitle the holder thereof to lawfully practice chiropractic within the State of Texas unless he has in fact been previously licensed as such chiropractor by the Texas Board of Chiropractic Examiners; as prescribed by law, and unless his license to practice chiropractic is in full force and effect; and provided further that, in any prosecution for the unlawful practice of chiropractic as denounced in Section 6 hereof, such receipt showing payment of the annual registration fee required by this Section shall not be treated as evidence that the holder thereof is lawfully entitled to practice chiropractic.

**Practicing Without Annual Registration Receipt; Renewal of License**

Sec. 8a. (a) Practicing chiropractic as defined in Section 1 of this Act without an annual registration receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing chiropractic without a license.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for longer than ninety (90) days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for longer than ninety (90) days but less than two (2) years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two (2) years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

**Application of Act and Registration Provisions; Prerequisites to Annual Registration or Renewal**

Sec. 8b. (a) The provisions of this Act shall apply to all persons licensed by the Texas Board of Chiropractic Examiners and the annual registration fee shall apply to all persons licensed by the Texas Board of Chiropractic Examiners, whether or not they are practicing within the borders of this State. Provided, however, that as a prerequisite to the

annual registration or renewal and before such chiropractic registration or renewal may be issued, the licensee shall present to the Board:

(1) satisfactory evidence that in the year preceding the application for renewal said licensee attended two (2) days of continuing educational courses approved by the Board; or

(2) satisfactory evidence that he was unavoidably prevented by sickness or otherwise from attending such educational or post-graduate program, together with a recommendation of two (2) reputable licensed Texas Chiropractors who personally know the licensee and vouch for his good standing in the profession; provided that new licensees during twelve (12) months immediately preceding said January 1st, by examination, shall be granted renewal without attending said educational programs.

(b) The Board shall notify licensees of approved continuing education courses at least annually.

**Expiration Dates of Registration; Proration of Fees**

Sec. 8c. The Board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

**License to Practitioners of Other States or Territories**

Sec. 9. The Texas Board of Chiropractic Examiners shall upon payment by an applicant of a fee grant license to practice chiropractic to licentiates of other states or territories having requirements and practices equal to those established by the laws of this State. Applications for license under the provisions of this Section shall be in writing, and upon a form to be prescribed by the Texas Board of Chiropractic Examiners. Said application shall be accompanied by a license, or a certified copy of license to practice chiropractic, lawfully issued to the applicant, upon examination, by some other state or territory of the United States. Said application shall also be accompanied by an affidavit made by the president or secretary of the Board of Chiropractic Examiners which issued the said license, or by a legally constituted chiropractic registration officer of the state or territory by which the license was granted, and on which the application for chiropractic registration in Texas is based, reciting that the accompanying license has not been cancelled or revoked, and that the statement or qualifications made in the application for chiropractic license in Texas is true and correct. Applicants for license under the provisions of this Section shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license under which

the applicant practiced chiropractic in the State or territory from which the applicant removed, was at the time of such removal in full force, and not suspended or cancelled. Said application shall also state that the applicant is the identical person to whom the said certificate was issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate to practice chiropractic in the State or territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which, under the law of Texas is a felony.

**Examination of Applicants for License; Evidence of College Credits**

Sec. 10. (a) All applicants for license to practice chiropractic in this State, not otherwise licensed under the provisions of this law, must successfully pass an examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. All applicants shall be eligible for examination who present satisfactory evidence to the Board that they are more than eighteen (18) years of age, of good moral character, have completed sixty (60) semester hours of college courses, other than a chiropractic school, and are graduates of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee. All applicants shall be given due notice of the date and place of such examination.

(b) The Board shall grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a practical examination. The Board shall periodically determine to its satisfaction whether those applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. When the Board determines that those applicants have not been adequately examined, the Board shall require those applicants to be examined in accordance with other provisions of this Act.

(c) If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe except that the applicant shall not be required to take a re-examination on subjects in which he has made a grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

(d) Prior to the issuance of a license to practice chiropractic, the Board shall require from a person otherwise qualified by law, evidence, verified by transcript of credits, certifying that the person has satisfactorily completed sixty (60) or more semester hours of college credits at a college or university which issues credits acceptable by The University of Texas at Austin leading toward a Bachelor of Arts or a Bachelor of Science degree. The credits shall include the satisfactory completion of courses in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, and public health with an average of seventy-five percent (75%) or better in each of the courses. The sequence of the courses shall be in the manner as from time to time is required by The University of Texas at Austin.

(1) The Board may charge a fee of not more than Fifty Dollars (\$50) for verification of the satisfaction of the completion of the courses described in this subsection.

(2) Any license to practice issued after September 1, 1981, contrary to this Act shall be void.

(e) Within thirty (30) days after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two (2) weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than ninety (90) days after the examination date, the Board shall notify the examinee of the reason for the delay before the ninetieth (90th) day.

(f) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

**Chiropractic Examiners Fund; Fees; Per Diem and Expenses of Board Members**

Sec. 11. (a) The funds realized from the fees collected under this Act shall constitute the "Chiropractic Examiners Fund," and shall be applied to the necessary expenses of the Texas Board of Chiropractic Examiners, including the expenses authorized by said Board in enforcing the provision of this Act.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act, not to exceed:

- (1) annual renewal: \$120;
- (2) reciprocal license: \$120;
- (3) examination fee: \$120;
- (4) reexam fee: \$75; and
- (5) verification of licensing requirements fee: \$75.

(c) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(d) Provided also that the premium of any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties.

(e) All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer or of the designated staff member of the Texas Board of Chiropractic Examiners upon warrants drawn by the Comptroller to be paid out of said fund.

**Conduct of Examinations; Subjects**

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent

(75%) with not less than sixty per cent (60%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

**Rights of Physicians and Surgeons**

Sec. 13. Nothing in this Act shall limit or affect the rights and powers of physicians and surgeons, duly qualified and registered as such under the laws of this State, to practice medicine as that term may now or hereafter be defined by law.

**Disciplinary Powers; Appeals**

Sec. 14. (a) The Texas Board of Chiropractic Examiners shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for any violations of the Act or rules of the Board.

(b) The Board shall keep an information file about each complaint filed with the Board relating to a licensee.

(c) If a written complaint is filed with the Board relating to a licensee, the Board at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) Any person whose license to practice chiropractic has been cancelled, revoked or suspended by the Board may take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notices to the Board.

(e) Upon application, the Board may reissue a license to practice chiropractic to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

(f) If the Board proposes to refuse a person's application for a license, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(g) Disciplinary proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

**Grounds for Refusing, Revoking or Suspending License**

Sec. 14a. The Texas Board of Chiropractic Examiners may refuse to admit persons to its examina-



tions and may cancel, revoke or suspend licenses or place licensees upon probation for such length of time as may be deemed proper by the Board for any one or more of the following causes:

1. For failure to comply with, or the violation of, any of the provisions of this Act or of a rule adopted under this Act;

2. If it is found that said person or persons are in any way guilty of deception or fraud in the practice of chiropractic;

3. The presentation to the Board or use of any license, certificate or diploma, which was illegally or fraudulently obtained, or the presentation to the Board of any untrue statement or any document or testimony which was illegally practiced in passing the examination;

4. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or the procuring or assisting in the procuring of an abortion;

5. Grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public, habits of intemperance or drug addiction, or other habits calculated in the opinion of the Board to endanger the lives of patients;

6. The use of any advertising statement of a character to mislead or deceive the public;

7. Employing or associating with, directly or indirectly, any person who, during the period of such employment, commits any act constituting the practice of chiropractic when such person is not licensed to do so;

8. The advertising of professional superiority, or the advertising of the performance of professional services in a superior manner;

9. The purchase, sale, barter, use, or any offer to purchase, sell, barter or use, any chiropractic degree, license, certificate, or diploma, or transcript of license, certificate, or diploma in or incident to an application to the Board of Chiropractic Examiners for license to practice chiropractic;

10. Altering with fraudulent intent any chiropractic license, certificate or diploma, or transcript of chiropractic license, certificate or diploma;

11. The impersonation of, or acting as proxy for, another in any examination required by this Act for a chiropractic license;

12. The impersonation of a licensed practitioner, or the permitting or allowing another to use his license or certificate to practice chiropractic as defined by statute by a licensed practitioner;

13. Proof of insanity of the holder of a certificate, as adjudged by the regularly constituted authorities;

14. Failure to use proper diligence in the practice of chiropractic by the holder of a certificate, or grossly inefficient practice of chiropractic;

15. Failing to clearly differentiate a chiropractic office or clinic from any other business or enterprise; or

16. Personally soliciting patients, or causing patients to be solicited, by the use of case histories of patients of other chiropractors.

#### Evidence Regarding Use of X-Ray; Construction

Sec. 14b. The Board may require evidence of proper training, precaution, and safety in the use of analytical and diagnostic x-ray in conformity with the provisions of Chapter 72, Acts of the 57th Legislature, 1961 (Article 4590f, Vernon's Texas Civil Statutes), and in conformity with all rules and regulations of the Texas Radiation Control Agency and the Texas State Department of Health. Nothing herein shall be deemed to alter, modify or amend the provisions of Section 1, Chapter 94, Acts of the 51st Legislature, 1949, as amended (Article 4512b, Vernon's Texas Civil Statutes), or to enlarge in any manner the scope of the practice of chiropractic or the acts which a chiropractor is authorized to perform; and, provided further, that nothing herein shall be deemed to alter, modify or amend the provisions of Article 4510, Revised Civil Statutes of Texas, 1925, as amended.<sup>1</sup> The Board shall implement any federal law requirements relating to radiologic training of the employees of a chiropractor.

<sup>1</sup> Repealed; see, now, art. 4495b, § 1.03(8).

#### Powers of District Court; Duty of District and County Attorneys

Sec. 15. The District Courts of this State shall have the right to revoke, cancel, or suspend the license of any practitioner of chiropractic upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the Texas Board of Chiropractic Examiners shall be authorized to refuse to admit persons to its examination, as provided in Section 14 thereof, and it shall be the duty of the several District and County Attorneys of this State to file and prosecute appropriate judicial proceedings for such revocation, cancellation, or suspension in the name of the State, on request of the Texas Board of Chiropractic Examiners.

#### Procedure in Judicial Proceedings

Sec. 16. All judicial proceedings which shall be instituted by any District or County Attorney under the provisions of the last preceding Section of this Act shall be in writing, shall state the ground thereof, and shall be signed officially by the prosecuting officer instituting the same. Citation thereon shall be issued in the name of the State of Texas in the manner and form as in other cases, and the same shall be served upon the defendant and such defendant shall be required to answer within the time and manner provided by law in civil cases. If the said practitioner of chiropractic shall be found guilty, or shall fail to appear and deny the charge,

after being cited as aforesaid, the said court shall, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely, and shall give proper judgment for costs.

#### Proceedings by Attorney General

Sec. 17. Upon the application of the Texas Board of Chiropractic Examiners, or a majority thereof, to the Attorney General setting forth that the County or District Attorney of a county or district has failed to prosecute or proceed against any person violating the terms of this Act, setting forth that application and request have been made of such County or District Attorney and that such request or application has been neglected or refused the Attorney General shall proceed against such person in the county of residence of the person complained against, either by civil or criminal proceedings.

#### Requests for Information From Peer Review Committee

Sec. 17a. The Texas Board of Chiropractic Examiners may request from a chiropractic peer review committee established under Chapter 286, Acts of the 64th Legislature, 1975 (Article 4512b(1), Vernon's Texas Civil Statutes), information pertaining to actions taken by the peer review committee.

#### Rules Restricting Competitive Bidding or Advertising

Sec. 17b. The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his personal voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

#### Injunctions

Sec. 18. The actual practice of chiropractic in violation of the provisions of this Act shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction of the party sought to be enjoined of violation of any provision of this Act. In such suits for injunction, it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or about to be so unlawfully practicing chiropractic in this State may be made a party defendant in said suit. The Attorney General, the District Attorney of the district in which the defendant resides, the County Attorney of the county in which the defend-

ant resides, or any of them, shall have the authority, and it shall be their duty, and the duty of each of them, to represent the State in such suits. No injunction, either temporary or permanent, shall be granted by any court, until after a hearing of the complaint is had by a court of competent jurisdiction on its merits. In such suit no injunction or restraining order shall be issued until final trial and final judgment on the merits of the suit. If on the final trial it be shown that the defendant in such suit has been unlawfully practicing chiropractic or is about to practice chiropractic unlawfully, the court shall by judgment perpetually enjoin the defendant from practicing chiropractic in violation of law as complained of in said suit. Disobedience of said injunction shall subject the defendant to penalties, provided by law for the violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution. Such causes shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as other suits for injunction.

#### Punishment for Violations

Sec. 19. Whoever 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 Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail for not more than thirty (30) days.

Sec. 20. [Amends Arts. 4504a, 4510a (repealed)].

Sec. 21. [Amends Arts. 4504, 4510 (repealed)].

#### Seal of Board

Sec. 22. The seal of the Board created by this Act shall consist of a star of five points with the words, "The State of Texas," and the words, "Texas Board of Chiropractic Examiners," around the margin thereof.

#### Repeal

Sec. 23. All laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed, only to the extent of any conflict.

#### Partial Invalidity

Sec. 24. If any of the provisions of this Act, or any Section or part thereof, shall be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the constitutionality or validity of any other provision, Section or part of this Act, and it is the legislative intent that all of the remaining parts of this Act should remain in full force and effect in spite of any invalidity of any provision, Section or part thereof; and the Legislature would have passed all other provisions, Sections and parts thereof regardless of the invalidity.

ty of any other provision, Section or part thereof of this Act.

[Acts 1949, 51st Leg., p. 160, ch. 94. Amended by Acts 1957, 55th Leg., p. 360, ch. 168, §§ 1 to 4; Acts 1967, 60th Leg., p. 110, ch. 55, § 1, eff. April 17, 1967; Acts 1971, 62nd Leg., p. 1349, ch. 357, §§ 1, 2, eff. May 25, 1971; Acts 1973, 63rd Leg., p. 210, ch. 94, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 623, ch. 266, § 1, eff. June 11, 1973; Acts 1975, 64th Leg., p. 19, ch. 14, § 1, eff. March 13, 1975; Acts 1975, 64th Leg., p. 21, ch. 15, §§ 1, 2, eff. March 13, 1975; Acts 1977, 65th Leg., p. 151, ch. 75, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.042, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2955, ch. 781, §§ 1, 2, 5, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 3247, ch. 559, §§ 1, 2, eff. Sept. 1, 1983.]

Section 3 of Acts 1975, 64th Leg., p. 22, ch. 15, provides:

"If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares it would have passed such remaining portions despite such invalidity."

Sections 3, 4, and 6 of Acts 1981, 67th Leg., p. 2963, ch. 781, provide:

"Sec. 3. A rule adopted by the Texas Board of Chiropractic Examiners before September 1, 1981, that conflicts with Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the Board shall repeal the rule.

"Sec. 4. (a) A person holding office as a member of the Texas Board of Chiropractic Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to fill the offices of incumbent members who are chiropractic examiners and whose terms expire in 1983, 1985, and 1987."

"Sec. 6. (a) This Act takes effect September 1, 1981.

(b) The requirements of Subsections (f) and (g), Section 4, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as added by this Act, that the Texas Board of Chiropractic Examiners develop a career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (g) of Section 4 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983."

Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(b), provides:

"Section 3, Chapter 556, Acts of the 66th Legislature, 1979 (Article 4590c-1, Vernon's Texas Civil Statutes), is repealed. The repeal of that section does not affect Subsection (d) of Section 10, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 4512b, Vernon's Texas Civil Statutes)."

### Art. 4512b(1). Peer Review

#### Definition

Sec. 1. In this article "chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

#### Peer Review Committee

Sec. 2. The chiropractors practicing in this state may elect from their membership a committee which may be denominated a chiropractic peer review committee. The committee shall be elected or appointed by the organization forming such peer review committee.

#### Duties

Sec. 3. The chiropractic peer review committee shall:

(1) review and evaluate chiropractic treatment and services in disputes involving a chiropractor and a patient or a person obligated to pay a fee for chiropractic services or treatment rendered; and

(2) act as arbitrator in a dispute involving a chiropractor and a patient or person obligated to pay a fee for chiropractic services or treatment.

#### Liability of Committee Member in Civil Action

Sec. 4. Unless fraud, conspiracy, or malice can be shown, a member of a chiropractic peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by him as a member of the committee, or by the committee.

#### Conflict of Interest

Sec. 5. A member of a chiropractic peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by him.

#### Rights or Remedies Not Deprived

Sec. 6. Except for the express immunity provided by Section 4 of this article, this article deprives no person of a right or remedy, legal or equitable.

[Acts 1975, 64th Leg., p. 686, ch. 286, § 1, eff. May 22, 1975.]

### Art. 4512b(2). Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas Board of Chiropractic Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the courts of any of said persons' performing assigned, designated, official or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Acts 1977, 65th Leg., p. 606, ch. 217, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 Act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

## CHAPTER SIX B. PSYCHOLOGY

## Art. 4512c. Psychologists' Certification and Licensing Act

## Short Title

Sec. 1. This Act may be known and cited as the "Psychologists' Certification and Licensing Act."

## Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(a) "Board" means the Texas State Board of Examiners of Psychologists provided for by this Act.

(b) A person represents himself to be a "psychologist" within the meaning of this Act when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologists," or "psychology," or offers to render or renders psychological services to individuals, corporations, or the public for compensation.

(c) The term "psychological services," means acts or behaviors coming within the purview of the practice of psychology, including, but not limited to, the application of psychological principles to the evaluation and remediation of learning, emotional, interpersonal, and behavioral disorders.

## Practice of Medicine Not Authorized

Sec. 3. Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state.

## State Board of Examiners; Members; Appointment and Terms; Oath

Sec. 4. (a) The Texas State Board of Examiners of Psychologists shall consist of nine qualified persons appointed by the governor with the advice and consent of the senate, for regular terms of six years.

(b) Before entering upon the duties of his office, each member of the Board shall take the constitutional oath of office and file it with the secretary of state.

(c) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

## Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners of Psychologists is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Board is abolished, and this Act expires effective September 1, 1993.

## Qualifications of Board Members; Terms; Vacancies

Sec. 5. (a) Each member of the Board shall be a citizen of the United States and a resident of this state.

(b) Six members must be persons certified as psychologists under this Act, who have engaged in independent practice, teaching, or research in psychology for a period of at least five years. To assure adequate representation of the diverse fields of psychology, the governor shall so make his appointments that at least two of these members are engaged in rendering services in psychology, at least one of these members is engaged in research in psychology, and at least one of these members is a member of the faculty of a training institution in psychology.

(c) One member must be certified as a psychological associate under this Act for at least five years.

(d) Two members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the Board;

(3) violates a prohibition established by Subsection (g) or (h) of this section; or

(4) does not attend at least one-half of the regularly scheduled meetings held by the Board in a calendar year, excluding meetings held while the person was not a member of the Board.

(f) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the psychology field. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(i) A member of the Board who is appointed for a term of less than six years may be appointed to succeed himself for one six-year term. A member of the Board who is appointed for a six-year term is ineligible for reappointment for a period of six years following expiration of the term. Any vacancy in the membership of the Board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment by the governor.

#### Compensation and Expenses of Board Members

Sec. 6. Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. All per diem and compensation for expense authorized by this section shall be paid from the "Psychologists Licensing Fund." No money shall ever be paid from the General Revenue Fund for the Administration of this Act.

#### Organization and Meetings of the Board

Sec. 7. The Board shall hold a regular annual meeting at which it shall select from its members a Chairman and a Vice-Chairman. Other regular meetings shall be held at such times as the rules of the Board may provide but not less than two times a year. Special meetings may be held at such times as may be deemed necessary or advisable by the Board or a majority of its members. Reasonable notice of all meetings shall be given in the manner prescribed by the rules of the Board. A quorum of the Board shall consist of a majority of its members. The Secretary of the Board shall be appointed by the Board and shall hold office at the pleasure of the Board. The Secretary may or may not be a member of the Board. The Board may employ such other persons as it deems necessary or desirable to carry out the provisions of this Act. The Board shall adopt and have an official seal.

#### Powers and Duties of the Board

Sec. 8. (a) In addition to the powers and duties granted the Board by other provisions of this Act, the Board may make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. The Board shall adopt and publish a Code of Ethics.

(b) The Board may certify specialties within the field of psychological services and may employ con-

sultants when necessary for the implementation of this Act. The Board shall adopt rules applicable to the certification of specialties and to the employment of consultants. Specialty certifications by the Board may include certifications for clinical psychologists, counseling psychologists, industrial psychologists, school psychologists, and psychologists designated as health service providers.

(c) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make information available to the general public and appropriate state agencies.

(d) Each written contract for services in this state of a licensed or certified psychologist must contain the name, mailing address, and telephone number of the Board.

(e) There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

(f) The Board shall keep an information file about each complaint filed with the Board relating to a licensee.

(g) If a written complaint is filed with the Board relating to a licensee, the Board at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

(h) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(i) The Board may recognize, prepare, or administer continuing education programs for persons regulated by the Board under this Act. Participation in the programs is voluntary.

(j) The Board shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the

Board in a nonentry level position. The intraagency posting shall be made at least 10 days before any public posting is made.

(k) The Board shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the Board shall be based on the system established under this subsection.

(l) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Receipts and Disbursements

Sec. 9. The Secretary of the Board shall receive the account for all monies derived under this Act. He shall pay these monies weekly to the State Treasurer who shall keep them in a separate fund to be known as the "Psychologists Licensing Fund." Monies may be paid out of this fund only by warrant drawn by the State Comptroller upon the State Treasurer, upon itemized voucher, approved by the Chairman of the Board and attested by the Secretary of the Board. There shall be an annual audit of the Psychologists Licensing Fund by the Auditor of the State of Texas. The Secretary of the Board shall give a surety bond for the faithful performance of his duties to the governor in the sum of Ten Thousand Dollars (\$10,000.00) or an amount recommended by the State Auditor. The premium for this bond shall be paid out of the Psychologists Licensing Fund. The Board may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this Act.

#### Annual Report of the Board

Sec. 10. As soon as practicable after the close of each fiscal year, the Board shall submit a report to the governor and the presiding officer of each House of the Legislature concerning the work of the Board during the preceding fiscal year.

#### Qualification of Applicant for Examination for Certification

Sec. 11. An applicant is qualified to take the examination for certification as a psychologist:

(a) if he has received the doctoral degree based upon a program of studies whose content was primarily psychological or its substantial equivalent in both subject matter and extent of training from a regionally accredited educational institution,

(b) if he has attained the age of majority,

(c) if he is of good moral character,

(d) if, in the judgment of the Board, he is physically and mentally competent to render psychological services with reasonable skill and safety to his patients and is afflicted with no disease or condition,

either mental or physical, which would impair his competency to render psychological services, and

(e) if he has not been convicted of a felony or a crime involving moral turpitude, has not used drugs or intoxicating liquors to an extent that would affect his professional competency, has not been guilty of fraud or deceit in making his application, or has not aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist in this state.

#### Applications

Sec. 12. Application under Section 14 of this Act for examination for certifications as a psychologist or for certification without examination as a psychologist shall be upon the forms prescribed by the Board. The Board may require that the application be verified. The required certification fee and examination fee shall accompany the application.

#### Evaluation of Experience

Sec. 13. In determining the acceptability of the applicant's professional experience, the Board may require such documentary evidence of the quality, scope and nature of the applicants' experience as it deems necessary.

#### Examinations

Sec. 14. (a) The Board shall administer examinations to qualified applicants for certification at least once a year. The Board shall determine the subject and scope of the examinations and establish appropriate fees for examinations administered. Part of the examinations shall test applicant knowledge of the discipline and profession of psychology and part shall test applicant knowledge of the laws and rules governing the profession of psychology in this state. This latter part of the examination is to be known as the Board's jurisprudence examination. An applicant who fails his examination may be reexamined at intervals specified by the Board upon payment of another examination fee corresponding to the examination failed.

(b) Within 30 days after the day on which a certification examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) The Board may waive the discipline and professional segment of the examination requirement for Diplomats of the American Board of Examiners in Professional Psychology and/or when in the Board's judgment the applicant has already demon-

strated competence in areas covered by the examination. However, the jurisprudence examination shall be administered to and passed by all applicants before certification.

(d) If requested in writing by a person who fails an examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

**Certification**

Sec. 15. (a) A qualified applicant for certification who has successfully passed the examinations prescribed by the Board and has paid the certification fee shall be certified by the Board as a psychologist.

(b) The Board may waive any licensure or certification requirement for an applicant with a valid license or certificate from another state having licensing or certification requirements substantially equivalent to those of this state. However, all applicants must take and pass the Board's jurisprudence examination before licensing or certification.

**Fees**

Sec. 16. The fees shall be fixed by the Board in amounts not to exceed:

1. Certification application:	
a. Doctoral level	\$105
b. Master's level	90
2. Examination	120
3. Jurisprudence examination	20
4. Licensure application	75
5. Certification renewal:	
a. Doctoral level	25
b. Master's level	25
6. License renewal	70
7. Health Service Provider application	55
8. Health Service Provider renewal	10
9. Inactive status	10

The Board shall not maintain unnecessary fund balances, and fee amount shall be set in accordance with this requirement.

**Renewal**

Sec. 17. (a) The Board shall issue a certificate to each person whom it certifies and a license to those persons licensed. The certificate or license shall show the full name of the psychologist and his address and shall bear a serial number. The certificate or license shall be signed by the Chairman and the Secretary of the Board under the seal of the Board.

(b) Certificates and licenses will be renewed no less than once every two years. Certificates and licenses expire on December 31st in the appropriate year following their issuance or renewal and are invalid thereafter unless renewed.

(c) The Board shall notify every person certified or licensed under this Act of the date of expiration

of his certificate or license and the amount of the renewal fee. A person may renew an unexpired certificate or license by paying to the Board before the expiration date of the certificate or license the required renewal fee. If a person's certificate or license has been expired for not longer than 90 days, the person may renew the certificate or license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the certificate or license. If a person's certificate or license has been expired for longer than 90 days but less than two years, the person may renew the certificate or license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the certificate or license. If a person's certificate or license has been expired for two years or longer, the person may not renew the certificate or license. The person may obtain a new certificate or license by submitting to reexamination and complying with the requirements and procedures for obtaining an original certificate or license.

(d) A psychologist who wishes to place his certificate or license upon an inactive status may do so upon application by payment of a fee established by the Board; such a psychologist shall not accrue any penalty for late payment of the renewal fee.

(e) The Board may refuse to renew the certification of any person who is not qualified to take the examination for certification under Section 11 of this Act.

(f) Any person holding a license issued under Section 21 of this Act shall be required to renew his license and not his certificate.

(g) The renewal procedures prescribed by this section apply to the renewal of doctoral level certificates, licenses, or specialty certifications.

(h) The renewal of certificates held by psychological associates as established by Section 19 of this Act is subject to the renewal procedures prescribed by this section except that the certificates expire May 31 in the appropriate year following their issuance or renewal.

**Expiration Dates of Certifications; Proration of Fees**

Sec. 17A. The board by rule may adopt a system under which certifications expire on various dates during the year. For the year in which the certification expiration date is changed, certification fees payable before January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which certification is valid. On renewal of the certification on the new expiration date, the total certification renewal fee is payable.

**Roster of Certified and Licensed Psychologists**

Sec. 18. During the month of April of each year, the Board shall publish a list of all psychologists certified or licensed under this Act. The list shall contain the name and address of the psychologist

and such other information that the Board deems desirable. The list shall be arranged both alphabetically and geographically. The Board shall mail a copy of this list to each person licensed under this Act, shall place a copy on file with the Secretary of State and shall furnish copies to the public upon request.

#### Sub-doctoral Certification

Sec. 19. The Board shall set standards for qualification and issue certificates of qualification for sub-doctoral levels of psychological personnel. Sub-doctoral personnel must have a master's degree in a program that is primarily psychological in nature in an accredited university or college. Sub-doctoral levels shall be designated by a title(s) which includes the adjective "psychological" followed by a noun such as "associate," "assistant," "examiner," "technician," etc.

#### Representation as a Psychologist, Psychological Associate, or Psychologist's Assistant Prohibited

Sec. 20. After December 31, 1970, no person shall represent himself as a psychologist or psychological associate within the meaning of this Act unless he is certified and registered under the provisions of this Act.

#### Licensing

Sec. 21. Any person who offers psychological services as defined herein for compensation, must apply to the Board and upon payment of a fee shall be granted a license by the Board. No person may be licensed unless:

(1) he is certified as a psychologist under the authority of this Act; and

(2) he has had at least two years' experience in the field of psychological services, at least one year of which was after the person's doctoral degree was conferred, and one of which was under the supervision of a licensed psychologist.

#### Exemptions

Sec. 22. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist by any: (1) governmental agency, (2) public school district, (3) regionally accredited institution of higher education or any hospital licensed by the Texas State Department of Health, including medical clinics associated with such hospitals and are organized as an unincorporated association, provided such employee is performing those duties for which he is employed by such agency, district, institution, or clinic and within the confines of such agency, district, institution, or clinic insofar as such activities and services are a part of the duties of his office or position as a psychologist with such agency, district, or institution, or clinic; except that persons employed as psychologists who offer or provide psy-

chological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pursuing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of members of other professional groups licensed, certified, or registered by this state, Christian Scientist practitioners who are duly recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or duly ordained religions doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions, provided that they do not represent themselves by any title or in any manner prohibited by this Act.

#### Revocation, Cancellation, or Suspension of License or Certification

Sec. 23. (a) The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist or the certificate of any psychological associate or reprimand any psychologist upon proof that the psychologist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or

(2) used drugs or intoxicating liquors to an extent that affects his professional competency; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(4) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(6) for any cause for which the Board shall be authorized to take that action by another section of this Act.

The Board shall have the right to order corrective advertising when a psychologist, individually or un-



der his assumed name, engages in false, misleading, or deceptive advertising.

(b) If the Board proposes to refuse a person's application for a license or certification, to suspend or revoke a person's license or certificate, or to reprimand a person, the person is entitled to a hearing before the Board.

(c) Proceedings for the refusal, suspension, or revocation of a license or certificate or for the reprimand of a person are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) An appeal of an action of the Board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of an action of the Board shall be conducted under the substantial evidence rule.

(e) The Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

(f) On application, the Board may recertify the applicant or reissue a license to a person whose license has been cancelled, revoked, or suspended. However, in the case of cancellation or revocation, the application may not be made before one year after the cancellation or revocation and must be

made in the manner and form as the Board may require.

#### Injunctions

Sec. 24. The Texas State Board of Examiners of Psychologists shall have the right to institute an action in its own name to enjoin the violation of any provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Texas State Board of Examiners of Psychologists shall be represented by the Attorney General and/or the County or District Attorneys of this state.

#### Enforcement of Competency Requirements

Sec. 24A. (a) If the Board reasonably believes that a person applying to take the certification examination, or applying for renewal of certification, is not physically and mentally competent to render psychological services with reasonable skill and safety to his patients, or is afflicted with a disease or condition, either physical or mental, which would impair his competency to render psychological services, the Board may request that that person submit to a physical examination by a medical doctor approved by the Board or submit to a mental examination by a medical doctor or licensed psychologist approved by the Board.

(b) If the applicant or person seeking renewal of certification refuses to submit to the examination, the Board shall issue an order requiring that person to show cause for his refusal and shall schedule a hearing on the order within thirty (30) days after notice is served on the person who has refused to submit to the examination. Notice shall be given either by personal service or by registered mail return receipt requested. At the hearing the person may appear personally and by counsel and present evidence in justification of his refusal to submit to the examination. After a complete hearing the Board shall issue an order either requiring the person to submit to the examination or withdrawing the request for the examination. Unless the request is withdrawn the person who has refused to take the examination may not take the certification examination, and is not entitled to renewal of his certification. An appeal from the order of the Board may be made under Section 23 of this Act.

#### Violations

Sec. 25. Any person who, after December 31, 1970, represents himself to be a psychologist within this state without being certified or licensed or exempted in accordance with the provisions of this Act is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in county jail for not more than thirty (30) days. Each day of violation is a separate offense.

**Appropriation**

Sec. 26. For the biennium ending August 31, 1971, the monies received in the Psychologists Licensing Fund are hereby appropriated to the Board to be expended by it in the administration of this Act. The salaries paid to persons employed by the Board shall be comparable to those prescribed in the General Appropriations Act for persons holding comparable positions. To the extent applicable, the general rules of the General Appropriations Act shall apply to the expenditure of funds under this appropriation.

**Severability Clause**

Sec. 27. If any provision of this Act or the application thereof to any person or circumstance is held invalid, this 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 severable.

[Acts 1969, 61st Leg., p. 2059, ch. 713, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 676, ch. 62, §§ 1, 2, eff. April 20, 1971; Acts 1973, 63rd Leg., p. 623, ch. 266, § 2, eff. June 11, 1973; Acts 1975, 64th Leg., p. 956, ch. 362, §§ 1 to 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.045, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2849, ch. 766, § 1, eff. Sept. 1, 1981.]

Sections 2 to 4 of the 1981 amendatory act provide:

"Sec. 2. (a) A person holding office as a member of the Texas State Board of Examiners of Psychologists on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint as additional members of the board a psychological associate and two members of the public. The governor shall designate the psychological associate for a term expiring October 31, 1981, one public member for a term expiring October 31, 1983, and one public member for a term expiring October 31, 1985.

"Sec. 3. A rule adopted by the Texas State Board of Examiners of Psychologists before September 1, 1981, that conflicts with the Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements of Subsections (j) and (k), Section 8, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), as added by this Act, that the Texas State Board of Examiners of Psychologists develop a career ladder program and a system of annual performance evaluation shall be implemented before September 1, 1982. The requirement of Subsection (k) of Section 8 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983."

**CHAPTER SIX C. ATHLETIC TRAINERS****Art. 4512d. Advisory Board of Athletic Trainers****Definitions**

Sec. 1. In this Act:

(1) "Athletic Trainer" means a person with specific qualifications, as set forth in Section 9 of this Act, who, upon the advice and consent of his team physician carries out the practice of prevention and/or

physical rehabilitation of injuries incurred by athletes. To carry out these functions the Athletic trainer is authorized to use physical modalities such as heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment.

(2) "Board" means the Advisory Board of Athletic Trainers.

(3) Nothing herein shall be construed to authorize the practice of medicine by any person not licensed by the Texas State Board of Medical Examiners.

(4) The provisions of this act do not apply to physicians licensed by the Texas State Board of Medical Examiners; to dentists, duly qualified and registered under the laws of this state, who confine their practice strictly to dentistry; nor to licensed optometrists, who confine their practice strictly to optometry as defined by statute; nor to occupational therapists, who confine their practice to occupational therapy; nor to nurses who practice nursing only; nor to duly licensed chiropractors or podiatrists, who confine their practice strictly to chiropractic or podiatry as defined by statute; nor to physical therapists who confine their practice to physical therapy; nor to masseurs or masseuses in their particular sphere of labor; nor to commissioned or contract physicians or physical therapists or physical therapists assistants in the United States Army, Navy, Air Force, Public Health and Marine Health Service.

**Advisory Board of Athletic Trainers**

Sec. 2. (a) The Advisory Board of Athletic Trainers, composed of six members, is created. The board is created as a part of the State Department of Health and shall perform its duties as a board within the State Department of Health. To qualify as a member, a person must be a citizen of the United States and a resident of Texas for five years immediately preceding appointment. Members must be licensed athletic trainers.

(b) The members of the board shall be appointed by the governor with the advice and consent of the Senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on January 31 of odd-numbered years.

(c) Each appointee to the board shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

**Appropriations to Department of Health**

Sec. 2A. The State Department of Health may expend funds appropriated to it for the purpose of implementing the provisions of this Act.

**Board Organization and Meetings**

Sec. 3. (a) The board shall elect from its members for a term of one year, a chairman, vice chairman, and secretary-treasurer, and may appoint such committees as it considers necessary to carry out its duties.

(b) The board shall meet at least twice a year. Additional meetings may be held on the call of the chairman or at the written request of any three members of the board.

(c) The quorum required for any meeting of the board is four members. No action by the board or its members has any effect unless a quorum of the board is present.

**Records**

Sec. 4. (a) The board shall keep a record of its proceedings in a book for that purpose.

(b) The board shall keep a complete record of all licensed athletic trainers and shall annually prepare a roster showing the names and addresses of all licensed athletic trainers. A copy of the roster shall be made available to any person requesting it on payment of a fee established by the board as sufficient to cover the costs of the roster.

**Powers and Duties of the Board**

Sec. 5. (a) The board may make rules and regulations consistent with this Act which are necessary for the performance of its duties.

(b) The board shall prescribe application forms for license applicants.

(c) The board shall establish guidelines, which may include requirements for continuing education, for athletic trainers in the state and prepare and conduct an examination for applicants for a license.

(d) The board may employ an executive secretary and other persons necessary to carry out the provisions of this Act. The executive secretary shall have such duties and responsibilities as the board may determine.

(e) The board shall adopt an official seal and the form of a license certificate of suitable design. The board shall have suitable office space to administer the provisions of this Act and keep permanent records.

(f) Before entering on the discharge of the duties of his office, the secretary-treasurer of the board must give bond for the performance of his duty in an amount determined by the board. The premium on the bond shall be paid from any available funds of the board.

(g) The secretary-treasurer of the board shall remit, on or before the 10th day of each month, to the state treasurer all of the fees collected by the board during the preceding month for deposit in the general revenue fund.

(h) The board may authorize all necessary disbursements to carry out the provisions of this Act, including the premium on the bond of the secretary-treasurer, stationery expenses, equipment, and facilities necessary to carry out the provisions of this Act.

(i) The board may issue subpoenas to compel witnesses to testify or produce evidence in a proceeding to deny, revoke, or suspend a license.

**Compensation**

Sec. 6. The compensation and travel expense allowance for members of the board and its employees shall be provided in the General Appropriations Act.

**Fees**

Sec. 7. The board may set and charge license and examination fees. The board may not set and charge fees that exceed:

- (1) an athletic trainer examination fee of \$50 for each examination taken;
- (2) an athletic trainer license fee of \$50; and
- (3) an athletic trainer annual license renewal fee of \$40.

**Prohibited Acts**

Sec. 8. No person may hold himself out as an athletic trainer or perform any of the activities of an athletic trainer as defined in this Act without first obtaining a license or a temporary license under this Act.

**Qualifications**

Sec. 9. An applicant for an athletic trainer license must possess one of the following qualifications:

- (1) have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation; or
- (2) hold a degree or certificate in physical therapy and have completed a basic athletic training course from an accredited college or university, and have completed an apprenticeship of 720 hours in two years under the direct supervision of a licensed athletic trainer acceptable to the board or as per board approval. Actual working hours will include a minimum of 20 hours per week during each fall semester; or
- (3) hold a degree in corrective therapy with at least a minor in physical education or health which included a basic athletic training course and meet apprenticeship or any other requirement established by the board.

(4) An out-of-state applicant must fulfill one of the above stated qualifications, (1), (2), or (3), and submit proof of active engagement as an athletic trainer in the State of Texas as set forth in Section 16(b) of this Act.

**Issuance of License**

Sec. 10. (a) An applicant for an athletic trainer license must submit an application to the board on forms prescribed by the board and submit the examination fee required by this Act.

(b) The applicant is entitled to an athletic trainer license if he possesses the qualifications enumerated in Section 9 of this Act, satisfactorily completes the examination administered by the board, pays the license fee asset in Section 7 of this Act, and has not committed an act which constitutes grounds for denial of a license under Section 12 of this Act.

(c) The board may issue a temporary license to an applicant under Subsection (a) of this section if the applicant meets the requirements of Section 9 of this Act and any other requirement established by the board. The board by rule shall prescribe the time during which temporary licenses are valid.

**License Renewal**

Sec. 11. A license issued pursuant to this Act expires one year from the date of issuance. Licenses shall be renewed according to procedures established by the board and payment of the renewal fee as set in Section 7 of this Act.

**Expiration Dates of Licenses; Proration of fees**

Sec. 11A. The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

**Grounds for Denial, Suspension, or Revocation of License**

Sec. 12. The board may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee if he has:

- (1) been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction; or
- (2) secure the license by fraud or deceit; or
- (3) violated or conspired to violate the provisions of this Act or rules and regulations issued pursuant to this Act.

**Procedures for Denial, Suspension, or Revocation of a License**

Sec. 13. (a) A person whose application for a license or license renewal is denied is entitled to a hearing before the board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), if the person submits to the board, not later than the 30th day after the day the license or

license renewal is denied, a written request for a hearing.

(b) Proceedings for revocation or suspension of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended.

Sec. 14. Repealed by Acts 1981, 67th Leg., p. 1857, ch. 437, § 5, eff. Sept. 1, 1981.

**Penalties**

Sec. 15. Any person who violates a provision of this Act is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

**Issuance of Licenses on the Effective Date of This Act**

Sec. 16. (a) Any person actively engaged as an athletic trainer on the effective date of this Act shall be issued a license if he submits proof of five years' experience as an athletic trainer within the preceding 10-year period, and pays the license fee required by this Act.

(b) For the purposes of this section a person is actively engaged as an athletic trainer if he is employed on a salary basis by an educational institution, professional athletic organization, or other bona fide athletic organization for the duration of the institution's school year, or the length of the athletic organization's season, and, performs the duties of athletic trainer as the major responsibility of his employment.

**Effective Date**

Sec. 17. Section 8 of this Act becomes effective on January 1, 1972. The remainder of this Act becomes effective on September 1, 1971.

[Acts 1971, 62nd Leg., p. 1722, ch. 498, §§ 1 to 7, 9 to 17, eff. Sept. 1, 1971, § 8, eff. Jan. 1, 1972. Amended by Acts 1973, 63rd Leg., p. 623, ch. 266, § 3, eff. June 11, 1973; Acts 1975, 64th Leg., p. 859, ch. 328, §§ 1 to 4, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 1856, ch. 437, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 385, ch. 81, § 12(k), eff. Sept. 1, 1983.]

Sections 5 and 6 of the 1975 amendatory act provided:

"Sec. 5. Members serving on the Texas Board of Athletic Trainers on the effective date of this Act shall serve on the Advisory Board of Athletic Trainers for the terms for which they were appointed. The governor shall appoint three additional members to the Advisory Board of Athletic Trainers. Of the three additional members the governor shall designate one for a term expiring in 1981, one for a term expiring in 1979, and one for a term expiring in 1977.

"Sec. 6. This Act takes effect September 1, 1975, on which date all property, files, and records in the custody of the Texas Board of Athletic Trainers are transferred to the State Department of Health to be used by the Advisory Board of Athletic Trainers in the performance of its duties."

Section 12(l) of the 1983 amendatory act provides:

"Until the fees imposed under the laws amended by Subsections (e) and (k) of this section are established by the appropriate entity, the fees as they existed on August 31, 1983, remain in effect."

## CHAPTER SIX D. PHYSICAL THERAPY

## Art. 4512e. Board of Physical Therapy Examiners

## Definitions

Sec. 1. In this Act:

(1) "Physical therapy" means the examination, treatment, or instruction of human beings to detect, assess, prevent, correct, and alleviate physical disability and pain from injury, disease, disorders, or physical deformities and includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of diagnosis or treatment; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices for preventive and therapeutic purposes on the basis of approved test findings and the provision of consultative, educational, and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. Physical therapy shall also include the delegation of selective forms of treatment to supportive personnel with assumption of the responsibilities for the care of the patient and continuing direction and supervision of the supportive personnel. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used herein, and a license issued hereunder shall not authorize the diagnosis of diseases or the practice of medicine as defined by law.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy. "Hydrotherapist," "massage therapist," "mechanotherapist," "functional therapist," "physical therapy practitioner," "physical therapy specialist," "physiotherapy practitioner," "physical therapy technician," and "myofunctional therapist" are equivalent terms; any derivation of the above terms or any reference to any one of them in this Act includes the others.

(3) "Physical therapist assistant" means a person who works under the supervision of a licensed physical therapist and assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy but do not require a professional education equivalent for licensing as a physical therapist.

(4) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by the physical therapist or a physical therapist assistant.

(5) "Board" means the Texas Board of Physical Therapy Examiners.

(6) "Discipline" means the revocation or suspension of a license, the placing on probation of a

licensee whose license has been suspended, or the reprimand of a licensee in accordance with this Act and rules adopted by the board.

## Creation of Board

Sec. 2. (a) There is created a Texas Board of Physical Therapy Examiners. The board shall consist of nine members appointed by the governor with the advice and consent of the senate for staggered terms of six years, with three members' terms expiring on January 31 of each odd-numbered year. Six members must be licensed physical therapists and three members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, any interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(b) A vacancy on the board shall be filled by appointment by the governor with the advice and consent of the senate for the remainder of the term.

(c) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(d) The board may appoint an executive director at an annual salary as determined by legislative appropriation.

(e) The executive director shall administer this Act and carry out the instructions of the board, including the employment of investigators and other staff as required to implement the purpose of this Act. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

(f) A member of the board is not liable to civil action for any act performed in good faith in the execution of his duties in this capacity.

(g) The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

(h) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(i) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by this section for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by this section for appointment to the board;

(3) violates a prohibition prescribed by Subsection (h) of this section; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

(j) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

#### Powers and Duties of Board

Sec. 3. (a) The board shall examine applicants for licenses at least once each year at such reasonable places and times as shall be designated by the board in its discretion.

(b) The board may employ additional employees to aid in administering examinations.

(c) The examination shall embrace the following subjects: anatomy; pathology; physiology; psychology; physics; electrotherapy; radiation therapy; hydrotherapy; massage therapy; exercises; physical therapy as applied to medicine; neurology; orthopedics; psychiatry; and procedures in the practice of physical therapy.

(d) The board shall revoke or suspend a license, place on probation a licensee whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the board.

(e) The board may adopt rules consistent with this Act to carry out its duties in administering this Act.

(f) Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board

shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(g) The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(h) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(i) Each written contract for services in this state of a licensed physical therapist shall contain the name, mailing address, and telephone number of the board.

(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(k) The board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(l) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

#### Organization of Board

Sec. 4. (a) The members of the board shall, on appointment, elect from their number a chairman, secretary, and other officers required for the conduct of business. Special meetings of the board shall be called by the chairman and secretary, acting jointly, or on the written request of any two members. The board may adopt bylaws and rules necessary to govern its proceedings and to implement the purposes of this Act.

(b) The secretary shall keep a record of each meeting of the board and maintain a register containing the names of all physical therapists licensed under this Act, which shall be at all times open to

public inspection. On March 1 of each year, the executive director shall transmit an official copy of the list of the licensees to the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.

(c) The board shall assist the proper legal authorities in the prosecution of all persons violating any provisions of this Act.

#### Compensation and Bond

Sec. 5. (a) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(b) The executive director of the board shall execute a bond in the amount of \$10,000 for board and staff members payable to the board, conditioned on the faithful performance of the duties of the board members and office staff and an accounting of funds received in the board office. The bond shall be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this state and shall be approved by the chairman of the board.

#### Exemptions

Sec. 6. This Act does not apply to:

(1) a licensee of another state agency performing health-care services within the scope of the applicable licensing act, an occupational therapist who confines his practice to occupational therapy, a certified corrective therapist who confines his practice to corrective therapy, and a speech pathologist or an audiologist who confines his practice to the treatment of communication disorders;

(2) a physical therapy aide;

(3) a physical therapy student or physical therapy assistant student in an accredited curriculum and under the supervision of a licensee under this Act; or a student of an accredited allied health science curriculum under the supervision of properly licensed, certified, or registered personnel;

(4) a physical therapist doing special projects in patient care while working toward an advanced degree from an accredited college or university; or

(5) a physical therapist who does not live in this state and is licensed by the appropriate authorities who comes into this state to attend educational activities. The duration of this exemption shall be no more than six months.

#### Prohibited Acts

Sec. 7. (a) A person may not practice or represent himself as able to practice physical therapy, or

act or represent himself as being a physical therapist unless he is licensed under this Act.

(b) A person may not act or represent himself as being a physical therapist assistant unless he is licensed under this Act.

(c) It is unlawful for any person or for any business, its employees, or other agents or representatives to use in connection with its name or business activity the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or assistant thereto, or the letters "PT," "PhT," "LPT," or "RPT" or any other words, letters, abbreviations, or insignia indicating or implying orally or in writing, in print or by sign, or in any other way, directly or by implication, that physical therapy is provided or supplied, or to extend or provide physical therapy services unless the services are provided by a physical therapist licensed under this Act.

#### Physical Therapist License

Sec. 8. (a) An applicant for a license as a physical therapist must file a written application, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited curriculum in physical therapy education that has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and has completed a minimum of 60 academic semester credits or the equivalent from a recognized college in which semester hour credits are acceptable for transfer to The University of Texas, including courses in biological, social, and physical science.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications prescribed by Subsection (a) of this section, and has not committed an act that constitutes grounds for denial of a license under Section 19 of this Act.

#### Physical Therapist Assistant License

Sec. 9. (a) An applicant for a physical therapist assistant license must file a written application with the board, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited physical therapist assistant program including courses in the anatomical, biological, and physical sciences, and clinical procedures as prescribed and approved by the board.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications prescribed by Subsection (a) of this section, and has not committed an act that constitutes grounds for denial of a license under Section 19 of this Act.

#### License by Endorsement

Sec. 10. A person who is licensed or otherwise registered as a physical therapist or as a physical therapist assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive a physical therapist license without examination on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.

#### Temporary License

Sec. 11. (a) The board shall issue a temporary license without examination to a physical therapist or physical therapist assistant who meets the qualifications prescribed by Sections 8 and 9 of this Act on submission of a written application on a form prescribed by the board, proof that the applicant is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project, and payment of a fee prescribed by the board for a physical therapist temporary license or a physical therapist assistant temporary license. This license expires one year from the date of issuance.

(b) The board shall issue a temporary license to a person who has applied for a license and meets the qualifications prescribed by Sections 8 and 9 of this Act. This license expires on completion of scoring of the next administered examination whether the applicant passes the examination or not. Issuance of a temporary license following failure of part or all of the examination shall be according to rules adopted by the board.

#### Title

Sec. 12. (a) A licensed physical therapist may use the title "Physical Therapist." No other person may be so designated or permitted to use the term "Physical Therapist." The license as a physical therapist does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

(b) A licensed physical therapist assistant may use the title "Physical Therapist Assistant." No other person may be so designated or permitted to use the term "Physical Therapist Assistant." The license as physical therapist assistant does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

#### Reexamination

Sec. 13. (a) An applicant who fails to pass a one-part examination or any part or parts of a divided examination given by the board may take another one-part examination or the part or parts of the divided examination that he failed on payment of an additional examination fee. The applicant must be reexamined not less than six months nor more than 12 months after the unsuccessful examination.

(b) On the failure of an applicant to pass a second or subsequent examination, the board shall require him to complete additional courses of study designated by the board, in which case the applicant shall be required to present to the board satisfactory evidence of having completed the required additional courses before taking subsequent examinations and shall pay additional fees equal to the fee required for filing the original application.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with a analysis of the person's performance on the examination.

#### Display of License

Sec. 14. (a) Each licensee under this Act shall display his license and renewal certificate in a conspicuous place in the principal office where he practices physical therapy.

(b) There shall at all times be prominently displayed in the place of business of each licensee under this Act a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees can be directed to the board.

#### Renewal of License

Sec. 15. (a) A license issued under this Act, except a temporary license, expires one year from the date of issuance.

(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the



requirements and procedures for obtaining an original license.

(f) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration date and shall attempt to obtain from the licensee a signed statement confirming receipt of the notice.

**Alternative Expiration Date System**

Sec. 16. (a) The board may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

**Fees**

Sec. 17. (a) The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

**Examination**

- 1. Physical Therapist \$75
- 2. Physical Therapist Assistant 70

**Application**

- 1. Physical Therapist 40
- 2. Physical Therapist Assistant 40

**License Fee**

**Endorsement**

- 1. Physical Therapist 75
- 2. Physical Therapist Assistant 70

**Temporary License**

- 1. Physical Therapist 30
- 2. Physical Therapist Assistant 20

**Renewal**

- 1. Physical Therapist 55
- 2. Physical Therapist Assistant 45

**Issuance Fee**

- 1. Physical Therapist 45
- 2. Physical Therapist Assistant 45

**Duplicate License**

- 1. Physical Therapist 25
- 2. Physical Therapist Assistant 25

**Transfer Fee**

- 1. Physical Therapist 25
- 2. Physical Therapist Assistant 25

(b) The board may not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

**Penalties**

Sec. 18. (a) A person who knowingly or intentionally violates a provision of this Act commits a Class A misdemeanor.

(b) Each day of violation constitutes a separate offense.

(c) The attorney general, a district attorney, a county attorney, or any other person or any group of persons may institute injunction proceedings or any other proceedings to enforce this Act and to enjoin or restrain a physical therapist, physical therapist assistant, or any other person from the practice of physical therapy without having complied with this Act. A physical therapist, physical therapist assistant, or any other person found by a court of competent jurisdiction to have violated a provision of this Act shall forfeit to the State of Texas the sum of \$200 per day as a penalty for each day's violation, the sums to be recovered in a suit by the attorney general, a district attorney, a county attorney, or any other person or any group of persons. A person other than the attorney general, a district attorney, or a county attorney who brings an action for injunction or to enforce this Act may recover his court costs and attorney's fees.

**Grounds for Denial of a License or Discipline of a Licensee: Competitive Bidding and Advertising**

Sec. 19. (a) A license may be denied, or after hearing, suspended or revoked, or a licensee otherwise disciplined if the applicant or licensee has:

- (1) provided physical therapy treatment to a person other than on the referral of a physician licensed to practice medicine by the Texas State Board of Medical Examiners, or by a dentist licensed by the State Board of Dental Examiners, or a doctor licensed to practice chiropractic by The Texas Board of Chiropractic Examiners or a podiatrist licensed by the Texas State Board of Podiatry Examiners, or by any other qualified, licensed health-care personnel who are authorized to prescribe treatment of individuals, or in the case of a physical therapist assistant, has treated a person other than under the direction of a licensed physical therapist;
- (2) used drugs or intoxicating liquors to an extent that affects his professional competence;
- (3) been convicted of a felony in this state or in any other state, territory, or nation; conviction as used in this subdivision includes a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;
- (4) obtained or attempted to obtain a license by fraud or deception;
- (5) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;
- (6) been adjudged mentally incompetent by a court of competent jurisdiction;

(7) practiced physical therapy in a manner detrimental to the public health and welfare;

(8) had his license to practice physical therapy revoked or suspended or had other disciplinary action taken against him or had his application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

#### Procedures for Denial of a License or Discipline of a Licensee

Sec. 20. (a) A person whose application for a license is denied is entitled to a hearing before the board if he submits a written request for a hearing to the board.

(b) Proceedings for the denial, suspension, or revocation of a license or for other discipline of a licensee and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) On application, the board may reissue a license to a person whose license has been revoked, but the application may not be made before the 180th day after the date the order of revocation became final, and the application must be made in the manner and form required by the board.

(d) On application, the board may issue a license to a person whose application for license has been denied, but the application may not be made prior to one year after the date of denial.

#### Disposition of Funds

Sec. 21. (a) Fees received by the board under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(c) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all

funds received and disbursed by the board during the preceding year.

[Acts 1971, 62nd Leg., p. 2542, ch. 836, eff. Sept. 1, 1971; 7, eff. Jan. 1, 1972. Amended by Acts 1973, 63rd Leg., p. 624, ch. 266, § 4, eff. June 11, 1973; Acts 1975, 64th Leg., p. 795, ch. 307, §§ 1 to 4, eff. May 27, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.043, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2936, ch. 779, § 1, eff. Sept. 1, 1981.]

Sections 2 to 4 of the 1981 amendatory act provide:

"Sec. 2. On the effective date of this Act, a person who is licensed as a physical therapist or a physical therapist assistant in this state shall be issued an appropriate license under this Act.

"Sec. 3. (a) Incumbent members of the board on the effective date of this Act serve the remainder of their terms.

"(b) The successors to the board members whose terms expire on January 31, 1983, are the three required public members.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Section 2(e), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), as revised by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 2(e) that merit pay is to be based on the performance evaluation system shall be implemented before September 1, 1983."

### CHAPTER SIX E. SOCIAL PSYCHOTHERAPY

#### Art. 4512f. Expired

The Texas State Board of Examiners in Social Psychotherapy was abolished and this article expired effective September 1, 1981, pursuant to § 2.050 of the Sunset Act, Acts 1977, 65th Leg., p. 1839, ch. 735.

### CHAPTER SIX F. PROFESSIONAL COUNSELORS

#### Art. 4512g. Licensed Professional Counselor Act

##### Short Title

Sec. 1. This Act may be cited as the Licensed Professional Counselor Act.

##### Definitions

Sec. 2. In this Act:

(1) "Licensed professional counselor" means a person who represents himself to the public by any title or description of services incorporating the words "Licensed Counselor," who offers to render professional counseling services in private practice to individuals, groups, organizations, corporations, institutions, government agencies, or the general public for compensation, implying that he is licensed and trained, experienced, or expert in counseling, and who holds a valid license to engage in the private practice of counseling.

(2) "Board" means the Texas State Board of Examiners of Professional Counselors.

(3) "Department" means the Texas Department of Health.

(4) "Applicant" means an individual who seeks licensing under this Act.

(5) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(6) "Counseling services" means those acts and behaviors coming within the meaning of the private practice of counseling.

(7) "Private practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public counseling services, in private practice for compensation, involving the application of principles, methods, or procedures of the counseling profession that include but are not restricted to:

(A) "counseling" which means assisting an individual or groups, through the counseling relationship, to develop understanding of personal problems, to define goals, and to plan action reflecting an individual's or group's interests, abilities, aptitudes, and needs as they are related to personal-social concerns, educational progress, and occupations and careers;

(B) "appraisal activities" which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics but does not include the use of projective techniques in the assessment of personality;

(C) "counseling, guidance, and personnel consulting" which means interpreting or reporting on scientific fact or theory in counseling, guidance, and personnel services to provide assistance in solving some current or potential problems of individuals, groups, or organizations;

(D) "referral activities" which means the evaluating of data to identify problems and to determine advisability of referral to other specialists; and

(E) "research activities" which means the designing, conducting, and interpreting of research with human subjects.

#### Exemptions

Sec. 3. This Act does not apply to:

(1) the activities and services of or use of an official title by a person employed as a counselor by a federal, state, county, or municipal agency or public or private educational institution, provided the person is performing counseling or counseling-related activities within the scope of his employment;

(2) the activities and services of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities and services constitute a part of the super-

vised course of study, provided that the person is designated a "counselor intern";

(3) the activities and services of a nonresident rendered not more than 30 days during any year, provided the person is authorized to perform the activities and services under the law of the state or country of his residence;

(4) the activities and services of licensed members of other professions, such as physicians, registered nurses, psychologists, social psychotherapists, licensed optometrists in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision, Christian Science practitioners who are recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or other recognized religious practitioners performing counseling consistent with the law of the state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or description in the manner prescribed by Section 2 of this Act;

(5) the activities, services, titles, and descriptions of persons licensed to practice law;

(6) the activities, services, titles, and descriptions of persons employed as professionals or as volunteers in the practice of counseling for public and private nonprofit organizations or charities; or

(7) persons providing counseling services exclusively related to marriage and family concerns and who hold a masters or doctorate degree in the area of marriage and family therapy from an accredited college or university.

#### Nature and Composition of Board

Sec. 4. (a) The Texas State Board of Examiners of Professional Counselors is created.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Not later than the 30th day after the effective date of this Act, the executive committee of the Texas Personnel and Guidance Association shall submit to the governor a list of qualified candidates for the board, including the names of four qualified counselor educators and 12 qualified practicing counselors. Not later than the 60th day after the date the list is received, the governor shall select from the list the membership of the board consisting of one counselor educator and four counselors in private practice. The governor shall appoint four citizens from the general public who have no direct or indirect affiliation with the practice of counseling or delivery of mental health services.

(d) Except for the initial appointees, members hold office for staggered terms of six years, with three members' terms expiring February 1 of each odd-numbered year. In making an appointment, the governor shall specify which member each new appointee succeeds. Before entering on the duties

of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state.

(e) A member of the board or an employee of the board or of the department that carries out the functions of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the counseling services industry;

(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the counseling services industry; or

(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate are given to each party to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(f) A member of the board who is the designated representative of the general public may not have personally, nor be related to a person within the second degree by affinity or third degree by consanguinity who has, except as a consumer, a financial interest in counseling services as an officer, director, partner, owner, employee, attorney, or paid consultant.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

#### Board Member Qualifications

Sec. 5. (a) To be qualified for appointment as a professional member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment;

(2) have engaged in the field of counseling for at least 24 months or 2,000 hours;

(3) be licensed under this Act, except that an initial appointee to the board must, instead of being licensed under this Act, meet the requirements of Section 9 of this Act except that he must possess a graduate degree, 30 graduate semester hours in the field of counseling or its equivalent, and have engaged in the field of counseling for at least 24 months or 2,000 hours after the granting of a graduate degree; and

(4) be appointed in accordance with Section 4 of this Act.

(b) To be qualified for appointment as a member who is a representative of the general public, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment; and

(2) be at least 18 years old.

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board; or

(3) violates a prohibition established by Subdivision (1) or (2) of Subsection (e) of Section 4 of this Act.

(d) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

#### Board Responsibilities

Sec. 6. (a) The board shall meet not later than the 30th day after the day its members are appointed by the governor. The board shall elect a chairman and a vice-chairman who shall hold office according to the rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board and approved by the department. Five members constitute a quorum.

(c) The board may delegate functions and activities required by this Act to individuals and committees on a permanent or temporary basis if a quorum of the board agrees to the delegation and if the delegates clearly possess the professional and personal qualifications to act as delegates of the board.

(d) The board shall keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint.

(e) The board shall:

(1) determine the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses;

(2) adopt and revise, with the approval of the department, rules not inconsistent with the law of this state that are necessary to administer this Act. However, the board may not adopt rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices. The board may not include in its rules to prohibit false, misleading, or deceptive practices by licensees a rule that:

(A) restricts a licensee's use of any medium for advertising;

(B) restricts a licensee's personal appearance or use of his personal voice in an advertisement;

(C) relates to the size or duration of an advertisement by a licensee; or

(D) restricts a licensee's advertisement under a trade name;

(3) adopt and publish a code of ethics and adopt an official seal;

(4) examine for, deny, approve, issue, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Act and conduct hearings in connection with these actions;

(5) conduct hearings on complaints concerning violations of this Act and the rules adopted under this Act and cause the prosecution and enjoinder of the violations;

(6) expend money necessary for the proper administration of its assigned duties;

(7) set fees with the approval of the department for the board's services in amounts that are sufficient to meet the expenses of administering this Act;

(8) request and receive the assistance of state educational institutions or other state agencies; and

(9) prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

#### Reimbursements of Board Expenses

Sec. 7. A member of the board may not receive a fixed salary for his services, but each member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

#### Board Personnel

Sec. 8. (a) The executive secretary must be an employee of the department. The Commissioner of Health, after consulting with the board, shall designate an employee to serve as executive secretary of the board. The executive secretary shall be the administrator of professional counselor licensing activities for the board. In addition to his other duties prescribed by this Act and by the department, the executive secretary shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this Act, including rules and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over persons employed by the department in the administration of this Act;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board, but the executive secretary is not entitled to vote at board meetings; and

(7) handle or arrange for the handling of the correspondence of the board, make or arrange for necessary inspections and investigations, and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(b) The basic personnel and necessary facilities that are required to administer this Act shall be the personnel and facilities of the department acting as the agents of the board. The department may secure by agreement services that it considers necessary and provide for compensation for these services and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to administer this Act.

#### Initial Licensing Period

Sec. 9. (a) For one year beginning on the effective date of this Act, a person may apply for licensing without examination, except that if the board cannot establish competence to its satisfaction through an examination of credentials, it may require examination of an applicant under the initial licensing period. For the initial licensing period an applicant must:

(1) be at least 18 years old;

(2) have submitted a completed application as required by the board accompanied by the application fee set by the board; the board may require that the statements on the application be made under oath; and

(3) have:

(A) a master's degree;

(B) at least 30 graduate semester hours in the field of counseling or the substantial equivalent in both subject matter and extent of training; and

(C) 24 months or 2,000 hours of professional experience working in a counseling setting that meets the requirements established by the board.

(b) For two years beginning on the effective date of this Act, a person may apply for licensing in a counseling specialty authorized by Section 13 of this

Act without examination, except that if the board cannot establish competence to its satisfaction through an examination of credentials, it may require examination of an applicant under the initial licensing period. For the initial licensing period an applicant must:

- (1) meet the requirements prescribed by Subsection (a) of this section; and
- (2) have attained professional credentials consistent with the standards of the counseling specialty required by Section 13 of this Act.

#### Applicant Qualifications

Sec. 10. An applicant is qualified for a license to practice counseling if the applicant:

- (1) is at least 18 years old;
- (2) has submitted an application as required by the board, accompanied by the application fee set by the board; the board may require that the statements on the application be made under oath;
- (3) has met requirements prescribed by the board;
- (4) has successfully completed at a regionally accredited institution of higher education a planned graduate program of 45 semester hours or the substantial equivalent, including 300 clock hours of supervised practicum that is primarily counseling in nature and that meets the specific academic course content and training standards established by the board. The board shall use the standards as developed by the appropriate professional association; and
- (5) has 24 months or 2,000 hours of supervised experience working in a counseling setting that meets the requirements established by the board.

#### Application Review

Sec. 11. After investigation of the application and other evidence submitted, the board shall, not later than the 30th day before the examination date, notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

#### Examination

Sec. 12. (a) Examinations to determine competence shall be administered to qualified applicants at least twice each calendar year. The examinations shall be in any of the following forms as determined by the board for each applicant:

- (1) a field examination through questionnaires answered by the applicant's instructors, employers, supervisors, references, and others who are competent in the board's judgment to evaluate the applicant's professional competence, which may include the submission of written case studies and taped interviews with the applicant's instructors, employers, supervisors, references, and others or submission of documentary evidence of the quality, scope,

and nature of the applicant's experience and competence as the board considers necessary; or

- (2) other examinations as prescribed by the board.

(b) If a written examination is required, the board shall grade the examination and recommend to the chairman action to be taken. To ensure impartiality, written examination documents shall be identified by number, and no paper may be marked with the name of an applicant but shall be anonymously graded by the board. In the event an applicant fails to receive a passing grade on the entire examination, he may reapply and shall be allowed to take a subsequent examination. An applicant who has failed two successive examinations may not reapply until two years have elapsed from the date of the last examination or he has satisfactorily completed nine graduate semester hours in the applicant's weakest portion of the examination.

(c) Within 30 days after the day a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the day the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested by a person who fails the examination for a license, the board shall furnish to the person an analysis of the person's performance on the examination.

#### Licensed Professional Counselor Specialties

Sec. 13. A specialty designation except in the area of marriage and family counseling may be added on demonstration to the board that the applicant has met the recognized minimum standards as established by nationally recognized certification agencies. On passage of an examination, written, oral, or situational, or all three, and on receipt of credentials from certifying agencies, the board may, by a simple majority of the board members present and voting, consider the credentials adequate evidence of professional competence and recommend to the chairman of the board that a license with appropriate specialty designation, if any, be approved. A professional counselor may not claim or advertise a counseling specialty unless the qualifications of that specialty have been met and have been approved by the board.

#### Licenses and Renewal of Licenses

Sec. 14. (a) A license certificate issued by the board is the property of the board and must be surrendered on demand.

- (b) The licensee shall display the license certificate in an appropriate and public manner.

(c) The licensee shall inform the board of his current address at all times.

(d) Each year the board shall prepare a registry of licensed professional counselors with specialties, if any, identified. The registry shall be made available to the licensees, other state agencies, and the general public on request.

(e) The license may be renewed annually if the licensee is not in violation of this Act at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(f) Each person licensed under this Act is responsible for renewing his license before the expiration date.

(g) The board shall adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable. Failure to renew a license by the expiration date shall result in an increase of the renewal fee by an amount to be determined by the board with the approval of the department. If failure to renew continues for more than 30 days after the date of expiration, the board shall notify the person licensed under this Act of the expiration date of his license and the amount of the fee required for renewal. If failure to renew continues for more than 90 days after the date of expiration of the license, the license shall be revoked. Any licensee whose license is revoked because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within one year from the expiration date on payment of the license fee and a penalty fee in an amount to be determined by the board with the approval of the department. After the expiration of the year for which the license fee was not paid, a license may not be reinstated unless the licensee fulfills current requirements applicable to all licensees as provided by the rules adopted by the board.

(h) A licensee may request that his license be declared inactive. The licensee then foregoes the licensing rights granted under this Act but is relieved of renewal fees and penalty fees. At any time in the future, the license shall be declared active on the payment of a license fee if the applicant is not in violation of this Act at the time of application for reactivation or renewal of the license and if the applicant fulfills current requirements applicable to all licensees as provided by the rules adopted by the board.

#### Penalty

Sec. 15. (a) A person commits an offense if the person, after one year from the effective date of

this Act, knowingly or intentionally acts as a licensed professional counselor without a license issued under this Act.

(b) An offense under this section is a Class B misdemeanor.

#### Revocation or Suspension of License

Sec. 16. (a) The board may revoke or suspend the license of a counselor on proof that the counselor:

(1) has violated this Act or a rule or code of ethics adopted by the board; or

(2) is legally committed to an institution because of mental incompetence for any cause.

(b) Proceedings for revocation or suspension of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Power to Sue

Sec. 17. The board or the department may institute a suit in its own name to enjoin the violation of this Act. The suit is in addition to any other action, proceeding, or remedy authorized by law. The board shall be represented by the attorney general or the appropriate county or district attorney.

#### Reciprocity

Sec. 18. The board may grant, on application and payment of fees, a license without examination to a person who at the time of application holds a valid license or certificate as a counselor issued by another state or any political territory or jurisdiction acceptable to the board if in the board's opinion the requirements for that license or certificate are substantially the same as the requirements of this Act.

#### Revenue, Receipts and Disbursements

Sec. 19. The department shall receive and account for funds derived under this Act. The funds shall be deposited in the State Treasury to the credit of a special fund to be known as the professional counselors licensing fund and may be used only for the administration of this Act. The board may impose application, examination, license, and renewal fees and any other appropriate fees in an amount fixed by the board. The board shall fix the amounts of the fees to collect sufficient revenue to meet the expenses of administering this Act without accumulating unnecessary surpluses.

#### Annual Report

Sec. 20. Not later than the 90th day after the last day of each state fiscal year, the board shall submit to the governor, lieutenant governor, and speaker of the house a report about the activities of the board during the preceding fiscal year.

**Application of Sunset Act**

Sec. 21. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

**Initial Board Appointments**

Sec. 22. In making the initial appointments to the board, the governor shall designate three members for terms expiring February 1, 1983, three members for terms expiring February 1, 1985, and three members for terms expiring February 1, 1987.

[Acts 1981, 67th Leg., p. 2913, ch. 775, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2359, ch. 424, §§ 11, 12, eff. Sept. 1, 1983.]

**CHAPTER SIX G. LICENSED DIETITIANS****Art.**

4512h. Licensed Dietitian Act.

**Art. 4512h. Licensed Dietitian Act****Short Title**

Sec. 1. This Act may be cited as the Licensed Dietitian Act.

**Definitions**

Sec. 2. In this Act:

- (1) "Board of health" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Board" means the Texas State Board of Examiners of Dietitians.
- (5) "Commission on Dietetic Registration" means the Commission on Dietetic Registration that is a member of the National Commission on Health Certifying Agencies.
- (6) "Dietetics" means the professional discipline of applying and integrating scientific principles of nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. The term includes without limitation the development, management, and provision of nutritional services.
- (7) "Licensed dietitian" means a person licensed under this Act.
- (8) "Provisional licensed dietitian" means a person provisionally licensed under this Act.
- (9) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred.

WTSC Civil Statutes—10

**Board; Membership**

Sec. 3. (a) The Texas State Board of Examiners of Dietitians is created.

(b) The board is composed of nine members. Three members must be members of the general public. Six members must be dietitians licensed under this Act.

(c) The governor with the advice and consent of the senate shall appoint the board members, who shall serve staggered terms of six years with two terms beginning September 1 of each odd-numbered year.

(d) The professional discipline of dietetics includes five primary areas of expertise: clinical, educational, management, consultation, and community. In making the six professional appointments to the board, the governor shall consider and attempt to accomplish a continuing balance of representation among these areas of expertise. Following the fourth anniversary date of the effective date of this Act, a licensee eligible for appointment as a professional board member must have been a licensed dietitian under this Act for at least three years before his appointment to the board.

(e) A person is eligible for appointment as a public member if the person and the person's spouse:

- (1) are not licensed by an occupational regulatory agency in the field of health care;
- (2) are not employed by and do not participate in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and
- (3) do not own, control, or have a direct or indirect interest in more than 10 percent of a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(f) It is the intent of the legislature that the membership of the board reflect the historical and cultural diversity of the inhabitants of this state; therefore, appointments to the board should be made without discrimination based on race, creed, sex, religion, national origin, or geographical distribution of the appointees.

(g) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the field of health care.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), in a health-related area may not serve as a member of the board or act as the general counsel to the board.

**Grounds for Removal**

Sec. 4. (a) It is a ground for removal from the board if a member:



(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board; or

(3) violates a prohibition established by this Act.

(b) If a ground for removal of a member from the board exists, the board's actions taken during the existence of the ground for removal are valid.

#### Officers; Meetings; Quorum; Expenses

Sec. 5. (a) Not later than the 30th day after the day its new members are appointed by the governor, the board shall meet to elect a chairman and vice-chairman who shall hold office according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board. The rules may not be inconsistent with present rules of the department relating to meetings of boards.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to a per diem payment at the rate set by the legislature for state employees in the General Appropriations Act for each day that the member engages in the business of the board. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. A board member may not receive a fixed salary for his services.

#### Powers and Duties of Board

Sec. 6. (a) The board may adopt rules consistent with this Act. In adopting rules, the board shall consider the rules and procedures of the board of health and the department and shall adopt procedural rules not inconsistent with similar existing rules and procedures of the board of health or the department.

(b) The board shall:

(1) adopt and publish a code of ethics and adopt an official seal;

(2) establish the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses;

(3) revoke, suspend, or deny a license, probate a license suspension, or reprimand a licensee for a violation of this Act, the code of ethics, or the rules of the board;

(4) spend funds necessary for the proper administration of its assigned duties;

(5) establish reasonable and necessary fees for the administration and implementation of this Act; and

(6) comply with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of any advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

#### Administrative Functions; Personnel

Sec. 7. (a) The basic personnel and necessary facilities that are required to administer this Act shall be the personnel and facilities of the department. The department personnel shall act as the agents of the board. If necessary to the administration or implementation of this Act, the department by agreement may secure and provide for compensation for services that it considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner shall designate an employee to serve as executive secretary of the board. The executive secretary must be an employee of the department. The executive secretary shall be the administrator of the licensing activities for the board. In addition to other duties prescribed by this Act and by the department, the executive secretary shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this Act, including rules and proposals on administrative procedures consistent with this Act;

(4) exercise general supervision over persons employed by the department in the administration of this Act;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

#### Fees; Funds; Annual Report; Audit

Sec. 8. (a) After consultation with the commissioner or the department, the board shall set the fees imposed by this Act in amounts that are adequate to collect sufficient revenue to meet the expenses necessary to administer this Act without accumulating an unnecessary surplus in the Licensed Dietitian Act fund created by this section.

(b) The department shall receive and account for funds derived under this Act. The funds shall be deposited in the State Treasury to the credit of a special fund to be known as the Licensed Dietitian Act fund to be used only for the administration of this Act.

(c) Not later than January 1 each year, the department shall make a written report to the governor, lieutenant governor, and speaker of the house of representatives accounting for all funds received and disbursed by the board or the department for the administration of this Act during the preceding year.

(d) During each fiscal year, the State Auditor shall audit the financial transactions of the board or the department in relation to the administration of this Act.

#### Applicant Qualifications; Application Review

Sec. 9. (a) An applicant for a dietitian license must submit a sworn application, accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received. These rules must not be inconsistent with present rules of the department related to application dates of other licenses.

(c) To qualify for the licensing examination under this Act, the applicant must:

(1) possess a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management or an equivalent major course of study approved by the board; and

(2) have completed an internship or preplanned professional experience program approved by the board.

(d) Not later than the 45th day after the receipt of a properly submitted and timely application and not later than the 30th day before the next examination date, the department shall notify an applicant in writing that his application and any other relevant evidence pertaining to applicant qualifications established by the board by rule has been received

and investigated. The notice shall state whether the application and other evidence submitted have qualified the applicant for examination. If the applicant has not qualified for examination, the notice shall state the reasons for the lack of qualification.

#### Examination

Sec. 10. (a) To qualify for a license under this Act, an applicant must pass a competency examination. Examinations shall be prepared or approved by the board and administered to qualified applicants at least twice each calendar year.

(b) An examination prescribed by the board may be or may include an examination given by the Commission on Dietetic Registration or by a national or state testing service in lieu of an examination prepared by the board.

(c) Not later than the 30th day after the day on which a licensing examination is administered under this Act, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination within two weeks after the day the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(e) If an applicant fails the examination three times, the applicant must furnish evidence to the board of completed course work taken for credit with a passing grade in the areas of weakness before the applicant may again apply for examination.

#### License

Sec. 11. (a) A person who meets the licensing qualifications under this Act is entitled to receive a license certificate as a licensed dietitian.

(b) The licensee must:

(1) display the license certificate in an appropriate and public manner; and

(2) keep the department informed of his current address.

(c) A license certificate issued by the board is the property of the board and must be surrendered on demand.

#### License Expiration; Renewal

Sec. 12. (a) A license is valid for one year from the date it is issued and may be renewed annually.

(b) The board of health by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license.

(d) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the department the required renewal fee and a penalty fee that is one-half of the renewal fee.

(e) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a penalty fee that is equal to the renewal fee.

(f) If a person's license has been expired two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining a license.

(g) The department shall notify each licensee in writing of the license expiration date at least 30 days before that date and shall obtain from the licensee a signed receipt confirming receipt of notification.

#### Provisional License

Sec. 13. (a) A license to use the title of provisional licensed dietitian may be issued by the board on the filing of an application, payment of an application fee, and the submission of evidence of the successful completion of the educational requirement under Section 9 of this Act. The initial application shall be signed by the supervising licensed dietitian.

(b) A provisional licensed dietitian shall be under the supervision and direction of a licensed dietitian.

(c) A person qualified for a provisional license under this Act is entitled to receive a license certificate as a provisional licensed dietitian. A provisional licensed dietitian must comply with Subsections (b) and (c) of Section 11 of this Act.

(d) A provisional license is valid for one year from the date it is issued and may be renewed annually by the same procedures established for renewal under Section 12 of this Act if the application for renewal is signed by the supervising licensed dietitian.

#### Reciprocity

Sec. 14. On receipt of an application and application fee, the board shall waive the examination requirement for an applicant who, at the time of application:

(1) is registered by the Commission on Dietetic Registration as a registered dietitian; or

(2) holds a valid license or certificate as a licensed or registered dietitian issued by another state with which this state has a reciprocity agreement.

#### Prohibited Acts; Penalty

Sec. 15. (a) A person may not use the title or represent or imply that he has the title of "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD" and may not use any facsimile of those titles in any manner to indicate or imply that the person is a licensed dietitian or provisional licensed dietitian, unless the person holds an appropriate license issued under this Act.

(b) A person may not use the title or represent or imply that he has the title of "registered dietitian" or the letters "RD" and may not use any facsimile of the title in any manner to indicate or imply that the person is registered as a registered dietitian by the Commission on Dietetic Registration, unless the person is registered as a registered dietitian by the Commission on Dietetic Registration.

(c) A person commits an offense if the person knowingly or intentionally violates Subsection (a) or (b) of this section. An offense under this section is a Class B misdemeanor.

#### Complaint File and Status

Sec. 16. (a) The department shall keep an information file about each complaint filed with the board related to a licensee.

(b) If a written complaint is filed with the board relating to a licensee, the department, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition of the complaint.

#### Revocation and Suspension; Ex Parte Communication

Sec. 17. (a) The board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee on proof of:

- (1) any violation of this Act; or
- (2) any violation of a rule or code of ethics adopted by the board.

(b) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the board.

(c) Proceedings for the suspension or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) A member or employee of the board or an employee of the department who carries out the functions of the board may not communicate directly or indirectly with a party to a proceeding pending before the board or with the party's representative, unless notice and an opportunity to participate are given to each party to the proceeding if the member or employee proposes to make a decision, a finding of fact, or a conclusion of law in the proceeding.

**Duties of Board of Health**

Sec. 18. For the purpose of implementing this Act, the board of health:

(1) shall request and receive any necessary assistance of state educational institutions or other state agencies;

(2) shall prepare information of consumer interest describing the regulatory functions of the board, the procedures by which consumer complaints are filed and resolved, and the profession of dietetics;

(3) shall prepare a registry of licensed dietitians and provisional licensed dietitians and make this information available to the general public, licensees, and appropriate state agencies; and

(4) may request the attorney general or the appropriate county or district attorney to institute a suit to enjoin a violation of this Act in addition to any other action, proceeding, or remedy authorized by law.

**Application of Sunset Act**

Sec. 19. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

[Acts 1983, 68th Leg., p. 1617, ch. 307, §§ 1 to 19, eff. Sept. 1, 1983.]

Sections 20 and 21 of the 1983 Act provide:

"Sec. 20. Initial Board Appointments. (a) In making the initial appointments to the board, the governor shall designate three members, including one public member, for terms expiring September 1, 1983, three members, including one public member for terms expiring September 1, 1987, and three members, including one public member, for terms expiring September 1, 1985.

"(b) In making the initial six professional appointments to the board, the governor shall appoint six persons otherwise qualified under this Act who also have been for 60 months immediately preceding their appointment and who presently are registered as registered dietitians by the Commission on Dietetic Registration.

"Sec. 21. Initial Licensing Period. For one year beginning on the effective date of this Act, the board shall waive the examination requirement under this Act and grant a license under this Act to any person who:

"(1) is registered by the Commission on Dietetic Registration as a registered dietitian on the effective date of this Act or who becomes so registered before the one year anniversary of the effective date of this Act; or

"(2) possesses a baccalaureate or postbaccalaureate degree, has satisfactorily completed appropriate academic requirements in the field of human nutrition, food and nutrition, dietetics, or food systems management or a directly related field approved by the board, and either has satisfactorily completed an internship or preplanned professional experience program of not less than six months approved by the board or has been employed in the field of dietetics for three of the 10 years immediately preceding the effective date of this Act."

**CHAPTER SIX H. LAY MIDWIVES**

Art.

4512i. Lay Midwifery Board.

**Art. 4512i. Lay Midwifery Board****Definitions**

Sec. 1. In this Act:

(1) "Approved lay midwifery training course" means a training course that satisfies the requirements established by the lay midwifery board and that is approved by the Texas Board of Health.

(2) "Certified nurse-midwife" means a person who is a registered nurse under the laws of this state and who is certified by the American College of Nurse-Midwives.

(3) "Department" means the Texas Department of Health.

(4) "Lay midwife" means a person who practices lay midwifery.

(5) "Lay midwifery" means the practice of assisting childbirth for compensation.

(6) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or signs or symptoms of complications.

(7) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but does not assist at childbirth.

**Exceptions**

Sec. 2. This Act does not apply to a certified nurse-midwife, a natural childbirth trainer, a physician, a health care professional licensed by the state and operating within the scope of his license; or a person other than a lay midwife who assists childbirth in an emergency.

**Lay Midwifery Board**

Sec. 3. The Texas Board of Health shall appoint a lay midwifery board composed of:

(1) three lay midwives with at least three years of experience in the practice of lay midwifery, no more than one of whom may be a licensed health care professional;

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by the American College of Obstetricians and Gynecologists;

(4) one person licensed to practice medicine who is certified by the American Board of Pediatricians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest.

**Terms**

Sec. 4. The members of the lay midwifery board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

**Officers; Quorum; Meetings**

Sec. 5. (a) The lay midwifery board shall elect a chairman from one of the public interest members and a vice-chairman from any of the other members.

(b) A majority of the members of the lay midwifery board constitutes a quorum.

(c) The lay midwifery board shall meet at least once during the first year of its existence and at other times at the call of the Texas Board of Health.

**Expenses**

Sec. 6. Members may not receive compensation for service on the lay midwifery board. Each member is entitled to receive \$50 for each meeting that the member attends and the per diem and travel allowance authorized for state employees.

**Executive Secretary; Staff**

Sec. 7. (a) The department shall hire an executive secretary after consultation with the lay midwifery board to perform administrative duties, including keeping the minutes of lay midwifery board meetings, maintaining records about approved training courses, and maintaining records of persons who have received a letter of completion as described in this Act.

(b) The department shall pay the salaries of the executive secretary and that of any additional staff it determines to be necessary. The department shall provide office space and supplies for the executive secretary and other staff.

**Duties and Powers of the Lay Midwifery Board and the Texas Board of Health**

Sec. 8. (a) Subject to the approval of the Texas Board of Health, the lay midwifery board shall:

(1) establish requirements for an approved lay midwifery training course;

(2) establish qualifications for the lay midwifery training course instructors;

(3) issue a lay midwifery training manual;

(4) establish eligibility requirements for taking the final examination of a training course; and

(5) issue a final examination for a lay midwifery training course.

(b) The Texas Board of Health shall review and act on the materials submitted by the lay midwifery board for approval not later than the 60th day after the date on which they are submitted. To implement this Act, the Texas Board of Health may adopt rules, enter contracts, and prepare and publish reports on the practice of lay midwifery in this state.

(c) The department shall establish a procedure for reporting and processing complaints relating to lay midwifery practice in Texas.

**Manual**

Sec. 9. (a) The lay midwifery board shall approve a manual for the practice of lay midwifery. The department shall provide the manual to any person who requests it. An approved manual must include information about:

(1) prenatal care;

(2) normal childbirth;

(3) signs, symptoms, and emergency management of complications that occur in childbirth;

(4) screening for women who are at greater risk of childbirth complications;

(5) anatomy of the human reproduction system;

(6) sterile techniques and procedures;

(7) delivery techniques to prevent vaginal lacerations;

(8) emergency treatment of vaginal lacerations occurring during childbirth;

(9) legal requirements and procedures for reporting births and deaths;

(10) resuscitation of the newborn;

(11) prophylactic treatment, screening, and diagnostic tests for newborns as required by law; and

(12) other information or procedures as determined by the department.

(b) The department may charge a fee not to exceed \$10 for each manual it distributes. The department shall make the manual available in English and Spanish.

**Training Course**

Sec. 10. (a) An approved lay midwifery training course may be offered by a local health department, an accredited postsecondary educational institution, or an adult education program. The entity offering the course may charge a reasonable fee for the course.

(b) If the department determines that the number of approved courses offered in a region designated by the department is insufficient to satisfy the demand for training in the region, the department shall make a training course available on a temporary basis through its regional office. The department may charge a fee not to exceed \$50 for a training course it conducts. The department may waive a portion of the fee charged to an individual.

(c) The training course shall be taught in Spanish if that is the only language a participant of the course understands. If other course participants do not understand Spanish, the training course shall be taught in English and Spanish.

**Examination**

Sec. 11. (a) A person who has completed an approved lay midwifery training course or who has comparable training approved by the lay midwifery

board is entitled to take the final examination of the training course.

(b) An applicant for examination shall submit to the department an application fee of \$25 and a completed application on a form prescribed by the lay midwifery board.

(c) The department shall administer the final examination at its regional or local offices.

(d) The examination shall be administered in English and Spanish and may be offered in written or oral form.

#### Letter

Sec. 12. The department shall grant a letter of completion to a person who passes the final examination.

#### Identification Requirement

Sec. 13. (a) In December of each year, a person who practices lay midwifery shall identify himself as a lay midwife by appearing in person before the county clerk of the county in which the person resides or before the county clerk of each county in which the person practices lay midwifery and delivering to the county clerk a verified identification form that contains:

(1) the person's name, residence, and post office address;

(2) the person's date and place of birth;

(3) the location of the person's practice according to counties; and

(4) other information the department determines necessary for the identification of lay midwives.

(b) The identification form shall be prescribed by the department.

(c) The county clerk shall provide each lay midwife who identifies himself a notice of a lay midwife's legal responsibilities under the laws and rules of this state on a form prescribed by the department. Failure to receive the notice does not constitute a defense to prosecution for acts committed in violation of the laws and rules of this state.

(d) The county clerk shall retain for the county clerk's records a copy of each identification form. The county clerk shall send the original identification form to the department. The county clerk may charge a reasonable fee for these services under Article 3930, Revised Statutes.

#### Additional Information

Sec. 14. (a) The department may require information in addition to that required by Subsection (a) of Section 13 of this Act if it determines the additional information is necessary and appropriate to ascertain the nature and extent of lay midwifery in this state. The department may not require information regarding any act that is prohibited under this Act.

(b) Information received under this section may not be made public so as to disclose the identity of any person to whom the information relates. This information is not a public record as defined in Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(c) The department shall prescribe forms for the additional information and shall distribute those forms to the county clerks of this state.

(d) When a person identifies himself as a lay midwife under Section 13 of this Act, the county clerk shall give a copy of any form for additional information to the person. The person shall complete the form and return it with the identification form to the county clerk.

(e) The county clerk shall send these forms to the department.

#### Roster

Sec. 15. (a) The department shall maintain a roster of all persons identified to practice lay midwifery.

(b) The roster shall contain for each person the information required on the identification form of this Act and other information that the department determines necessary to identify with accuracy each lay midwife who is identified under this Act. This information shall be a public record as defined in Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

#### Duties of Lay Midwives; Disclosure Requirement

Sec. 16. (a) Each lay midwife shall disclose in oral and written form to a prospective client the limitations of the skills and practices of a lay midwife.

(b) The department with the advice of the lay midwifery board shall prescribe the form of the written disclosure required by this section, which shall include the information that a lay midwife:

(1) may assist only in normal childbirth;

(2) has or does not have an arrangement with a local physician for referring patients who have complications that occur before or during childbirth;

(3) may not administer a prescription drug without a physician's supervision, perform a Caesarean section, or perform an episiotomy; and

(4) has or has not passed the lay midwife training course final examination approved by the board.

(c) The written disclosure required by this section may not exceed 500 words and must be in English and Spanish.

(d) A lay midwife shall have each client sign a written disclosure form and shall send the form to the department not later than the 30th day after the date of the birth.

(e) A lay midwife shall encourage a client to seek prenatal care.

(f) A lay midwife shall encourage a client to seek medical care if the lay midwife recognizes a sign or symptom of a complication to the client's childbirth.

(g) Each lay midwife shall disclose to a prospective or actual client the procedure for reporting complaints with the department.

**Prohibited Acts**

Sec. 17. A lay midwife may not:

(1) administer a prescription drug to a client except under the supervision of a licensed physician in accordance with the laws of this state;

(2) use forceps or surgical instruments for any procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(3) remove placenta by invasive techniques;

(4) advance or retard labor or delivery by using medicines or mechanical devices;

(5) use in connection with his name a title, abbreviation or any designation tending to imply that he is a "registered" or "certified" lay midwife as opposed to one who has identified himself in compliance with this Act; or

(6) assist at childbirth other than a normal childbirth except in an emergency situation that poses an immediate threat to the life of the mother or newborn.

**Penalties**

Sec. 18. (a) A lay midwife commits an offense if the lay midwife knowingly or intentionally commits an act prohibited by this Act.

(b) An offense under this section is a Class C misdemeanor.

(c) A lay midwife who knowingly or intentionally fails to comply with the disclosure requirement of this Act commits a Class C misdemeanor.

(d) A lay midwife who knowingly or intentionally fails to comply with the identification requirement of this Act commits a Class C misdemeanor.

**Effect on Local Ordinances**

Sec. 19. This Act does not prohibit an incorporated city or town from adopting a local ordinance to regulate the practice of lay midwifery within its corporate limits if the ordinance is at least as strict as this Act.

**Funds**

Sec. 20. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund and shall

be appropriated to the department to defray the costs of this Act.

[Acts 1983, 68th Leg., p. 2012, ch. 365, §§ 1 to 15, 16(b) to (g), 19, 20, eff. Sept. 1, 1983; §§ 16(a), 17, 18, eff. Sept. 1, 1984.]

Sections 22 and 23 of the 1983 Act provide:

"Sec. 22. Initial Appointments. In making the initial appointments to the lay midwifery board, the Texas Board of Health shall designate one lay midwife, one public interest representative, and the obstetrician for terms expiring January 31, 1985, one lay midwife, one public interest representative, and the certified nurse-midwife for terms expiring January 31, 1987, and one lay midwife, one public interest representative, and the pediatrician for terms expiring January 31, 1989.

"Sec. 23. Report. The department shall study the practice of lay midwifery in the state, including the quality of the services provided by lay midwives and the efficacy of the training program, disclosure requirements, and prohibitions established in this Act. The department shall report the results of this study to the regular session of the 71st Legislature. In the report, the department shall analyze the training program and shall recommend that the program be:

- "(1) continued as enacted;
- "(2) continued with amendments;
- "(3) made mandatory; or
- "(4) discontinued."

**CHAPTER SIX I—SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS**

Art.

4512j. State Committee of Examiners for Speech-Language Pathology and Audiology.

Art. 4512j. State Committee of Examiners for Speech-Language Pathology and Audiology

**Purpose**

Sec. 1. It is the policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from unprofessional conduct by speech-language pathologists and audiologists it is necessary to provide regulatory authority over persons offering speech-language pathology and audiology services to the public.

**Definitions**

Sec. 2. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Committee" means the State Committee of Examiners for Speech-Language Pathology and Audiology.

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, corporation, partnership, or other legal entity.

(5) "Speech-language pathologist" means an individual who practices speech-language pathology, who makes a nonmedical evaluation, who examines, counsels, or provides habilitative or rehabilitative services for persons who have or are suspected of having speech, voice, or language disorders, and who meets the qualifications set forth in this Act.

(6) "The practice of speech-language pathology" means the application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of speech, voice, or language for the purpose of rendering or offering to render an evaluation, prevention, or modification of these disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform the basic audiometric screening tests and hearing therapy procedures consistent with their training.

(7) "Audiologist" means a person who practices audiology, who makes a nonmedical evaluation, who examines, counsels, or provides habilitative or rehabilitative services for persons who have or are suspected of having a hearing disorder, and who meets the qualifications set forth in this Act.

(8) "The practice of audiology" means the application of nonmedical principles, methods, and procedures for the measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to hearing and disorders of hearing and for the purpose of rendering or offering to render services modifying communicative disorders involving speech, language, auditory function, or other aberrant behavior relating to hearing loss. An audiologist may engage in any tasks, procedures, acts, or practices that are necessary (A) for the evaluation of hearing; (B) for training in the use of amplification including hearing aids; or (C) for the making of earmolds for hearing aids. An audiologist may participate in consultation regarding noise control and hearing conservation, may provide evaluations of environment or equipment including calibration of equipment used in testing auditory functioning and hearing conservation, and may perform the basic speech and language screening tests and procedures consistent with his or her training.

(9) "Speech-language pathology aide" means a person who meets minimum qualifications which the committee may establish for speech-language pathology aides and who works under the direction of a licensed speech-language pathologist. The qualifications for licensure as a speech-language pathology aide shall be uniform and shall be less than those established by this Act as necessary for licensure as a speech-language pathologist.

(10) "Audiology aide" means a person who meets minimum qualifications which the committee may establish for audiology aides and who works under the direction of a licensed audiologist. The qualifications for licensure as an audiology aide shall be uniform and shall be less than those established by this Act as necessary for licensure as an audiologist.

#### Committee; Membership

Sec. 3. (a) The State Committee of Examiners for Speech Pathology and Audiology is created within the Texas Department of Health. The committee consists of nine members appointed by the governor to take office on the effective date of this Act. Members of the committee must have been residents of the State of Texas for two years immediately preceding appointment and must be representative of varying geographic regions of the state and from varying employment settings. Six members must have been engaged in rendering services, teaching, or research in speech-language pathology or audiology for at least five years and must meet the qualifications for licensure under this Act. Of these six members, three members shall be audiologists, three members shall be speech-language pathologists. Except for the initial appointees, all six shall hold valid licenses under this Act. Three members shall be selected from the general public. One of the three public members of the committee must be a physician licensed to practice in the State of Texas and board certified in otolaryngology or pediatrics. The two remaining public members may not:

(1) be licensed by an occupational regulatory agency in the field of health care;

(2) be employed by and participating in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) own, control, or have a direct or indirect interest in more than 10 percent of a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(4) be an officer, employee, or paid consultant of a trade association in the field of health care. A member of the committee may not be related within the second degree of affinity or consanguinity to a person who is an officer, employee, or a paid consultant of a trade association in the health-care field.

(b) An appointment to the committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), in a health-related area may not serve as a member of the board or act as the general counsel to the board.

#### Terms; Officers; Quorum; Expenses

Sec. 4. (a) The term of initial appointees to the board shall be determined by lot as follows: three members are appointed for terms which expire August 31, 1985; three members are appointed for terms which expire August 31, 1987; and three



members are appointed for terms which expire August 31, 1989. After the initial appointments, members are appointed for staggered terms of six years, with three terms beginning September 1 of each odd-numbered year. Members of the committee shall serve until the expiration of the term to which they have been appointed or until their successors have qualified. A person may not be appointed to serve more than two consecutive terms.

(b) The committee shall be organized annually and select a chairperson, vice-chairperson, and a secretary-treasurer. The initial chairperson shall be a person who meets the qualifications for licensing under this Act. After September 1, 1984, the chairperson shall hold a valid license under this Act.

(c) Five members of the committee constitute a quorum to do business.

(d) The committee shall hold at least two regular meetings each year at which time an examination as defined in Section 12 of this Act shall be offered. Additional meetings may be held on the call of the chairperson or at the written request of any three members of the committee. At least 14 days' advance notice of the committee meeting is required.

(e) Committee members receive no compensation for their services; however, each member of the committee is entitled to a per diem and travel allowance at the rate set by the legislature for state employees in the General Appropriations Act for each day that the member engages in the business of the committee.

#### Duties and Powers of the Committee

Sec. 5. (a) Subject to the approval of the board, the committee shall adopt rules necessary to administer and enforce this Act, including rules that establish standards of ethical practice.

(b) With the assistance of the department, the committee shall administer, coordinate, and enforce the provisions of this Act; evaluate the qualifications of applicants; provide for the examination of applicants; and issue subpoenas, examine witnesses, and administer oaths under the laws of the State of Texas.

(c) With the assistance of the department and in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the committee shall conduct hearings and keep records and minutes necessary to the orderly administration of this Act.

(d) The committee with the aid of the department shall investigate persons engaging in practices that violate the provisions of this Act.

(e) A person who holds a license to practice speech-language pathology or audiology in this state is governed and controlled by the rules adopted by the committee and approved by the board of health.

(f) The conferral or enumeration of specific powers elsewhere in this Act shall not be construed as a limitation of the general powers conferred by this section.

(g) The committee shall be represented by the attorney general and the district and county attorneys of this state.

(h) The committee may appoint subcommittees to work under its jurisdiction, subject to the approval of the board.

#### Employees of the Committee

Sec. 6. The Texas Department of Health shall provide such administrative and clerical employees as are necessary to carry out the provisions of this Act.

#### Seal and Authentication of Records

Sec. 7. The committee shall adopt a seal by which it shall authenticate its proceedings. Copies of the proceedings, records, and acts of the committee and certificates purporting to relate the facts concerning the proceedings, records, and acts, signed by the secretary-treasurer and authenticated by the seal, are prima facie evidence in all courts of this state.

#### Licensing and Regulation of Speech-Language Pathologists and Audiologists

Sec. 8. (a) Licenses shall be granted either in speech-language pathology or audiology independently. Persons may be licensed in both areas if they meet the qualifications.

(b) A person may not practice or represent himself or herself as a speech-language pathologist or audiologist in this state after August 31, 1984, unless he or she is licensed in accordance with the provisions of this Act.

(c) Any violation of this subsection shall constitute a deceptive trade practice.

#### Persons and Practices Not Affected

Sec. 9. (a) This Act does not prevent qualified persons licensed in this state under another law from engaging in the profession for which they are licensed.

(b) This Act does not prevent or restrict the activities and services and the use of an official title by persons holding a valid and current certification in speech and hearing therapy from the Central Education Agency if those persons perform speech-language pathology or audiology services solely as a part of their duties within an agency, institution, or organization under the jurisdiction of the Central Education Agency. If persons affected by this subsection perform work as a speech-language pathologist or audiologist apart from their positions within an agency, institution, or organization of the Central Education Agency, they must have a license issued by the committee, except that a person af-

ected by this subsection may perform speech and hearing screening procedures without compensation without having a license issued by the committee.

(c) This Act does not restrict the activities and services of students or interns pursuing a course of study leading to a degree in speech-language pathology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent, provided that these activities and services constitute a part of their supervised course of study or internship year; that after September 1, 1984, they are supervised by a person licensed under this Act; and that they are designated by a title such as "Speech-Language Pathology Intern" or "Speech-Language Pathology Trainee" or other title clearly indicating the training status appropriate to their level of training.

(d) This Act does not restrict activities and services of students or interns in audiology pursuing a course of study leading to a degree in audiology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent, provided that these activities and services constitute a part of their supervised course of study or internship year; that after September 1, 1984, they are supervised by a person licensed under this Act; and that they are designated by a title such as "Audiology Intern" or "Audiology Trainee" or other title clearly indicating the training status appropriate to their level of training.

(e) This Act does not restrict the performance of speech-language pathology or audiology services in this state by a person not a resident of this state who is not licensed under this Act, if the services are performed for no more than five days in a calendar year and if the person meets the qualifications and requirements for application for licensure under this Act.

(f) This Act does not restrict the use of an official title by an individual teaching in a university or college training program, provided that the person is not engaged in the practice of speech-language pathology or audiology and does not supervise persons engaged in the practice of speech-language pathology or audiology.

(g) This Act does not permit a person to perform an act that would be in violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). This Act does not permit a person to provide medical or surgical diagnosis or treatment of laryngeal or ear disorders.

(h) Nothing in this Act shall be construed as restricting or preventing a physician or surgeon from engaging in the practice of medicine in this state. This Act does not restrict speech or hearing testing or evaluation conducted by a licensed physician or surgeon.

(i) This Act does not apply to persons employed by the Texas Department of Health in its programs concerned with hearing or speech services as long

as they are performing duties under the jurisdiction of the Texas Department of Health.

(j) This Act does not apply to a person who shows evidence of having received training by the Texas Department of Health in one of the hearing screening training programs approved by that agency, provided that all activities performed under this exception shall be limited to screening of hearing sensitivity.

(k) This Act does not license a person to sell hearing aids as defined in Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes).

(l) This Act does not prevent or restrict a person licensed by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids from engaging in the practice of fitting and dispensing hearing aids.

(m) This Act does not prevent persons in an industrial setting from engaging in hearing testing as a part of a hearing conservation program in compliance with regulations of the Occupational Safety and Health Administration, provided that such persons are certified by an agency acceptable to the Occupational Safety and Health Administration.

(n) This Act does not prevent or restrict speech or hearing sensitivity screening evaluations conducted by registered nurses licensed by the laws of this state and practicing in accordance with the standards of professional conduct and ethics promulgated by the rules and regulations of the Board of Nurse Examiners.

(o) This Act does not prevent the use of the title "Certified Hearing Aid Audiologist" by a person so certified by the National Hearing Aid Association if the person is a licensed hearing aid dispenser and uses the title solely in connection with fitting and dispensing hearing aids and does not represent himself to be a licensed audiologist under this Act.

(p) Nothing in this Act shall be construed as restricting or preventing a licensed psychologist from engaging in the practice of psychology within the scope of the activities permitted under that license.

#### Qualification of Applicants for License

Sec. 10. To be eligible for licensing as a speech-language pathologist or audiologist, an applicant must:

(1) possess at least a master's degree with a major in speech-language pathology or audiology from an accredited or approved college or university;

(2) submit transcripts from one or more colleges or universities showing successful completion of course work in amounts set by the committee with the approval of the board in the following areas:

(A) information about normal development and use of speech, language, and hearing;

(B) information about evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and

(C) information pertaining to related fields that augment the work of clinical practitioners of speech-language pathology and audiology;

(3) have successfully completed at least 30 semester hours in courses that are acceptable toward a graduate degree by the college or university in which they are taken, at least 21 of which are within the professional area for which the license is requested and at least six of which are in audiology for the applicant for a speech-language pathology license or in speech-language pathology for the applicant for a license in audiology;

(4) have completed a minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders, and this experience must have been obtained within his or her training institution or in one of its cooperating programs and under the supervision of a person holding a valid license to practice speech-language pathology or audiology, provided during the first year of this Act, the supervision may be under a person who would have met the qualifications for a license under this Act; and

(5) have obtained the equivalent of nine months of full-time supervised professional experience in which bona fide clinical work has been accomplished in the major professional area for which the license is being sought, under the supervision of a qualified person acceptable to the committee pursuant to guidelines approved by the board which experience must have begun after completion of the academic and clinical experience required by this section.

#### Application for License

Sec. 11. Each person desiring a license under this Act shall make application to the committee on a form and in the manner the committee prescribes. The application shall be accompanied by the application fee which may not be refunded by the committee.

#### Examination

Sec. 12. (a) Each applicant shall be examined by the committee and shall pay to the committee, at least 30 days prior to the date of examination, a nonrefundable examination fee prescribed by the committee. The examination shall be given at least twice each year at a time and place established by and under the supervision of the committee.

(b) The committee may examine by written or oral examination or by both. The committee shall maintain a record of all examination scores for at least two years after the date of examination.

(c) Standards for acceptable performance shall be determined by the committee.

(d) The committee may examine in whatever theoretical or applied fields of speech-language pathology or audiology it deems appropriate. It may examine the candidates with regard to their professional skills and their judgment in the utilization of speech-language pathology or audiology techniques or methods.

(e) Persons who fail the examination may be examined at a subsequent time if they pay another nonrefundable examination fee. No applicant who has taken and failed to pass two examinations may take the examination until the person has submitted a new application together with a nonrefundable application fee and presented evidence to the committee of additional study in the area for which licensure is sought.

(f) The committee may waive the examination for applicants who:

(1) present proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the committee to be equivalent to those set forth in this Act; or

(2) hold the Certificate of Clinical Competence of the American Speech-Language Hearing Association in the area for which a license is being sought.

#### Licensing under Special Conditions

Sec. 13. (a) The committee on request must waive educational, professional experience, and examination requirements for licensure in speech-language pathology for applicants who hold a baccalaureate or graduate degree, are fully certified by the Central Education Agency in speech and hearing therapy or in the judgment of the committee have met equivalent requirements, and within two years prior to the effective date of this Act were engaged in the practice of speech pathology on proof of bona fide practice of speech pathology, presented to the committee in the manner prescribed by the committee's rules, provided they file an application for licensure with the committee or the board of health before August 31, 1984. Such licenses shall be issued without delay and shall be renewed in the same manner as licenses granted under other provisions of this Act.

(b) The committee on request shall waive educational, professional experience, and examination requirements for licensure in audiology for applicants who on the effective date of this Act hold a baccalaureate or graduate degree and have successfully completed 21 semester hours of course work in audiology, and are engaged in the practice of audiology on proof of bona fide practice of audiology presented to the committee in the manner prescribed by the committee's rules, provided they file an application for licensure with the committee or the department within 90 days from the effective date of this Act.

(c) The committee may waive the examination and grant licensure to an applicant who presents proof of current licensure in another state, including the District of Columbia, or territory of the United States which maintains professional standards considered by the committee to be equivalent to those set forth in this Act.

(d) The committee may waive the examination and grant licensure to an applicant who holds the Certificate of Clinical Competence of the American Speech-Language Hearing Association or has met equivalent requirements in the area for which a license is sought.

#### Issuance of License

Sec. 14. (a) The committee shall issue a license to an applicant who meets the requirements of this Act and who pays to the committee the initial nonrefundable license fee.

(b) A temporary certificate of registration may be applied for by a person who fulfills the requirements of Section 10 of this Act and who has not previously applied to take the examination provided under Section 12 of this Act.

(c) On receiving an application provided for under Subsection (b) of this section accompanied by the nonrefundable application fee, the committee shall issue a temporary certificate of registration which entitles the applicant to practice audiology or speech-language pathology for a period ending eight weeks after the conclusion of the next examination given after the date of issue.

(d) All licenses expire and become invalid one year from the date of issuance if not renewed.

#### Renewal of License

Sec. 15. (a) Each licensed speech-language pathologist or audiologist shall annually pay the nonrefundable renewal fee for a renewal of his license. A 60-day grace period shall be allowed. After expiration of the grace period, the committee may renew each license after payment of a penalty set by the rules. No person who applies for renewal within two years after the date of expiration of the license may be required to submit to an examination as a condition to renewal.

(b) Persons who fail to renew their license within two years after the date of its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but those persons may apply for and obtain a new license if they meet the requirements of this Act.

(c) Within three years of the effective date of this Act, renewal of a license is contingent on the applicant's meeting uniform continuing education requirements established by the committee. These continuing education requirements must be of such a nature that they can be met without necessitating an extended absence from the licensee's county of residence. Notice of continuing education require-

ments shall be sent to all persons licensed under this Act at least 12 months prior to the time that the person's license renewal is dependent on completion of the requirements. Continuing education requirements shall be sent to new applicants with the forms on which they are to apply for licensure. Notification or changes in continuing education requirements shall be sent to persons licensed under this Act at least one year prior to the date on which the new requirements become effective.

(d) A suspended license is subject to expiration and may be renewed as provided in this Act, but the renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license revoked on disciplinary grounds is subject to expiration as provided in this Act, but it may not be renewed. If it is reinstated after its expiration, the licensee as a condition of reinstatement shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of the license revocation.

#### Fees

Sec. 16. The amount of fees initially prescribed in connection with a license as a speech-language pathologist or audiologist may not exceed the following:

(1) application fee:	\$75
(2) examination fee:	\$50
(3) initial license fee:	\$75
(4) license renewal fee:	\$75
(5) delinquency fee:	\$50
(6) temporary license fee:	\$25
(7) duplicate license fee:	\$10

The committee by rule shall establish fees, and such fees shall be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act and so that unnecessary surpluses in the fund provided for in Section 20 of this Act are avoided.

#### Denial, Suspension, and Revocation

Sec. 17. (a) The committee may refuse to issue a license to an applicant or may suspend or revoke the license of any licensee for any of the following causes:

- (1) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;
- (2) selling, bartering, or offering to sell or barter a license or certificate of registration;
- (3) unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public as defined by the rules established by the committee or violation of the code of ethics adopted and published by the committee;

(4) violating any lawful order or rule rendered or adopted by the committee; or

(5) violating any provisions of this Act.

(b) The committee shall deny an application for or suspend or revoke or impose probationary conditions on a license as ordered by the committee in any decision made after hearing as provided in this Act. One year from the date of revocation of a license under this Act, application may be made to the committee for reinstatement. The committee shall have discretion to accept or reject an application for reinstatement and may require an examination for the reinstatement.

(c) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of an offense involving moral turpitude is deemed to be a conviction within the meaning of this Act. At the direction of the committee the license may be suspended or revoked or the committee may decline to issue a license when the time for appeal of the conviction has elapsed or the judgment or conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order allowing a person to withdraw his or her plea of guilty, or setting aside the verdict of guilty, or dismissing the information or indictment.

#### Penalties

Sec. 18. (a) A person who violates any of the provisions of this Act is guilty of a Class B misdemeanor and on conviction may be punished by confinement in the county jail not exceeding six months, by a fine not exceeding \$1,000, or by both.

(b) If a person other than a licensed speech-language pathologist or audiologist has engaged in any act or practice which constitutes an offense under this Act, a district court of any county on application of the committee may issue an injunction or other appropriate order restraining such conduct.

#### Procedures for Denial, Revocation, or Suspension of a License

Sec. 19. (a) A person whose application for a license is denied is entitled to a hearing before the committee if such person submits a written request to the committee.

(b) Proceedings for revocation or suspension of a license shall be commenced by filing charges with the committee in writing and under oath. The charges may be made by any person or persons.

(c) The chairperson of the committee shall fix a time and place for a hearing and shall cause a written copy of the charges or reason for denial of a license, together with a notice of the time and place fixed for the hearing, to be served on the applicant requesting the hearing or the licensee against whom the charges have been filed at least 20 days prior to the date set for the hearing. Service of charges

and notice of hearing may be given by certified mail to the last known address of the licensee or applicant.

(d) At the hearing the applicant or licensee has the right to appear either personally or by counsel or both, to produce witnesses, to have subpoenas issued by the committee, and to cross-examine opposing or adverse witnesses.

(e) The committee shall determine the charges on their merits and enter an order in a permanent record setting forth the findings of fact and law and the action taken. A copy of the order of the committee shall be mailed to the applicant or licensee at his or her last known address by certified mail.

(f) An individual whose application for a license has been refused or whose license has been cancelled, revoked, or suspended by the committee may take an appeal, within 20 days after the order is entered, to any district court of Travis County or to any district court of the county of his or her residence.

(g) In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts in Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.

(h) All proceedings under this Act shall conform to the requirements of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13g, Vernon's Texas Civil Statutes), except as modified by this section.

#### Disposition of Funds Received

Sec. 20. (a) All funds received by the committee under this Act shall be deposited in accordance with applicable state law in the State Treasury in a separate fund to be known as the speech-language pathology and audiology fund and be appropriated to the Texas Department of Health solely for administration of this Act.

(b) After August 31, 1984, all expenses for the administration of the Act shall be paid from fees collected by the committee under this Act.

(c) There is hereby appropriated \$80,000 to the speech-language pathology and audiology fund for the implementation of this Act, said funds coming from the General Revenue Fund for the first year provided that the first \$80,000 of application and license fees shall be returned to the General Revenue Fund as they are received.

#### Exemptions From the Basic Science Law

Sec. 21. The provisions of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 4590c, Vernon's Texas Civil Statutes),<sup>1</sup> do not apply to audiologists or speech-lan-

guage pathologists duly qualified and licensed under this Act who confine their activity to the areas specified in this Act.

<sup>1</sup> Repealed.

#### Sunset Provision

Sec. 22. Unless reenacted, the provisions of this Act shall be without effect after August 31, 1993. [Acts 1983, 68th Leg., p. 2072, ch. 381, eff. Sept. 1, 1983.]

### CHAPTER SEVEN. NURSES

#### Art.

- 4513. Board of Examiners.
- 4513a. Application of Sunset Act.
- 4514. Organization of Board.
- 4515. Per Diem, Salary, Travel and Other Expenses.
- 4516. Educational Secretary.
- 4517. Executive Secretary and Bonds.
- 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board and Requirement of Registration; Continuing Education.
- 4518a. Repealed.
- 4519. Examination and Fee.
- 4520. Exempt from Examination.
- 4521. Certificate from Another State.
- 4522. Use of Title "R.N."; Registration Bureaus.
- 4523. Temporary Permit.
- 4524. Repealed.
- 4525. Disciplinary Proceedings.
- 4526. Re-registration.
- 4526a. Repealed.
- 4526b. Inactive Status List.
- 4527. Fees.
- 4527a. Prohibited Practices.
- 4527b. Penalty.
- 4527c. Injunction.
- 4527-1. Repealed.
- 4528. Exceptions.
- 4528a. Employment for Public Schools and Compensation.
- 4528b. Expired.
- 4528c. Licensed Vocational Nurses.
- 4528d. Repealed.

#### Art. 4513. Board of Examiners

##### Composition of Board; Programs of Study

Sec. 1. The Board of Nurse Examiners is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board of Nurse Examiners shall prescribe three programs of study to prepare professional nurse practitioners, to wit: (1) The Baccalaureate Degree Program—A program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing (department, division, school, or college) which is a part of a senior college or university; (2) The Associate Degree Program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or a university; and (3) The Diploma Program—A program leading

to a diploma in nursing conducted by a single purpose school usually under the control of a hospital. Six of the board members must be Registered Nurses, three of whom shall be engaged in professional nurse education and shall be representative of said three programs in that one shall be a nurse faculty member in a school of nursing pursuing the Baccalaureate Degree Program; one shall be a nurse faculty member in a school of nursing pursuing the Associate Degree Program; and one shall be a nurse faculty member in a school of nursing pursuing the Diploma Program. Three members must be members of the general public.

##### Terms; Requirements of Professional Nurse Members and Public Members

Sec. 2. The members of the board shall hold office for staggered terms of six years, with the terms of one practicing registered nurse, one professional nurse engaged in nurse education, and one public member expiring on January 31 of odd-numbered years. The professional nurse members must be actually employed in the nursing profession for at least three years before their appointment. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment.

##### Restrictions on Members, Employees, and General Counsel

Sec. 3. A member or employee of the board may not be an officer, employee, or paid consultant of a national or statewide trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a national or statewide trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a national or statewide trade or professional association in a health-services industry may not serve as a member of the board or act as the general counsel to the board.

**Grounds for Removal**

Sec. 4. It is grounds for removal from the board if a member:

- (1) does not have at the time of appointment the qualifications required for appointment to the board;
- (2) does not maintain during the service on the board the qualifications for appointment to the board;
- (3) violates a prohibition imposed on members of the board; or
- (4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

**Validity of Actions**

Sec. 5. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 261, ch. 115, § 1; Acts 1931, 42nd Leg., p. 35, ch. 28, § 1; Acts 1969, 61st Leg., p. 1566, ch. 475, § 1, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 5 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Board of Nurse Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987."

**Art. 4513a. Application of Sunset Act**

The Board of Nurse Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1993.

[Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.041, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

**Art. 4514. Organization of Board****President; Special Meetings; Powers**

Sec. 1. The members of the board shall elect from their number a president. Special meetings of said board shall be called by the president acting upon the written request of any two members. The board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and

regulations shall not be inconsistent with the provisions of this law.

**Legislative Disapproval of Rules**

Sec. 2. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

**Rules Restricting Competitive Bidding or Advertising Prohibited**

Sec. 3. The board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his or her voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

**Records; Consumer Information; Assistance to Legal Authorities**

Sec. 4. The executive secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. Nothing herein shall either expand or contract the board's present powers as they relate to the regulation of nursing education.

**Open Meetings; Administrative Procedure**

Sec. 5. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

**Recommendation of Rules Relating to Delegation of Medical Acts by Physicians**

Sec. 6. The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to physician's delegating medical acts to persons licensed by the board. The recommendations shall be acted on in the same manner as a petition for the adoption of a rule by an interested party under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The board in making recommendations may distinguish between nurses on the basis of special training and education. The Board of Nurse Examiners in recommending rules and the Texas State Board of Medical Examiners in acting on recommended rules shall act, to the extent allowable under state and federal statutes and regulations, so as to permit the state to obtain its fair share of federal funds available for the delivery of health care in this state.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 261, ch. 115, § 2; Acts 1969, 61st Leg., p. 1566, ch. 475, § 2, eff. June 10, 1969; Acts 1979, 66th Leg., p. 1220, ch. 590, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 6 of the 1981 amendatory act provides:

"A rule adopted by the Board of Nurse Examiners before September 1, 1981, that conflicts with laws relating to the practice of nursing, as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule."

**Art. 4515. Per Diem, Salary, Travel and Other Expenses**

Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1566, ch. 475, § 3, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

**Art. 4516. Educational Secretary**

The board shall appoint an educational secretary who shall have had at least five years teaching experience in educational work among nurses. The duties of said secretary shall be determined by the board.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 261, ch. 115, § 3; Acts 1969, 61st Leg., p. 1566, ch. 475, § 4, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

**Art. 4517. Executive Secretary and Bonds**

Sec. 1. The board shall employ a qualified executive secretary, who shall not be a member of the board. Under the direction of the board, the execu-

tive secretary shall perform duties required by this Act and duties designated by the board. Also, the board shall employ all other persons necessary to carry on the work of the board. The executive secretary shall upon employment execute a bond in the sum of One Thousand Dollars payable to the Governor. The bond is conditioned that the executive secretary shall faithfully perform the duties of his or her office and shall account for funds coming into his or her hands as executive secretary. The bond shall be signed by two or more sufficient sureties or by a surety company authorized to do business in this state and approved by the president of the board.

Sec. 2. The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this section.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1566, ch. 475, § 5, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 8(b) of the 1981 amendatory act provides:

"The requirement under Section 2, Article 4517, Revised Civil Statutes of Texas, 1925, as added by this Act, that the executive secretary of the board develop a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 2 that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

**Art. 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board and Requirement of Registration; Continuing Education**

Sec. 1. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or



adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

Sec. 2. No person shall be certified as a graduate of any school of nursing or educational program unless such person has completed the requirements of the prescribed course of study, including clinical practice, of an accredited school of nursing or educational program.

Sec. 3. Every applicant for registration under this law shall present to the Board of Nurse Examiners evidence of successful completion of an accredited program of professional nursing education and a sworn application and shall upon payment of required fees be entitled to take the examination prescribed by the Board. Upon making a passing grade, the applicant shall be entitled to receive from said Board a certificate attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas. The Board shall determine the score, not to exceed a score required by a majority of the states, that constitutes a passing grade on the examination.

Sec. 4. Any person practicing or offering to practice professional nursing in this state for compensation, shall hereafter be required to submit evidence to the Board of Nurse Examiners that he or she is qualified to practice and shall be registered as provided by this law.

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabilitation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as prescribed by a licensed physician or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of

medical diagnosis or prescription of therapeutic or corrective measures.

Sec. 6. Nothing in this chapter permits the practice of medicine as defined by the Acts of 1907, page 224, being Article 4510, Revised Civil Statutes of Texas, 1925, as amended by Chapter 94, Acts of the 51st Legislature, Regular Session, 1949; Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953; and nothing in this chapter shall be construed to amend, modify, or repeal Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951, known as Article 4528c, Revised Civil Statutes of Texas, 1925, as amended by Chapter 28, Acts of the 53rd Legislature, First Called Session, 1954; Chapter 47, Acts of the 55th Legislature, Regular Session, 1957, and Chapter 449, Acts of the 55th Legislature, Regular Session, 1957.

Sec. 7. The Board may recognize, prepare, or implement continuing education programs for its licensees. Participation in the programs is voluntary.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 157, ch. 67, § 1; Acts 1959, 56th Leg., p. 107, ch. 56, § 1; Acts 1967, 60th Leg., p. 1759, ch. 665, § 1, eff. Jan. 1, 1968; Acts 1969, 61st Leg., p. 1566, ch. 475, § 6, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1571, ch. 476, § 1, eff. June 10, 1969; Acts 1977, 65th Leg., p. 1755, ch. 703, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1221, ch. 590, §§ 2, 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2891, ch. 772, § 2, eff. Sept. 1, 1981.]

**Art. 4518a. Repealed by Acts 1959, 56th Leg., p. 107, ch. 56, § 2**

#### **Art. 4519. Examination and Fee**

Upon filing application for examination each applicant shall pay an examination fee which shall in no case be returned to the applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right to stand a second examination. The examination shall be given in various cities throughout the State and shall be of such character as to determine the fitness of the applicant to practice professional nursing. Within 30 days after the date on which a licensing examination is administered, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination. If the result of the examination be satisfactory to the board, a certificate shall

be issued to the applicant, signed by the president and executive secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1566, ch. 475, § 7, eff. June 10, 1969; Acts 1979, 66th Leg., p. 1222, ch. 590, § 5, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

#### Art. 4520. Exempt from Examination

No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law.

[Acts 1925, S.B. 84. Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 6, eff. Aug. 27, 1979.]

#### Art. 4521. Certificate from Another State

Any applicant who holds a registration certificate as a registered nurse from another state, district, territory or possession of the United States, or from a foreign country, may be issued a license to practice as a registered nurse in the State of Texas by endorsement and without examination upon the payment of a fee established by the board, provided in the opinion of the Board of Nurse Examiners such other board issuing such other certificate in its examination required the same general degree of fitness required by this state.

[Acts 1925, S.B. 84. Amended by Acts 1961, 57th Leg., p. 455, ch. 226, § 1, eff. May 25, 1961; Acts 1969, 61st Leg., p. 1566, ch. 475, § 8, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

#### Art. 4522. Use of Title "R.N."; Registration Bureaus

A nurse who has received his or her license according to the provisions of this law, shall be styled a "Registered Nurse," and may use the title or abbreviation "R.N." When a licensed registered nurse is on duty providing direct care to patients, the nurse shall wear an insignia identifying the nurse as a registered nurse.

[Acts 1925, S.B. 84. Amended by Acts 1941, 47th Leg., p. 194, ch. 140, § 1; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

#### Art. 4523. Temporary Permit

(a) Any nurse who has graduated from an accredited school of nursing, who holds a registration certificate as a Registered Nurse from another state or from a possession of the United States, and who is actually engaged in the pursuit of his or her profession, shall be permitted to practice in the state under a permit issued by the board of nurse examiners, upon the payment of a fee established by the board.

(b) The board may issue a permit to practice professional nursing under the direct supervision of a Registered Nurse to graduates of approved educational programs pending the results of the licensing examination. The permit expires on receipt of a permanent license or on receipt of a notice of failing the examination from the board. The permit may not be issued to any applicant who has previously failed an examination administered by the board or by another state.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 261, ch. 115, § 4; Acts 1969, 61st Leg., p. 1566, ch. 475, § 9, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

#### Art. 4524. Repealed by Acts 1979, 66th Leg., p. 1222, ch. 590, § 7, eff. Aug. 27, 1979

#### Art. 4525. Disciplinary Proceedings

(a) The board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license or certificate of registration or to issue a certificate of re-registration, may refuse to issue a temporary permit, may issue a warning or reprimand, may suspend for any period not to exceed 2 years, or may revoke the license or certificate of any practitioner of professional nursing, for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereunder.

(2) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, or revocation shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs if the nurse knows or should know that the effects of that use endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(b) Proceedings under this Article shall be begun by filing charges with the board of nurse examiners in writing and under oath. Such charges may be made by any person or persons. An information file about each complaint filed relating to a licensee shall be maintained by the board. If a written complaint is filed with the board relating to a licensee, the board at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. The board shall make such preliminary investigation of the charges as it deems necessary and may issue a warning or reprimand to the person charged. If the board proposes to refuse to admit a person to its examination, to refuse to issue a temporary permit, license, certificate of registration, certificate of re-registration, or to suspend or revoke a person's permit, license, or certificate, the person is entitled to a hearing before the board. Proceedings for these disciplinary actions are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). If a licensed professional nurse voluntarily surrenders said license to the board and executes a sworn statement that he or she no longer desires to be licensed, the board may revoke said license without the necessity of formal charges, notice, or opportunity of hearing.

(c) Any person whose license or certificate to practice professional nursing has been revoked or suspended by the board or who has been otherwise disciplined by the board may take an appeal to any of the district courts in the county of residence, but the decision of the board shall not be enjoined or stayed except on application to such district courts after notice to the board. Upon application the board may reissue a license or certificate to practice professional nursing to a person whose license has been revoked or suspended but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the board may require.

(d) The board shall have the right and may, upon majority vote, rule that the order denying an application for a license or suspending any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of probation. The board, at the time of probation, shall set out the period of time which shall constitute the probationary period; provided further that the board may at any time while the probationer remains on probation hold a hearing

and upon majority vote rescind the probation and enforce the board's original action in denying or suspending such license. The said hearing to rescind the probation shall be called by the president of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his or her counsel at least 20 days prior to the time set for the hearing. Notice shall be sufficient if sent by registered or certified mail to the person charged at the address shown on his or her most recent application for certificate of registration or re-registration.

(e) The board of nurse examiners is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the board, but prior to retaining outside legal counsel, the board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the board that the attorney general cannot provide such services. The board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

[Acts 1925, S.B. 84. Amended by Acts 1967, 60th Leg., p. 1760, ch. 665, eff. Jan. 1, 1968; Acts 1979, 66th Leg., p. 1222, ch. 590, § 8, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2892, ch. 772, § 3, eff. Sept. 1, 1981.]

#### Art. 4526. Re-registration

The board shall adopt a system under which licenses issued by the board shall be renewed each biennium. For the year in which the expiration date is changed, registration fees payable on or before March 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the re-registration fee that is allocable to the months in which the registration is valid. On the new expiration date, the total re-registration fee is payable. The board shall notify each licensee at least 30 days in advance of the date of expiration of the license. The application for re-registration shall be mailed by United States mail to the address shown in the board's records. Any application received after the expiration date shall be charged a

late fee. If a license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half the examination fee for the license. If a license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a license has been expired for two years or more, the person may renew the license on meeting the requirements that the board considers necessary. If any registered nurse continues to practice professional nursing beyond the time for which the nurse is registered or re-registered, the nurse shall be considered to be an illegal practitioner and the license may be revoked or suspended.

[Acts 1925, S.B. 84. Amended by Acts 1949, 51st Leg., p. 4, ch. 4, § 1; Acts 1969, 61st Leg., p. 1566, ch. 475, § 10, eff. June 10, 1969; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

**Art. 4526a. Repealed by Acts 1981, 67th Leg., p. 2894, ch. 772, § 7, eff. Sept. 1, 1981**

**Art. 4526b. Inactive Status List**

Any nurse licensed under the provisions of this law, not actively or actually engaged in the practice of professional nursing, at the expiration of any such license upon written request to the board in such form and manner as the board shall determine may be placed on an inactive status list which shall be maintained by the board. No professional nurse on such inactive status list shall perform any professional nursing services or work or violate any of the provisions of this law or any rule or regulation of the board so long as on such inactive status. At any time such person desires to reenter the active practice of professional nursing or again begin performing or offering to perform professional nursing services, such person shall notify the board and upon payment of appropriate fees and meeting requirements as determined by the board shall be removed from the inactive status list.

[Acts 1979, 66th Leg., p. 1224, ch. 590, § 9, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

**Art. 4527. Fees**

The Board of Nurse Examiners shall establish reasonable and necessary fees for the administration of its functions in amounts not to exceed:

Admission fee to examinations	\$ 75
Duplicate or substitute of current certificate	10
Duplicate or substitute of permanent certificate	10
Duplicate permits	5
Endorsement with or without examination	75
Re-registration	25
Issuance of a temporary permit under Article 4523	15
Reactivating from inactive status	30
Accreditation of new schools and programs	150
Approval of exchange visitor programs	75

Proctoring of examinations of examinees from other states	115
Filing of affidavits in re-change of name <sup>1</sup>	10
Verification of records	10
Bad checks	15

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. The Board shall set and collect a sales charge for copies of any paper or record in the office of the Board and for any printed material published by the Board. The charges are to be in an amount considered sufficient to reimburse the Board for its actual expenses. All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collected by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. This provision shall apply to all fees on hand on September 1, 1981, and all fees of whatsoever nature as permitted by law now or as amended. The state auditor shall audit the financial transactions of the Board during each fiscal biennium.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1566, ch. 475, § 11, eff. June 10, 1969; Acts 1979, 66th Leg., p. 1225, ch. 590, § 12, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> So in enrolled bill; probably should read "in re change of name".

**Art. 4527a. Prohibited Practices**

**Sec. 1.** No person may sell, fraudulently obtain, or fraudulently furnish any nursing diploma, license, renewal license, or record, or assist another to do so.

**Sec. 2.** No person may practice professional nursing under cover of any diploma, license, or record

- (1) obtained unlawfully or fraudulently; or
- (2) signed or issued unlawfully or under false representation.

**Sec. 3.** No person, unless he or she is licensed under this chapter, may use in connection with his or her name the abbreviation "R.N." or any designation tending to imply that he or she is a licensed registered nurse.

**Sec. 4.** No person may practice professional nursing during the time his or her license is suspended or revoked.

[Acts 1967, 60th Leg., p. 1761, ch. 665, § 3, eff. Jan. 1, 1968. Amended by Acts 1981, 67th Leg., p. 2893, ch. 772, § 4, eff. Sept. 1, 1981.]

**Art. 4527b. Penalty**

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, confinement in jail for a term not to exceed 30 days, or both.

[Acts 1967, 60th Leg., p. 1762, ch. 665, § 3, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 11, eff. Aug. 27, 1979.]

**Art. 4527c. Injunction**

In addition to any other action, proceeding, or remedy authorized by law, the board shall have the right to institute any action in its own name to enjoin any violation or any provision of this law or rule or regulation of the board, and in order for the board to sustain such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof; provided, however, that in any such proceeding for injunction the defendant may assert and prove as a complete defense to such action that the actions or proceedings of the board were: (1) arbitrary or capricious; (2) contrary to legal requirements; or (3) conducted without due process of law. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The board shall not be required to give any appeal bond in any cause arising under this law.

[Acts 1979, 66th Leg., p. 1221, ch. 590, § 3, eff. Aug. 27, 1979.]

**Art. 4527-1. Repealed by Acts 1981, 67th Leg., p. 2894, ch. 772, § 7, eff. Sept. 1, 1981**

See, now, art. 4527.

**Art. 4528. Exceptions**

This law shall not be construed to apply to: the gratuitous nursing of the sick by friends; the furnishing of nursing care where treatment is by prayer or spiritual means alone; acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners; Licensed Vocational Nurses; the practice of registered tuberculosis nurses certified under Article 4528b, Vernon's Texas Civil Statutes; nor to acts done by persons licensed by any board or agency of the State of Texas if such acts are authorized by such licensing statutes.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 1571, ch. 476, § 2, eff. June 10, 1969.]

**Art. 4528a. Employment for Public Schools and Compensation**

Sec. 1. That the Commissioners Court of the various Counties in the State of Texas shall have the authority, when in their judgment it shall be deemed to be necessary or advisable, to employ one or more Graduate Registered nurses whose duty it shall be to visit the public schools in the county in which they are employed, and to investigate the

health conditions and sanitary surroundings of such schools, and the personal, physical and health condition of pupils therein, and to co-operate with the duly organized Board of Health and local health authorities in general public health nursing and perform such other and further duties as may be required of them by the Commissioners Court.

Sec. 2. That said nurses when so appointed shall be employed on a monthly salary to be fixed by the Commissioners Court and shall at all times be subject to removal by the Commissioners Court without prior notice.

Sec. 3. The Commissioners Court shall be empowered to appropriate from any funds of the respective counties the necessary money to cover the salary of such nurses, not to exceed the sum of Two Thousand, Seven Hundred Dollars (\$2,700) to each nurse, and in addition thereto may appropriate additional funds to cover all expenses that may be proper and necessary in the visiting of such schools, and General Public Health Nursing including transportation and other incidental expenses.

[Acts 1927, 40th Leg., p. 243, ch. 169. Amended by Acts 1949, 51st Leg., p. 431, ch. 231, § 1.]

**Art. 4528b. Expired**

The Board of Tuberculosis Nurses Examiners was abolished and this article expired effective September 1, 1981, pursuant to § 2.037 of the Sunset Act, Acts 1977, 65th Leg., p. 1839, ch. 735.

**Art. 4528c. Licensed Vocational Nurses****Definitions**

Sec. 1. In this Act:

(a) "Board" means the Board of Vocational Nurse Examiners.

(b) "Licensed Vocational Nurse" means a person who is licensed by the Board of Vocational Nurse Examiners.

(c) "Nursing" or "nursing services" means attending or caring for a person's illness or health for compensation.

(d) "Practical Nurse" or "Licensed Practical Nurse" means the title used in some other states for nurses with licensure requirements similar to those for licensed vocational nurses in this state.

(e) "Vocational nursing" or "vocational nursing services" means nursing services that generally require experience and education in biological, physical, and social sciences sufficient to qualify for licensure as a Licensed Vocational Nurse.

**Prohibited Practices**

Sec. 2. (a) A person may not use the designation Licensed Vocational Nurse or the abbreviation L.V.N., unless such person shall hold a license issued by the Board pursuant to the provisions of this Act.

(b) A person may not:

(1) sell, fraudulently obtain, or fraudulently furnish to the Board a vocational nursing diploma, license, or other document or assist another person to do so;

(2) practice vocational nursing with a vocational nursing diploma, license, or other document that is obtained unlawfully or that is signed or issued unlawfully or because of a false representation;

(3) practice vocational nursing while the person's license is suspended or revoked; or

(4) use the designation "Licensed Practical Nurse," "L.P.N.," "Practical Nurse," "P.N.," "Licensed Technical Nurse," "L.T.N.," "Technical Nurse," or "T.N."

#### Exceptions

Sec. 3. The provisions of this Act shall not apply to gratuitous nursing of the sick by friends or members of the family; nor shall the provisions of this Act requiring a license apply to persons who do not hold themselves out to the public as being Licensed Vocational Nurses or using the abbreviation L.V.N.

#### L.V.N. Registries

Sec. 4. Licensed Vocational Nurses Organizations operating nonprofit registries for the enrollment of its members for the purpose of providing nursing services to the public shall not be liable for the payment of any occupation taxes and/or license fees imposed by any law unless such Licensed Vocational Nurses registries are specifically named therein.

Sec. 4½. Repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

#### Term of Office, Organization, Meetings of Board

Sec. 5. (a) There is hereby created a board to be known as the Board of Vocational Nurse Examiners; consisting of twelve (12) members to be appointed by the Governor and confirmed by the State Senate. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Seven (7) members of the Board must be Licensed Vocational Nurses who are graduates of approved schools of vocational nursing, who have been actively engaged in the practice of vocational nursing for five (5) years immediately preceding their appointments, and who are not licensed physicians, registered professional nurses, or hospital administrators.

One (1) member of the Board must be a Registered Nurse licensed by the Board of Nurse Examiners who is actively engaged in a teaching, administrative, or supervisory capacity in a vocational nursing educational program and who is not a licensed physician, hospital administrator, or licensed vocational nurse.

One (1) member of the Board must be a physician licensed by the Texas State Board of Medical Examiners who has been actively engaged in the practice of medicine for five (5) years immediately preceding appointment and who is not a hospital administrator, registered professional nurse, or licensed vocational nurse.

One (1) member of the Board must be a hospital administrator who has been actively engaged in hospital administration for a period of five (5) years and who is not a licensed physician, registered professional nurse, or licensed vocational nurse.

Two (2) members of the Board must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse is licensed by an occupational regulatory agency in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(b) The term of office of each member of the Board shall be six (6) years. A member may not immediately succeed himself (or herself) in office. In case of death, resignation or vacancy from any cause on the Board, the vacancy of the unexpired term shall be filled by the Governor within sixty (60) days after the occurrence of such vacancy.

Each appointee to the Board of Vocational Nurse Examiners shall, within fifteen (15) days of the date of his appointment, qualify by taking the constitutional oath of office.

(c) A member or employee of the Board may not be an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.

(d) A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3) violates a prohibition prescribed by Subsection (c) or (d) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(f) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(g) The Board shall elect a President, Vice-president, and Secretary-treasurer yearly at an annual meeting. The Board may make such rules and regulations as may be necessary to govern its proceedings and to carry in effect the purposes of this law. The Secretary-treasurer shall be required to keep minutes of each meeting of said Board, a register of the names of all nurses licensed under this law, and books of account of fees received and disbursements; and all minutes, the register of Licensed Vocational Nurses and books of account shall be at all times open to public inspection. The State Auditor shall audit the books of this Board annually. The Board shall employ a person other than a member of the Board as the executive director of the Board. The executive director shall perform the administrative functions of the Board. The Board shall employ other persons that it considers necessary in carrying out the provisions of this law. The Secretary-treasurer shall be bonded by the Board in such amount as may be recommended by the State Auditor.

(h) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

(i) The Board shall employ a full-time Director of Education, who shall have had a least five (5) years experience in teaching nursing in an accredited school of nursing or an approved program in vocational nursing. The Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Education. The duties of the Director of Education shall be to visit and inspect all schools of vocational nursing to determine whether the Board's minimum requirements for vocational nursing programs are being met. The Board shall prescribe such methods and rules of visiting, and such methods of reporting by the Director of Education as may in its judgment be deemed proper.

(j) Regular meetings of the Board shall be held at least twice a year, one of which shall be designated as an Annual Meeting for election of officers and the reading of auditors' reports. At least twice each year the Board shall hold examinations in various cities in the state for qualified applicants for licensure. Examinations may be held under the supervision of a Board member or such other person as the Board may specify. Not less than sixty (60) days notice of the holding of the examination shall be given by publication in at least three (3) daily newspapers of general circulation, to be selected by the Board; special meetings shall be held upon request of four (4) members of the Board or upon the call of the president; six (6) members of the Board shall constitute a quorum for the transac-

tion of business, and should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three (3) successive days; each member of said Board is entitled to a per diem set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(k) The Board may not adopt rules restricting competitive bidding or advertising by a licensee of the Board except to prohibit false, misleading, or deceptive practices by the licensee. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

(1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

(l) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(m) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(n) The Board shall enforce this Act. The Board may retain outside legal counsel to represent the Board. However, before the Board may retain outside counsel, the Board shall request the attorney general to perform the necessary services and may retain the outside counsel only if the attorney general certifies to the Board that the services cannot be performed.

(o) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(p) The Board of Vocational Nurse Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(q) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(r) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

#### Examination and Licenses

Sec. 6. (a) Except as provided in Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L.V.N. in the State of Texas, shall be required to pass the examination given by the Board of Vocational Nurse Examiners or its delegate. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant has had at least two (2) years of high school education or its equivalent and has completed an approved course of not less than twelve (12) months in an approved school for educating vocational nurses. An approved school as used herein shall mean one approved by the Board. Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.

(b) The Board in its discretion may waive the requirement in subdivision (a) of this Section for completion of a course in an approved school for educating Vocational Nurses upon presentation of satisfactory sworn evidence that the applicant has completed at least two (2) years of education in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other school of professional nurse education approved by a similar board or licensing agency of another State of the United States.

(c) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis

of the person's performance on the examination or other information which the Board has available to it after the tests are scored.

(d) If an examinee has graduated from an approved educational program in vocational nursing in this or another state or successfully completed two years of an associate degree program or diploma program in professional nursing education in this or another state, the Board may issue to the examinee, pending the results of the licensing examination, a temporary permit to practice vocational nursing under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A permit issued to an applicant who fails the examination expires on the applicant's receipt of the results of the examination. A permit issued to an applicant who passes the examination expires on the applicant's receipt of a license from the Board. A permit may not be issued to an applicant who has previously failed an examination administered by the Board or by another state.

(e) Any nurse who is licensed under the provisions of this Act, when on duty in a public or private hospital, nursing home, or licensed health-care facility, shall wear identifying insignia on white caps or uniforms.

#### Endorsement

Sec. 7. Any applicant who holds a license as a Vocational Nurse or Practical Nurse issued by another state whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required by this law, may be granted a license to practice nursing as a Licensed Vocational Nurse in this State without examination provided the required fee is paid to the Board by such applicant.

#### License Renewal

Sec. 8. (a) The board by rule shall adopt a system under which licenses expire every two years. For the year in which the expiration date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(b) The Board shall notify each licensee about the expiration date of the person's license at least 30 days before the expiration date. The Board by United States mail shall send with the notice an application for license renewal to the licensee's address contained in the Board's records. A licensee whose completed application for renewal is received by the Board after the expiration date of the license shall be charged a late fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal



fee and a fee that is one-half the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may renew the license by complying with the requirements set forth in substantive rules adopted by the Board.

(d) If a person practices vocational nursing after the person's license has expired, the person is an illegal practitioner and the Board may suspend or revoke the license.

(e) A person licensed under this Act who is not actively engaged in the practice of vocational nursing, at the expiration of the person's license and on written request to the Board in the manner required by the Board, may be placed on an inactive status list by the Board. A Licensed Vocational Nurse on the inactive status list may not practice vocational nursing nor violate the Act or any rule of the Board. If the person desires to reenter the active practice of vocational nursing, the person must notify the Board. On payment by the person of fees required by the Board and compliance with other requirements set forth in substantive rules adopted by the Board, the Board shall remove the person from the inactive status list.

#### Fees

Sec. 9. (a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

- (1) examination and application fee: \$40;
- (2) reexamination fee: \$40;
- (3) renewal fee: \$10;
- (4) endorsement fee: \$40;
- (5) accreditation of new programs fee: \$75;
- (6) duplicate temporary permit or license fee: \$10;
- (7) filing of affidavits in rechange of name fee: \$10;
- (8) endorsement to another state fee: \$40; and
- (9) reactivating from inactive status fee: \$30.

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(b) All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the Board during the preceding year.

#### Disciplinary Action

Sec. 10. (a) The Board may refuse to admit persons to its examinations, may refuse to issue or renew a license, may refuse to issue a temporary permit, may issue a warning or reprimand, may place on probation a person whose license has been suspended, or may suspend or may revoke the license of any practitioner of vocational nursing for any of the following reasons:

- (1) violation of this Act or of any rule, regulation, or order issued under this Act;
- (2) commission of fraud or deceit in procuring or attempting to procure a license to practice vocational nursing;
- (3) conviction of a crime of the grade of felony or a crime of a lesser grade which involves moral turpitude;
- (4) use of any nursing license, certificate, diploma, or permit or transcript of the license, certificate, diploma, or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered;
- (5) impersonation of or the acting as a proxy for another in any examination required by law to obtain a license to practice vocational nursing;
- (6) knowingly aiding or abetting any unlicensed person in connection with the unauthorized practice of vocational nursing;
- (7) revocation, suspension, or denial of a license to practice vocational or practical nursing in another jurisdiction or revocation, suspension, or denial of a license to practice professional nursing in this state or in another jurisdiction; certified copy of the order of denial, suspension, or revocation shall be conclusive evidence of that fact;
- (8) intemperate use of alcohol or drugs;
- (9) unprofessional or dishonorable conduct that, in the opinion of the Board, is likely to deceive, defraud, or injure the public;
- (10) adjudication of mental incompetency; or
- (11) lack of fitness to practice by reason of mental or physical health that may result in injury to patients or the public.

(b) The Board may issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at Board hearings, and initiate the prosecution of any person who has violated this Act. The Board shall keep a record of its proceedings.

(c) If a Licensed Vocational Nurse voluntarily surrenders a license to the Board and executes a sworn statement that he or she no longer desires to be licensed, the Board may revoke the license without formal charges, notice, or a hearing.

(d) Disciplinary action by the Board shall be accomplished by a majority vote of the Board after a hearing held on specific charges filed against such

licensee, which charges shall be made in writing, under oath and filed by the Secretary.

(e) If the Board shall make and enter an order disciplining a person, the person may take an appeal to the District Court of the county of residence of the person. Said trial shall be subject to the substantial evidence rule in sustaining administrative action by the Board. In all such cases the burden of proof shall be on the Board to sustain its action by a preponderance of the evidence.

(f) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(g) If the Board proposes to refuse a person's application for a license, to reprimand a licensee, to place on probation a person whose license has been suspended, or to suspend or revoke a person's license, the person is entitled to a hearing before the Board. These proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 10A. Repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

#### Penalties

Sec. 11. (a) A person who is in violation of this Act may be enjoined and restrained by a District Court from continuing the violation upon petition of the Board.

(b) A person commits an offense if the person knowingly or intentionally violates this Act. An offense under this subsection is a Class B misdemeanor.

#### Approval of Vocational Nursing Programs

Sec. 12. (a) Any hospital in regular use for patients which has a registered nurse in charge of nursing, and whose staff consists of one or more licensed physicians licensed by the State Board of Medical Examiners, may qualify as an approved hospital for Vocational Nurse Education, provided it can and will meet requirements of the Board for the education of Vocational Nurses.

(b) Any institution which shall be qualified under Section 5, and under regulations promulgated by the Board to conduct a course in Vocational Nursing shall apply to the Board and shall accompany said application with evidence that it is prepared to give a course of not less than twelve (12) months for the education of Vocational Nurses; such application shall be accompanied by the appropriate fee provided for in Section 9 of this Act; upon receipt of such application the Board shall cause a survey of the institution making such application to be made by a

qualified representative of such Board. If in the opinion of a majority of the members of the Board, the requirements for an approved course for Vocational Nursing are met by such institution, such institution shall be placed on a list of such institutions given for educating Vocational Nurses. It shall further be the duty of the Board, from time to time, to survey all courses for such education of Vocational Nurses offered within the State. Written reports of such surveys shall be submitted to the Board. If the Board shall determine as a result of such surveys that any school, hospital or institution heretofore approved as an institution of Vocational Nursing is not maintaining the standards required by law and by the rules and regulations promulgated by the Board, notice thereof shall immediately be given to such school, hospital or institution. If the requirements of the Board are not complied with within a reasonable time set by the Board in such notices, such institution shall be removed from the list of approved schools, hospitals or institutions offering courses for Vocational Nurses within this State.

#### Custody and Use of Revenues

Sec. 13. Upon and after the effective date of this Act, all moneys derived from fees, assessments, or charges under this Act shall be paid by the Board into the State Treasury for safekeeping, and shall by the State Treasurer be placed in a separate fund to be available for use of the Board in the administration of the act upon requisition of the Board. All such moneys so paid into the State Treasury are hereby allocated to the Board for the purpose of paying the salaries and expenses of all persons employed or appointed as provided herein for the administration of this Act, and all other expenses necessary and proper for the administration of this Act, including equipment and maintenance of any supplies for such offices or quarters as the Board may occupy, and necessary traveling expenses for the Board or persons authorized to act for it when performing duties hereunder at the request of the Board. The Comptroller shall, upon requisition of the Board, from time to time, draw warrants upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making any requisition; provided, however, that all moneys expended in the administration of this Act shall be specified and determined by itemized appropriation in the General Departmental Appropriation Act or other appropriation acts. At the end of a fiscal year, any unused portion of said fund in excess of the amount appropriated for the following fiscal year shall be set over and paid into the General Revenue Fund.

#### Constitutionality

Sec. 14. If any section, subsection or part of this Act shall be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remaining portions thereof, it being the express intention of the Legislature to enact such Act with-

out respect to such section, subsection or a part so held to be invalid or unconstitutional.

[Acts 1951, 52nd Leg., p. 197, ch. 118. Amended by Acts 1954, 53rd Leg., 1st C.S., p. 67, ch. 28, §§ 1, 2; Acts 1957, 55th Leg., p. 95, ch. 47, §§ 1 to 6; Acts 1957, 55th Leg., p. 1327, ch. 449, § 1; Acts 1963, p. 955, ch. 380, § 1, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 541, ch. 237, § 1, eff. May 19, 1967; Acts 1971, 62nd Leg., p. 1071, ch. 224 §§ 1-3, eff. Oct. 1, 1971; Acts 1971, 62nd Leg., p. 1812, ch. 538, §§ 1, 2, eff. June 1, 1971; Acts 1973, 63rd Leg., p. 628, ch. 266, § 21, eff. June 11, 1973; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.038, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2990, ch. 787, §§ 1, 4, eff. Sept. 1, 1981.]

Former § 6 of this article was repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

Sections 2, 3, and 5 of the 1981 amendatory act provide:

"Sec. 2. A rule adopted by the Board of Vocational Nurse Examiners before September 1, 1981, that conflicts with Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 4528c, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 3. (a) A person holding office as a member of the Board of Vocational Nurse Examiners on the effective date of this Act continues to hold the office for the term for which the person was originally appointed.

"(b) The governor shall appoint the two public members to the board and one licensed vocational nurse member to the board. The term of the licensed vocational nurse member shall expire in 1985; and the term of the public members shall expire in 1983 and 1987, respectively."

"Sec. 5. (a) This Act takes effect September 1, 1981.

"(b) The requirement under Section 5(h), Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the board develop a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 5(h) that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

**Art. 4528d. Repealed by Acts 1971, 62nd Leg., p. 3363, ch. 1024, art. 2, § 48, eff. Sept. 1, 1971**

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

**CHAPTER EIGHT. PHARMACY**

**Art.**

4529 to 4542a. Repealed.

4542a-1. Texas Pharmacy Act.

4542b. Repealed.

4542c. Labeling Requirements for Prescription Drugs.

**Arts. 4529 to 4542. Repealed by Acts 1929, 41st Leg., p. 242, ch. 107, § 18**

**Art. 4542a. Repealed by Acts 1981, 67th Leg., p. 662, ch. 255, § 43, eff. Sept. 1, 1981**

Acts 1981, 67th Leg., p. 103, ch. 52, §§ 3 and 4, without reference to the repeal of this article by Acts 1981, 67th Leg., p. 662, ch. 255, § 43, amended § 12 and added §§ 12A and 17A to read:

**"Revocation or Suspension of License; Appeal**

"Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons:

"(a) That said applicant is guilty of gross immorality;

"(b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;

"(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

"(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

"(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

"(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; provided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;

"(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), dangerous drugs as defined in Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), or any other dangerous or habit-forming drugs;

"(h) That said licensee has engaged in the act of 'substitution' as that term is hereinafter defined. The term 'substitution' as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation

shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;

"(i) That said licensee is a member of the Communist Party or affiliated with such party.

"Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where said applicant resided at the time the offense was committed which resulted in the Board's action refusing, revoking, or suspending said license.

"This section does not apply to revocation, cancellation or suspension of the license of a person convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes.)

**"Felony Drug Conviction; Suspension and Revocation of License**

"Sec. 12A. On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

**"Felony Drug Conviction; Suspension and Revocation of Permit**

"Sec. 17A. On conviction of a person who has been issued a permit under Section 17 of this Act or, if the permit holder is an association, joint-stock company, partnership, or corporation, on conviction of a managing officer of the permit holder of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the permit. On final conviction, the board shall revoke the permit. The board may not reinstate or reissue a permit that has been suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the permit is in the best interests of the public and of the person, association, joint-stock company, partnership, or corporation whose permit has been suspended or revoked."

Acts 1981, 67th Leg., p. 662, ch. 255, § 43, provides:

"All laws or parts of laws inconsistent with this Act, including Section 1, Chapter 447, Acts of the 55th Legislature, Regular Session, 1957 (Article 4542b, Vernon's Texas Civil Statutes), and Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), are repealed."

See, now, art. 4542a-1.

**Art. 4542a-1. Texas Pharmacy Act**

**Short Title**

Sec. 1. This Act may be cited as the "Texas Pharmacy Act."

**Legislative Declaration**

Sec. 2. The practice of pharmacy in this state is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy as defined by this Act merit and received the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in this state.

This Act shall be liberally construed to carry out these objects and purposes.

#### Application of Sunset Act

Sec. 3. The Texas State Board of Pharmacy is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished, and this Act expires effective September 1, 1993.

#### Purpose

Sec. 4. It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy and the registration of pharmacies engaged in the sale, delivery, or distribution of prescription drugs and devices used in the diagnosis and treatment of injury, illness, and disease.

#### Definitions

Sec. 5. In this Act, unless the context of its use clearly indicates otherwise:

(1) "A.C.P.E." means the American Council on Pharmaceutical Education.

(2) "Administer" means the direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner or an authorized agent under his supervision; or

(B) the patient at the direction of a practitioner.

(3) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(4) "Board" means the Texas State Board of Pharmacy.

(5) "Class A pharmacy license" or "community pharmacy license" means a license issued to a pharmacy dispensing drugs or devices to the general public pursuant to a prescription drug order.

(6) "Class B pharmacy license" or "nuclear pharmacy license" means a license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

(7) "Class C pharmacy license" or "institutional pharmacy license" means a license issued to a pharmacy located in a hospital or other in-patient facility that is licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or to a pharmacy located in a hospital maintained or operated by the state.

(8) "Class D pharmacy license" or "clinic pharmacy license" means a license issued to a pharmacy dispensing a limited type of drugs or devices pursuant to a prescription drug order.

(9) "College of pharmacy" means a school, university, or college of pharmacy that satisfies the accreditation standards of A.C.P.E. as adopted by the board; or that has degree requirements which meet the standards of accreditation set by the board.

(10) "Controlled substance" means a drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).<sup>1</sup>

(11) "Controlled Substances Act" means the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) "Dangerous drug" means any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) "Dangerous Drug Act" means Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

(14) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(16) "Dispense" means preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) "Distribute" means the delivery of a prescription drug or device other than by administering or dispensing.

(18) "Drug" means:

(A) a substance recognized as drugs in the current official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharma-

copoeia, or other drug compendium or any supplement to any of them;

(B) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(C) a substance, other than food, intended to affect the structure or any function of the body of man or other animals;

(D) a substance intended for use as a component of any articles specified in Paragraph (A), (B), or (C) of this subdivision;

(E) a dangerous drug; or

(F) a controlled substance.

(19) "Internship" means a practical experience program that is approved by the board.

(20) "Label" means written, printed, or graphic matter on the immediate container of a drug or device.

(21) "Labeling" means the process of affixing a label including all information required by federal and state law or regulation to any drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device, or unit dose packaging.

(22) "Medication order" means a written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(23) "Nonprescription drug" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

(24) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(25) "Pharmacist" means a person licensed by the board to practice pharmacy.

(26) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(27) "Pharmacist-intern" means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board and participating in a school-based, board-approved internship program or a graduate of a college of pharmacy who is participating in a board-approved internship.

(28) "Pharmacy" means a facility where the practice of pharmacy occurs.

(29) "Practice of pharmacy" means interpreting and evaluating prescription or medication orders, dispensing and labeling drugs or devices, selecting drugs and reviewing drug utilization, storing pre-

scription drugs and devices and maintaining prescription drug records in a pharmacy, advising or consulting when necessary or required by law about therapeutic value, content, hazard, or use of drugs or devices, or offering or performing the services and transactions necessary to operate a pharmacy.

(30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs. "Practitioner" does not include a person licensed under this Act.

(31) "Preceptor" means a pharmacist in good standing licensed in this state to practice pharmacy and certified by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

(32) "Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(33) "Prescription drug order" means a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed.

(34) "Provide" means to supply one or more unit doses of a nonprescription drug or dangerous drug to a patient.

(35) "Radioactive drug" means a drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons, including any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance.

(36) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(37) "Supportive personnel" means those individuals utilized in pharmacies whose responsibility it shall be to provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

(38) "Ultimate user" means a person who has obtained and possesses a prescription drug or device for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(39) "Unit dose packaging" means the ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(40) "Authorized agent" means an individual under the supervision of a practitioner, designated by the practitioner, and for whom the practitioner assumes legal responsibility, who communicates the practitioner's instructions to the pharmacist.

<sup>1</sup> Generally, 21 U.S.C.A. § 801 et seq.

#### Board

Sec. 6. The board shall enforce this Act and all laws that pertain to the practice of pharmacy and shall cooperate with other state and federal governmental agencies regarding any violations of any drug or drug-related laws. The board shall have all of the duties, powers, responsibilities, and authority specifically granted and necessary to the enforcement of this Act, as well as other duties, powers, responsibilities, and authority that may be granted by appropriate statutes.

#### Membership

Sec. 7. (a) The board consists of nine members, seven of whom must be licensed pharmacists and two of whom must be representatives of the general public.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities as a member of a trade or professional association in the regulated profession may not act as general counsel or serve as a member of the board.

#### Qualifications

Sec. 8. (a) A licensed pharmacist member of the board may not be a salaried faculty member at a college of pharmacy and must at the time of his appointment:

- (1) be a resident of this state;
- (2) be licensed for the five years immediately preceding appointment and be in good standing to engage in the practice of pharmacy in this state;
- (3) be engaged in the practice of pharmacy in this state; and
- (4) not be an officer, employee, or paid consultant of a trade association in the regulated industry or be related within the second degree by affinity or consanguinity to a person who is an officer, employ-

ee, or paid consultant of a trade association in the regulated industry.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of an agency or business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

(3) owns, controls, or has an interest in, directly or indirectly, more than 10 percent of a business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or does not maintain during his service on the board the qualifications required by Subsection (a) or (b) of this section, as appropriate; or

(2) violates the prohibition prescribed by Section 7(b) of this Act.

#### Appointment

Sec. 9. (a) The governor shall appoint the members of the board with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(b) The board shall be properly constituted in all respects from the time of commencement of each member's term, including during pendency of senate confirmation proceedings and until the senate has acted on each appointment. Any action taken by the board prior to the rejection of an appointee in which the appointee has participated is valid, but any action taken after the rejection and in which the rejected appointee participates as a board member is voidable.

#### Terms of Office

Sec. 10. (a) Except as provided by Subsection (b) of this section, members of the board shall be appointed for a term of six years, except that members of the board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of the term.

(b) The terms of the members of the board shall be staggered so that the terms of three members expire every other year.

(c) A member of the board may not serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this section.

(d) An appointee to a full term on the board shall be appointed by the governor before the expiration

of the term of the member being succeeded and shall become a member of the board on the first day of the state fiscal year next following his appointment. An appointee to an unexpired portion of a full term shall become a member of the board on the day next following the appointment. Each appointee to the board shall within 15 days from the date of appointment qualify by taking the constitutional oath of office.

(e) Each term of office on the board expires at midnight on the last day of the state fiscal year in the final year of the board member's term or on the date his successor is appointed and qualified, except for senate confirmation, whichever is later.

(f) Failure of a board member to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a member of the board, is a ground for removal.

#### Vacancies

Sec. 11. A vacancy that occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled by the governor in the manner prescribed by Section 9 of this Act.

#### Organization

Sec. 12. (a) The board shall elect from its members a president, vice-president, treasurer, and other officers it considers appropriate and necessary to the conduct of its business. The president of the board shall preside at each meeting of the board and shall be responsible for the performance of the duties and functions of the board required by this Act. Each additional officer elected by the board shall perform those duties normally associated with his position and other duties assigned to him by the board.

(b) Officers elected by the board shall serve terms of one year commencing on the first day of the state fiscal year following their election and ending on election of their successors, and shall serve no more than two consecutive full terms in each office to which they are elected.

(c) The board shall employ a licensed pharmacist who shall serve as a secretary to and be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and other duties as the board may direct. The executive director may not perform any discretionary or decision-making functions for which the board is solely responsible.

(d) The executive director or his designee shall develop within one year of the effective date of this Act an intra-agency career ladder program, one part of which shall be the intra-agency posting of all

nonentry level positions for at least 10 days prior to any public posting.

(e) The executive director or his designee shall develop within one year of the effective date of this Act a system of annual performance evaluations based on measurable job tasks. Within two years of the effective date of this Act, all merit pay authorized by the executive director must be based on the system established by this subsection.

#### Compensation

Sec. 13. (a) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(b) The executive director of the board shall receive, as compensation, an annual salary payable monthly, the amount of which shall be determined by legislative appropriation, and reimbursement for expenses incurred in connection with performance of his official duties.

#### Meetings

Sec. 14. (a) The board shall meet at least once every four months to transact its business and at least twice each year for the examination of applicants. Any additional meetings may be called by the president of the board or by two-thirds of the members of the board.

(b) A majority of the members of the board constitute a quorum for the conduct of a board meeting and, except when a greater number is required by this Act, or by any rule of the board, all actions of the board shall be by a majority of a quorum.

(c) All board meetings and hearings shall be open to the public. The board may, in its discretion and in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), conduct any portion of its meeting in executive session. The board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session.

#### Employees

Sec. 15. (a) The board may provide for the employment of persons in addition to the executive director in other positions or capacities it considers necessary to the proper conduct of board business and to the fulfillment of the board's responsibilities under this Act.



(b) The employees of the board other than the executive director shall receive, as compensation, an annual salary payable monthly, the amount of which shall be determined by the board, and reimbursement for all expenses in accordance with current state government policies.

(c) An employee of the board may not be an officer, employee, or paid consultant of a trade association in the regulated industry or be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

#### Rules

Sec. 16. (a) The board shall adopt rules for the proper administration and enforcement of this Act, consistent with this Act. The rules shall be adopted in accordance with the Administrative Procedure Act.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

#### Board Responsibilities

Sec. 17. (a) The board is responsible for the regulation of the practice of pharmacy in this state, including the following:

(1) the licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy and the licensing of pharmacies under this Act;

(2) the renewal of licenses to engage in the practice of pharmacy and licenses to operate pharmacies;

(3) the determination and issuance of standards for recognition and approval of degree requirements of colleges of pharmacy whose graduates shall be eligible for licensing in this state and the specification and enforcement of requirements for practical training, including internship;

(4) the enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this state and the conduct of pharmacies operating in this state and the suspension, revocation, fining, reprimanding, cancellation, or restriction of licenses to engage in the practice of pharmacy or to operate a pharmacy;

(5) the regulation of the training, qualifications and employment of pharmacist-interns; and

(6) the enforcement of this Act and any rules adopted under this Act.

(b) The board has the following responsibilities relating to the practice of pharmacy and to prescription drugs and devices used in this state in the diagnosis, mitigation, and treatment or prevention of injury, illness; and disease:

(1) regulation of the delivery or distribution of prescription drugs and devices, including the right to seize, after notice and hearing, any prescription drugs or devices posing a hazard to the public health and welfare, but the board may not regulate:

(A) manufacturers' representatives or employees acting in the normal course of business;

(B) persons engaged in the wholesale drug business and registered with the commissioner of health as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes); or

(C) employees of persons engaged in the wholesale drug business and registered with the commissioner of health as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes), if the employees are acting in the normal course of business;

(2) specification of minimum standards for professional environment, technical equipment, and security in the prescription dispensing area; and

(3) specification of minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, dispensing in a suitable container appropriately labeled, or providing of prescription drugs or devices within the practice of pharmacy.

(c) The board may join professional organizations and associations organized to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public.

(d) In addition to any statutory requirements, the board may require surety bonds it considers necessary to guarantee the performance and discharge of the duties of the executive director, treasurer, and any other officer or employee receiving and disbursing funds. The minimum amount of the bond for the executive director and treasurer shall be \$100,000.

(e) The executive director shall keep the seal of the board and shall affix it only in the manner prescribed by the board.

(f) The board shall submit whatever reports are required by state law. Before December 1 of each year, the board shall file a written report with the legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(g) Revenue, other than fines, collected under this Act constitutes a fund outside the state treasury from which the expenses of administering this Act are paid. Money in the fund may not be expended except pursuant to specific legislative appropriation in the General Appropriations Act. Nothing in this Act shall be construed to prohibit the board from expending money for the administration of this Act for a period not to exceed two years from the effective date of this Act. An appropriation is not

required for the investment of the fund by the board and for payment of customary fees or charges in connection with the investment. Investment income shall be deposited in the fund. The fines collected under this Act shall be deposited to the credit of the general revenue fund and may not be used for the administration of this Act. The board shall defray all expenses under this Act from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the board, or its officers or employees, or any other expenses thereof. The state auditor shall audit the board's books and records in accordance with state law.

(h) The board may receive and expend funds, in addition to funds collected under Subsection (g) of this section, from parties other than the state in accordance with state law.

(i) The board or its authorized representatives may investigate and gather evidence concerning alleged violations of this Act or of the rules of the board.

(j) The board or any officer of the board may issue subpoenas ad testificandum and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, may administer oaths, and may take testimony concerning the matters within its or his jurisdiction.

(k) If a person violates any provision of this Act, the board may petition the district court to restrain or enjoin the person from continuing the violation. In a suit for injunctive relief, venue is in Travis County. On application for injunctive relief and a finding that a person is violating any provision of this Act, the district court shall grant the injunctive relief the facts warrant.

(l) The board shall cooperate with other state or federal agencies in the enforcement of dangerous drug and controlled substances laws or other laws pertaining to the practice of pharmacy.

(m) The board shall maintain an office where permanent records are kept and preserve a record of its proceedings. The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board shall, at least semiannually, notify the parties to the complaint as to the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation.

(n) The board may appoint committees from its membership and advisory committees from the pharmacy profession and other groups to assist in administering this Act.

(o) The board may establish rules for the use of supportive personnel and the duties of those personnel in pharmacies licensed by the board, provided that those personnel are responsible to and directly supervised by a pharmacist licensed by the board;

provided however that the board may not adopt rules or regulations establishing ratios of pharmacists to supportive personnel in Class C pharmacies.

(p) The board may be represented by the attorney general, the district attorney, county attorney, or other counsel if necessary in any legal action taken under this Act.

(q) Board investigative files are not considered open records for purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

(r) Board employees are authorized to possess dangerous drugs and controlled substances when acting in their official capacity.

(s) The board may lease or purchase vehicles for use in official board business. The vehicles are exempt from bearing state government identification. The vehicles may be registered with the State Department of Highways and Public Transportation in an alias name for investigative personnel only.

(t) The board has the other duties, powers, and authority necessary to administer this Act.

(u) The board may commission employees as peace officers for the purpose of enforcing this Act if the employees have been certified as being qualified to be peace officers by the Commission on Law Enforcement Officer Standards and Education. Any employee commissioned as a peace officer under this Act has the powers, privileges, and immunities of a peace officer while carrying out his duties under this Act. However, employees of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers.

(v) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

#### Administrative Inspections and Warrants

Sec. 18. (a) In this section, "facility" means:

(1) a place that has applied for licensing as a pharmacy under this Act;

(2) a place licensed as a pharmacy under this Act; or

(3) a place operating as a pharmacy in violation of this Act.

(b) The board or its representative may enter and inspect a facility relative to the following:

(1) drug storage and security;

(2) equipment;

(3) sanitary conditions; or

(4) records, reports, or other documents required to be kept or made under this Act or the Controlled

Substances Act or Dangerous Drug Act or rules adopted under those acts.

(c) Prior to an entry and inspection, the board employee shall:

- (1) state his purpose;
- (2) present appropriate credentials to the owner, pharmacist, or agent in charge of a facility; and
- (3) present to the owner, pharmacist, or agent in charge of a facility a written notice of his inspection authority, which notice in the case of an inspection requiring or in fact supported by an administrative inspection warrant, shall consist of the warrant.

(d) Except as may otherwise be indicated in an applicable inspection warrant, the board employee may:

- (1) inspect and copy records, reports, and other documents required to be kept or made under this Act, the Controlled Substances Act, or Dangerous Drug Act, or rules adopted under those acts;
- (2) inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, prescription drugs or devices, or records; or
- (3) inventory any stock of any prescription drugs or devices in the facility and obtain samples of those substances.

(e) Except when the owner, pharmacist, or agent in charge of the facility consents in writing, an inspection authorized by this section may not extend to:

- (1) financial data;
- (2) sales data other than shipment data; or
- (3) pricing data.

(f) A warrant is not required under this section for the inspection of books and records under an administrative subpoena issued under this Act or for entries and administrative inspections under the following conditions:

- (1) with the consent of the owner, pharmacist, or agent in charge of the facility;
- (2) in situations presenting imminent danger to the public health and safety;
- (3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant; or
- (4) in any other exceptional situation or emergency involving an act of God or natural disaster when time or opportunity to apply for a warrant is lacking.

(g) Issuance and execution of administrative inspection warrants shall be as follows:

- (1) a judge of a state district court of record may, within the territorial jurisdiction of the district court and on proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting

administrative inspections authorized by this Act or the rules adopted under this Act and seizures of property appropriate to the inspections; for purposes of this subsection, the term "probable cause" means a valid public interest in the effective enforcement of this Act or rules, sufficient to justify administrative inspections of the area, facility, building, or conveyance, or their contents, in the circumstances specified in the application for the warrant;

(2) a warrant shall issue only on an affidavit of a board employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant; if the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, facility, building, or conveyance to be inspected, the purpose of the inspection, and when appropriate, the type of property to be inspected; the warrant shall identify the items or types of property to be seized, if any; the warrant shall be directed to a person authorized under this Act to execute it; the warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support of the warrant; it shall command the person to whom it is directed to inspect the area, facility, building, or conveyance identified for the purpose specified, and when appropriate, shall direct the seizure of the property specified; the warrant shall direct that it be served during normal business hours; it shall designate the judge to whom it shall be returned;

(3) a warrant issued under this section shall be executed and returned within 10 days of its date unless, on a showing by the board of a need therefor, the judge allows additional time in the warrant; if property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose facility the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken; the return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken; the inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person making the inventory, and shall be verified by the person executing the warrant; the judge, on request, shall deliver a copy of the inventory to the person from whom or from whose facility the property was taken and to the application for the warrant; and

(4) the judge who issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection with the warrant and file them with the clerk of the district court in which the inspection was made.

(h) Any property seized under this section shall be disposed of in a manner considered appropriate by the board or district court, whichever has jurisdiction over the property.

(i) Before a complaint may be filed with the board as a result of an inspection authorized by this section, the licensee must be given a reasonable time, as determined by the board, to comply with this Act or rules adopted by the board as provided by this Act.

#### Unlawful Practice

Sec. 19. (a) A person may not dispense or distribute prescription drugs unless he is a licensed pharmacist or is authorized by this Act to dispense or distribute prescription drugs.

(b) Wholesalers and manufacturers may distribute prescription drugs as provided by state or federal law.

(c) This Act does not apply to a practitioner licensed by the appropriate state board who supplies his patients with drugs in a manner authorized by state or federal law and who does not operate a pharmacy for the retailing of prescription drugs.

(d) This Act does not prevent a practitioner licensed by the appropriate state board from administering drugs to his patients.

(e) This Act does not prevent the sale by a person, other than a registered pharmacist, firm, joint stock company, partnership, or corporation, of:

(1) a nonprescription drug that is harmless if used according to instructions on a printed label on the drug's container unless the drug contains a narcotic;

(2) an insecticide, fungicide, or a chemical used in the arts if the insecticide, fungicide, or chemical is properly labeled; or

(3) an insecticide or fungicide that is mixed or compounded for agricultural purposes only.

(f) This Act does not apply to:

(1) a member of the faculty of a college of pharmacy that is recognized by the board if the faculty member is a licensed pharmacist and performs his services for the benefit of the college only;

(2) a pharmacist-intern; or

(3) a person who procures prescription drugs for lawful research, teaching, or testing and not for resale.

(g) Any person found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed \$1,000 for each offense. Each violation of this Act or the rules adopted under this Act pertaining to unlawfully engaging in the practice of pharmacy also constitutes a Class A misdemeanor.

#### Pharmacist-Intern Registration

Sec. 20. (a) A person must register with the board before beginning the board-approved internship in this state. An application for the registration of a pharmacist-intern must be on a form prescribed by the board. Registration shall remain in effect during internship training and thereafter until the earlier of the following occurs:

(1) the failure of the pharmacist-intern to take the next regularly scheduled examination; or

(2) the failure to pass the next regularly scheduled examination.

(b) The board may in its discretion refuse to issue a registration to an applicant and may suspend or revoke a pharmacist-intern registration for any violation of this Act.

#### Qualifications for Licensing by Examination

Sec. 21. (a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board with satisfactory sworn evidence that he:

(1) is at least 18 years old;

(2) is of good moral character;

(3) has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board;

(4) has graduated and received a professional degree from an accredited college of pharmacy that has been approved by the board; and

(5) has passed the examination required by the board.

(b) A person who falsely makes the affidavit prescribed by Subsection (a) of this section is guilty of fraudulent and dishonorable conduct and malpractice and is subject to all penalties that may be prescribed for making a false affidavit.

(c) The examinations for licensing required under this section shall be given by the board at least two times during the fiscal year of the state. The board shall determine the content and subject matter of each examination and determine which persons have successfully passed the examination. An applicant who fails the examination may retake the examination. If a person who fails the licensing examination administered under this Act so requests in writing, the board shall furnish the person an analysis of his performance on the examination.

(d) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examina-

tion, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed the examination.

(e) Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(f) Each applicant for licensing by examination shall obtain practical experience in the practice of pharmacy concurrent with college attendance or after college graduation, or both, under conditions that the board shall determine.

(g) The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensing examination and shall also determine the necessary qualifications of any preceptors used in any internship or other program.

#### Qualification for Licensing by Reciprocity

Sec. 22. (a) To qualify for a license to practice pharmacy by reciprocity, an applicant for licensing must:

(1) submit to the board a reciprocity fee as determined by the board and a completed application given under oath, in the form prescribed by the board;

(2) have good moral character;

(3) have graduated and received a professional degree from an accredited college of pharmacy that has been approved by the board;

(4) have possessed at the time of initial licensing as a pharmacist other qualifications necessary to have been eligible for licensing at that time in this state;

(5) have presented to the board proof of initial licensing by examination and proof that the license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled or otherwise restricted for any reason; and

(6) pass the Texas Drug and Pharmacy Jurisprudence examination.

(b) A person who falsely makes the affidavit prescribed by Subsection (a) of this section is guilty of fraudulent and dishonorable conduct and malpractice and is subject to all penalties that may be prescribed for making a false affidavit.

(c) An applicant is not eligible for licensing by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants

reciprocal licensing to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

#### Display of Pharmacist License

Sec. 23. A pharmacist shall publicly display the license to practice pharmacy and the license renewal certificate in his primary place of practice.

#### License Renewal Certificate

Sec. 24. (a) A license to practice pharmacy expires on December 31 of each year or of every other year, as determined by the board.

(b) The license may be renewed for one or two years, as determined by the board, by payment of a renewal fee as determined by the board and by filing a completed application, given under oath, with the board for a license renewal certificate before the expiration date of the license or license renewal certificate.

(c) On timely receipt of the completed application and renewal fee, the board shall issue a license renewal certificate bearing the pharmacist's license number, the period for which it is renewed, and other information the board determines necessary.

(d) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(e) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(f) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(g) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days prior to the expiration date.

(h) The board shall specify by rule the procedures to be followed and the fees to be paid for renewal and penalties for late renewal of licenses.

(i) Practicing pharmacy without an annual or biennial renewal certificate for the current year, as provided by this Act, shall have the same effect and be subject to all penalties of practicing pharmacy without a license.

(j) A license to practice pharmacy or annual or biennial renewal certificate issued by the board may not be duplicated in any manner except as expressly provided by this Act. The board may in its discretion issue duplicate copies of either the license to practice pharmacy or the annual or biennial renewal

certificate on request from the holder and on payment of a fee as determined by the board.

#### Alternative License Renewal

Sec. 25. (a) The board may adopt a system in which licenses to practice pharmacy expire on various dates during the year.

(b) In the year the expiration date is changed, the board shall prorate the license renewal fee due December 31 of each year or of every other year, as determined by the board, to cover the months for which the license is valid. The total license renewal fee is due on the new expiration date.

#### Grounds for Discipline

Sec. 26. (a) The board shall refuse to issue a pharmacist license for failure to meet the requirements of Section 21 or 22 of this Act. The board may in its discretion refuse to issue or renew a license or may fine, reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) violated any provision of this Act or any of the rules of the board adopted under this Act;

(2) engaged in unprofessional conduct as that term is defined by the rules of the board;

(3) engaged in gross immorality as that term is defined by the rules of the board;

(4) developed an incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public. In enforcing this subdivision, the board shall, on probable cause, request a pharmacist to submit to a mental or physical examination by physicians designated by the board. If the pharmacist refuses to submit to the examination, the board shall issue an order requiring the pharmacist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the pharmacist. The pharmacist shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the pharmacist and his attorney are entitled to present any testimony and other evidence to show why the pharmacist should not be required to submit to the examination. After the hearing, the board shall issue an order either requiring the pharmacist to submit to the examination or withdrawing the request for examination;

(5) engaged in any fraud, deceit, or misrepresentation as those words are defined by the rules of the board in the practice of pharmacy or in seeking a license to act as a pharmacist;

(6) been convicted of a felony or misdemeanor involving moral turpitude by a court of competent jurisdiction;

(7) a drug or alcohol dependency;

(8) failed to keep and maintain records required by this Act or failed to keep and maintain complete and accurate records of purchases and disposals of drugs listed in the Controlled Substances Act or the Dangerous Drug Act;

(9) violated any provision of the Controlled Substances Act or Dangerous Drug Act or rules relating to those acts;

(10) aided or abetted an unlicensed individual to engage in the practice of pharmacy;

(11) refused an entry into any pharmacy for any inspection authorized by this Act;

(12) violated the pharmacy or drug laws or rules of any other state or of the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board pursuant to Subdivision (4) of this subsection; or

(15) had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in Subdivisions (1)-(14) of this subsection. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

(b) The board shall refuse to issue a pharmacy license for failure to meet the requirements of Section 29 or 30 of this Act. The board may in its discretion refuse to issue or renew a license or may fine, reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude under the law of this state, another state, or the United States;

(2) advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this Act or any rule adopted under this Act or that any owner or employee of a pharmacy has violated any provision of this Act or any rule adopted under this Act;

(4) sold without legal authorization prescription drugs or devices to persons other than:

(A) a pharmacy licensed by the board;

(B) a practitioner;

(C) a person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale;

(D) a manufacturer or wholesaler registered with the commissioner of health as required by the Texas Food, Drug, and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes); or

- (E) a carrier or warehouseman;
- (5) allowed an employee who is not a licensed pharmacist to practice pharmacy;
- (6) sold mislabeled prescription or nonprescription drugs;
- (7) failed to engage in or ceased to engage in the business described in the application for a license;
- (8) failed to keep and maintain records as required by this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted under this Act or the Dangerous Drug Act; or
- (9) failed to establish and maintain effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this Act or other state or federal laws or rules.

#### Procedure

Sec. 27. Except as provided in Section 27A of this Act, any disciplinary action taken by the board under Section 26 of this Act is governed by the Administrative Procedure Act and the rules of practice and procedure before the board.

#### Peer Review Committees; Pharmaceutical Organization Committees; Reports

Sec. 27A. (a) Any pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state, if in the opinion of the peer review committee, they have knowledge relating to the pharmacist which might provide grounds for disciplinary action as specified in Subdivision (4) or (7) of Subsection (a) of Section 26 of this Act.

(b) Any committee of a professional society comprised primarily of pharmacists, its staff, or any district or local intervenor participating in a program established to aid pharmacists impaired by chemical abuse or mental or physical illness may report in writing to the board the name of the impaired pharmacist together with the pertinent information relating to his impairment. The board may report to any committee of such professional society or the society's designated staff information which it may receive with regard to any pharmacist who may be impaired by chemical abuse or mental or physical illness.

(c) On a determination by the board that a report submitted by a peer review committee or pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's individual record in the board's office. A pharmacist or his authorized representative shall be entitled on request to examine the pharmacist's peer review or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's view with respect to any information existing in the report.

(d) The records and proceedings of the board, its authorized agents, or any pharmaceutical organization committee as set out in Subsections (a) and (b) of this section shall be confidential and are not considered open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes); provided, however, the board may disclose this confidential information only:

- (1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;
- (2) to the pharmacist licensing or disciplinary authorities of other jurisdictions; or
- (3) pursuant to an order of a court of competent jurisdiction.

(e) No employee or member of the board, peer review committee member, pharmaceutical organization committee member, pharmaceutical organization district or local intervenor furnishing information, data, reports, or records for the purpose of aiding the impaired pharmacist shall by reason of furnishing such information be liable in damages to any person.

(f) No employee or member of the board or such committee, staff, or intervenor program shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such board, committee, or staff, if such member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him.

#### Penalties and Reinstatement

Sec. 28. (a) On the finding of the existence of grounds for discipline of any person holding a license or seeking a license or a renewal license under this Act, the board may impose one or more of the following penalties:

- (1) suspension of the offender's license;
- (2) revocation of the offender's license;
- (3) restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy or operating a pharmacy in a particular manner for a term and under conditions to be determined by the board;
- (4) imposition of a fine not to exceed \$1,000 for each offense involving diversion of controlled substances or a fine not to exceed \$250 for any other offense;
- (5) refusal to issue or renew the offender's license;
- (6) placement of the offender's license on probation and supervision by the board for a period to be determined by the board;
- (7) reprimand; or
- (8) cancellation of the offender's license.

(b) A person whose pharmacy license or license to practice pharmacy in this state has been canceled, revoked, or restricted under this Act, whether voluntarily or by action of the board, may, after 12 months from the effective date of the cancellation, revocation, or restriction, petition the board for reinstatement or removal of the restriction of the license. The petition shall be in writing and in the form prescribed by the board. On investigation and hearing, the board may in its discretion grant or deny the petition or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(c) Nothing in this Act shall be construed as barring criminal prosecutions for violations of this act if the violations are considered criminal offenses in this Act or other laws of this state or of the United States.

(d) A final decision by the board is subject to judicial review in accordance with the Administrative Procedure Act. Any review by the court of a final action by the board shall be under the substantial evidence rule.

(e) Upon a finding that a rule of the board has been violated, the board may impose only those sanctions listed in Subsections (a)(1), (3), (4), (6), and (7) of this section; provided, however, nothing in this subsection shall be construed to preclude imposition of sanctions for violation of board rules regarding controlled substances.

#### Registration of Pharmacies

Sec. 29. (a) A pharmacy shall annually register with the board.

(b) Each pharmacy shall apply for a license in one or more of the following classifications:

- (1) Class A;
- (2) Class B;
- (3) Class C; or
- (4) Class D.

(c) Each pharmacy shall be under the supervision of a pharmacist as follows:

(1) a Class A pharmacy shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services;

(2) a Class B pharmacy shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services;

(3) a Class C pharmacy shall be under the continuous on-site supervision of a pharmacist in institutions with more than 100 beds during the time it is open for pharmacy services; in institutions with 100 beds or fewer, the services of a pharmacist shall be required on a part-time or consulting basis according to the needs of the institution; and

(4) a Class D pharmacy shall be under the continuous supervision of a pharmacist whose services

shall be required according to the needs of the pharmacy.

(d) The board shall establish by rule the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification.

(e) The board shall have the discretion to determine under which classifications a pharmacy applicant may be licensed. With respect to Class C pharmacies, the board may establish rules for the use of supportive personnel and the duties of those personnel in Class C pharmacies licensed by the board, provided that these personnel are responsible to and directly supervised by a pharmacist licensed by the board; provided, however, the board may not adopt any rule setting ratios with respect to pharmacists and supportive personnel or limiting the number of supportive personnel that may be utilized.

(f) The board shall have the authority to inspect facilities licensed under this Act for compliance with this Act.

(g) A pharmacy operated by the state or a local government that qualifies for a Class D license may not be required to pay a fee to obtain a license.

#### Application

Sec. 30. (a) The board shall specify by rule the licensing procedures to be followed, including specification of forms for use in applying for a license and fees for filing an application.

(b) To qualify for a pharmacy license, the applicant must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

- (1) ownership;
- (2) location;
- (3) the license number of each pharmacist employed by the pharmacy;
- (4) the license number of the pharmacist-in-charge, who shall have the authority or responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy; and
- (5) any other information the board determines necessary.

(c) A person who falsely makes the affidavit prescribed by Subsection (b) of this section is subject to all penalties that may be prescribed for making a false affidavit.

(d) A pharmacy license issued by the board under this Act is not transferable or assignable.

(e) The board shall specify by rule minimum standards for professional responsibility in the conduct of a pharmacy.



(f) A separate license is required for each principal place of business, and only one pharmacy license may be issued to a specific location.

(g) A pharmacy shall display in full public view the license in the pharmacy operating under the license.

(h) A Class A or Class C pharmacy that serves the general public shall:

(1) display the word "pharmacy" in a prominent place on the front of the pharmacy or a similar word or symbol as determined by the board; and

(2) display in public view the licenses of the pharmacists employed in the pharmacy.

#### Renewal of Pharmacy Licenses

Sec. 31. (a) A license to operate a pharmacy expires on May 31 of each year.

(b) A license may be renewed by payment of a renewal fee as determined by the board and by filing with the board a completed application given under oath for a license renewal certificate before the expiration date of the license or license renewal certificate.

(c) On timely receipt of the completed application and renewal fee, the board shall issue a license renewal certificate bearing the pharmacy license number, the year for which it is renewed, and other information the board determines necessary.

(d) The board shall remove the name from the register of licensed pharmacies and suspend the license of a pharmacy that does not file a completed application and pay the renewal fee before June 1 of each year.

(e) The board shall specify by rule the procedures to be followed, the fees to be paid for renewal, and the penalties for late renewal of licenses.

#### Notifications

Sec. 32. (a) A pharmacy shall report in writing to the board within 10 days of any of the following:

(1) permanent closing;

(2) change of ownership;

(3) change of location;

(4) change of pharmacist-in-charge;

(5) the theft or significant loss of any controlled substances on discovery of the theft or loss; the notification of theft or loss shall contain a list of all controlled substances stolen or lost;

(6) the sale or transfer of controlled substances or dangerous drugs on the permanent closing or change of ownership of the pharmacy;

(7) any matters and occurrences that the board may require by rule; and

(8) out-of-state purchases of controlled substances as determined by the board.

(b) A pharmacist shall report in writing to the board within 10 days a change of address or place of employment.

(c) Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease shall be immediately reported to the board.

(d) A copy of any notification required by this section shall be maintained by the reporting pharmacy for two years and be available for inspection.

#### Administration and Provision of Dangerous Drugs

Sec. 33. (a) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician, that are used or required to meet the immediate needs of such physician's patients. Such administration or provision as ordered by a physician may be delegated through the physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to dangerous drugs. A physician or person or persons acting under the supervision of a physician may not, except as provided by Subsection (c) of this section, keep a pharmacy, advertised or otherwise, for the retailing of such drugs without complying with the applicable laws relating to same.

(b) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under such physician's supervision, the act or acts of administering or providing dangerous drugs, if such provision is provided through a facility licensed by the board pursuant to Section 29(b)(4) of this Act, as ordered by such physician, that are used or required to meet the needs of such physician's patients. Such administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the board. Such administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. A physician or person or persons acting under the supervision of a physician

may not, except as provided by Subsection (c) of this section, keep a pharmacy, advertised or otherwise, for the retailing of such dangerous drugs without complying with applicable laws relating to same. Such dangerous drug shall be supplied in a suitable container that has been labeled in compliance with applicable drug laws; provided, however, a qualified and trained person or persons acting under the supervision of a physician may be permitted to specify at the time of such provision the inclusion of the date of provision and the patient's name and address.

*Text of subsec. (c) as added by Acts 1983, 68th Leg., p. 973, ch. 231, § 1*

(c) A licensed veterinarian may administer or provide in his office or at the premises of the patient dangerous drugs that are used or required to meet the needs of the veterinarian's patient or patients, and may itemize and be compensated for such administration or provision performed in the course of treating a patient or patients. A licensed veterinarian may delegate the administration or provision of dangerous drugs to a qualified and properly trained person who acts under the veterinarian's supervision. The administration or provision of dangerous drugs must comply with laws relating to the practice of veterinary medicine and with state and federal laws relating to dangerous drugs. This section does not permit a veterinarian to otherwise keep a pharmacy for the retailing of drugs without complying with applicable laws.

*Text of subsec. (c) as added by Acts 1983, 68th Leg., p. 4977, ch. 890, § 1*

(c) A licensed physician who practices medicine in a rural area in which there is no pharmacy may maintain a supply of dangerous drugs in the office of the physician to be dispensed in the course of treating the physician's patients and may be reimbursed for the cost of supplying those drugs without obtaining a license under this Act. Such physicians shall comply personally with all appropriate labeling sections of this Act, and oversee compliance with packaging and recordkeeping sections applicable to the class of drugs. Physicians desiring to dispense dangerous drugs under this subsection shall notify both the Texas State Board of Pharmacy and the Texas State Board of Medical Examiners that such physician practices in a rural area, as hereinafter defined. Such physician may continue to so dispense dangerous drugs until the State Board of Pharmacy shall determine, upon notice and hearing to such physician, that such physician no longer practices in a rural area as hereinafter defined. For the purposes of this subsection:

(1) the term "rural area" means an area in which there is no pharmacy within a 15-mile radius of the physician's office and is within:

(A) a county with a total population of 5,000 or less according to the most recent federal census; or

(B) a city or town, incorporated or unincorporated, with a population of less than 2,500, according to the most recent federal census, but shall not include a city or town, incorporated or unincorporated, whose boundaries are adjacent to an incorporated city or town with an equal or greater population.

(2) the term "reimbursed for cost" shall mean an additional charge separate from that made for the physician's professional services which include the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service but not including a separate fee for the act of dispensing the drug product itself.

#### Violations and Penalties

Sec. 34. (a) No pharmacy designated in Section 29 of this Act may be operated until a license or renewal certificate has been issued to the pharmacy by the board. On the finding of a violation of this Act or rules adopted under this Act, the board may impose one or more of the penalties prescribed by Section 28(a) of this Act.

(b) Reinstatement of a pharmacy license that has been canceled, revoked, or restricted by the board may be granted in accordance with Section 28(b) of this Act.

#### Unlawful Use of "Pharmacy"

Sec. 35. A person may not display in or on any store or place of business the word "pharmacy," either in English or any other language, any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public unless it is a pharmacy licensed under this Act.

#### Unlawful to Impersonate Applicant, Licensed Pharmacist, or Fraudulently Acquire License

Sec. 36. A person may not impersonate before the board an applicant applying for licensing under this Act, fraudulently acquire a license in any other manner than provided by this Act, impersonate a licensed pharmacist, or use the title "Registered Pharmacist" or "R.Ph.," or words of similar intent unless the person is licensed to practice pharmacy in this state.

#### Penalties

Sec. 37. (a) A person commits an offense if the person knowingly or intentionally violates the licensing requirements of this Act or Section 35 or 36 of this Act.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation is a separate offense.

#### Burden of Proof; Liabilities

Sec. 38. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other

proceedings under this Act, and the burden of going forward with the evidence with respect to any exemption or exception is on the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate license issued under this Act, he is presumed not to be the holder of the license. The presumption is subject to rebuttal by a person charged with an offense under this Act.

(c) No liability is imposed by this Act on any authorized board employee or person acting under the supervision of a board employee, or on any state, county, or municipal officer, engaged in the lawful enforcement of this Act.

#### Fees

Sec. 39. The board may not charge more than the following fees for the performance of the following duties and functions to carry out the purposes of this Act:

(1) for processing application and administration of examination for licensure—\$150;

(2) for processing application for licensure by reciprocity—\$250 (plus the applicable license fee);

(3) for processing application and issuance of a pharmacist license or renewal of a pharmacist license—\$85 a year; and

(4) for processing of an application and issuance of a pharmacy license or renewal of a pharmacy license—\$150.

#### Substitution

Sec. 40. (a) It is the intent of the legislature to save consumers money by allowing the substitution of lower-priced generically equivalent drug products for certain brand name drug products and for pharmacies and pharmacists to pass on the net benefit of the lower costs of the generically equivalent drug product to the purchaser.

(b) Except as otherwise provided by this section, a pharmacist who receives a prescription for a drug product for which there exists one or more generic equivalents, as defined herein, may dispense any of the generically equivalent products.

(c) In this section:

(1) "Generically equivalent" means a drug that is "pharmaceutically equivalent" and "therapeutically equivalent" to the drug prescribed.

(2) "Pharmaceutically equivalent" means drug products which have identical amounts of the same active chemical ingredients in the same dosage form and which meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or other nationally recognized compendium.

(3) "Therapeutically equivalent" means pharmaceutically equivalent drug products which, when

administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

(d) Unless otherwise directed by the practitioner, the label on the dispensing container shall indicate the actual drug product dispensed, either (1) the brand name, or if none (2) the generic name, the strength, and the name of the manufacturer or distributor. In instances where a drug product has been selected other than the one prescribed, the pharmacist shall place on the container the words "Substituted for brand prescribed." The brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(e) A pharmacist may not select a generically equivalent drug unless the generically equivalent drug selected costs the patient less than the prescribed drug product. A pharmacist may not charge a higher professional fee for dispensing a generically equivalent drug product than the fee he or she customarily charges for dispensing the brand name product prescribed.

(f) A pharmacist who selects a generically equivalent drug product as authorized by this section shall:

(1) personally, or through his or her agent or employee and prior to delivery of a generically equivalent drug product, inform the patient or the patient's agent that a less expensive generically equivalent drug product has been substituted for the brand prescribed and the patient or patient's agent's right to refuse such substitution; or

(2) cause to be displayed, in a prominent place that is in clear public view where prescription drugs are dispensed, a sign in block letters not less than one inch in height that reads, in both English and Spanish:

**"TEXAS LAW ALLOWS A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG TO BE SUBSTITUTED FOR CERTAIN BRAND NAME DRUGS UNLESS YOUR PHYSICIAN DIRECTS OTHERWISE. YOU HAVE A RIGHT TO REFUSE SUCH SUBSTITUTION. CONSULT YOUR PHYSICIAN OR PHARMACIST CONCERNING THE AVAILABILITY OF A SAFE, LESS EXPENSIVE DRUG FOR YOUR USE."**

Only one sign displayed in a pharmacy, as required above, shall be deemed compliance with this subsection.

(3) A pharmacist complies with the requirements of this section if an employee or agent of the pharmacist notifies a purchaser as required by Subdivision (1) of this subsection. The patient or patient's agent shall have the right to refuse such product selection.

(g) No written prescription may be dispensed unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written." The practitioner shall communicate dispensing instructions to the pharmacist by signing on the appropriate line. If the practitioner's signature does not clearly indicate that the prescription must be dispensed as written, generically equivalent drug selection is permitted. No prescription form furnished a practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer.

(h) If a prescription is transmitted to a pharmacist orally, the pharmacist shall note any dispensing instructions by the practitioner or the practitioner's agent on the file copy of the prescription and retain the prescription for the period of time specified by law. Properly authorized prescription refills shall follow the original dispensing instructions unless otherwise indicated by the practitioner or practitioner's agent.

(i) A pharmacist shall record on the prescription form the name, strength, and manufacturer or distributor of any drug product dispensed as herein authorized.

(j) A pharmacist who selects a generically equivalent drug to be dispensed pursuant to this section assumes the same responsibility for selecting the generically equivalent drug that he does in filling a prescription for a drug product prescribed by generic name. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing, or dispensing a drug product pursuant to this section.

(k) Drug product selection as authorized in this section shall not apply to enteric-coated tablets; controlled release products; injectable suspensions, other than antibiotics; suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity; and different delivery systems for aerosol or nebulizer drugs. This subsection shall not apply to any drug product which is determined to be generically equivalent to the brand prescribed.

#### Code of Professional Responsibility

Sec. 41. (a) The board shall adopt a code of professional responsibility to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

(b) The code shall contain a procedure to be followed by agency personnel:

- (1) on entering a pharmacy;
- (2) during inspection of the pharmacy; and
- (3) during the exit conference.

(c) The code shall contain standards of conduct that agency personnel are to follow in dealing with the staff and management of the pharmacy and the general public.

(d) The board shall establish a procedure for receiving and investigating complaints of code violations. The board shall investigate all complaints of code violations. The results of an investigation shall be forwarded to the complainant.

(e) The board may adopt rules establishing sanctions for violations of the code.

[Acts 1981, 67th Leg., p. 638, ch. 255, §§ 1 to 39, 41, eff. Sept. 1, 1981; § 40, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 973, ch. 231, § 1, eff. May 24, 1983; Acts 1983, 68th Leg., p. 3836, ch. 600, §§ 1, 2, eff. June 19, 1983; Acts 1983; 68th Leg., p. 4977, ch. 890, § 1, eff. Aug. 29, 1983.]

Sections 42 to 44 of the 1981 Act provide:

"Sec. 42. (a) The board may discipline an applicant or licensee as provided by Section 26 of this Act if the applicant or licensee has engaged in the act of 'substitution' as that term is hereinafter defined. The term 'substitution' as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted.

"(b) This section expires January 1, 1982. The expiration of this section does not affect the imposition of discipline on or after January 1, 1982, for conduct committed in violation of this section before that date, and this section remains in effect on and after January 1, 1982, for this limited purpose.

"Sec. 43. All laws or parts of laws inconsistent with this Act, including Section 1, Chapter 447, Acts of the 55th Legislature, Regular Session, 1957 (Article 4542b, Vernon's Texas Civil Statutes), and Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), are repealed.

"Sec. 44. (a) The validity of licenses and renewal certificates issued under the law repealed by this Act is not affected by the repeal. Those licenses and renewal certificates shall be treated as if issued under this Act.

"(b) A license application pending on the effective date of this Act is governed by the law repealed by this Act and the repealed law is continued in effect for this purpose.

"(c) A person required to obtain a pharmacy license under this Act who was not required to obtain a pharmacy permit under the law repealed by this Act is not required to have a pharmacy license until January 1, 1982.

"(d) An offense prescribed by this Act applies only to conduct committed on or after the effective date of this Act and a criminal or administrative action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For the purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date of this Act.

"(e) A member of the board constituted under the law repealed by this Act who is serving a term on the effective date of this Act shall continue as a board member and shall serve the duly appointed term as governed by the law repealed by this Act, and the repealed law is continued in effect for this purpose. A current board member appointed initially for a term of less than six years is eligible to serve for two additional full terms.

"(f) Rights and obligations of the board existing on the effective date of this Act are governed by the law repealed by this Act, which law is continued in effect for the purpose of continuing and governing those rights and obligations as if this Act were not in force.

"(g) Any proceeding pending before the board on the effective date of this Act is governed by the law existing before the effective date of this Act, which law is continued in effect for this purpose as if this Act were not in force.

"(h) The rules of the board existing on the effective date of this Act are governed by the law repealed by this Act, which rules are continued in effect for the purpose of continuing and governing those rights and obligations as if this Act were not in force until the board adopts similar rules under this Act."

**Art. 4542b. Repealed by Acts 1981, 67th Leg., p. 662, ch. 255, § 43, eff. Sept. 1, 1981**

See, now, art. 4542a-1, § 4.

**Art. 4542c. Labeling Requirements for Prescription Drugs**

(a) All prescription drugs manufactured and sold or distributed to a pharmacist in this state after the effective date of this Act to be subsequently dispensed to the consumer of the drug or drug product shall have affixed to the labeling the name and business address of the original manufacturer of the finished dosage form, and the names and business address of all repackagers or distributors of the prescription drug or drug product prior to its delivery to the pharmacist. This information does not need to be affixed to the container delivered to the patient. Provided, however, that the name and business address of the distributor need not be so affixed if the distributor acts only as a wholesaler or supplier and does not repackage the drug or in any way modify the individual drug package or container or its contents as such was received from the manufacturer, repackager, or other distributor.

(b) An individual, corporation, or association who violates any provision of this Act commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 1360, ch. 517, § 1, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 1225, ch. 473, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed conflicting laws.

**CHAPTER NINE. DENTISTRY**

- Art.
- 4543. Appointment; Qualifications.
- 4543a. Application of Sunset Act.
- 4544. Examination for License to Practice Dentistry.
- 4544a. Board to Aid in Enforcing Statutes.
- 4545. Qualifications of Applicants.
- 4545a. Reciprocal Arrangements.
- 4546, 4546a. Repealed.
- 4547. Duplicate License.
- 4547a. Aid to the Board.
- 4548. License Required to Practice.
- 4548a. Unlawful to Practice Without License.
- 4548b. Repealed.
- 4548c. Practice After License Has Been Revoked.
- 4548d. Shall Exhibit License.
- 4548e. Use of Trade Name.
- 4548f. Unlawful Advertising.
- 4548g. Unprofessional Conduct.
- 4548h. Refusing, Revoking, Cancelling, and Suspending Licenses.
- 4548i. Punishment.
- 4548j. Repealed.

- Art.
- 4549. Disciplinary Actions.
- 4549a. False or Misleading Statements to Patients Prohibited; Posting of School Diploma.
- 4549b. Consumer Information.
- 4549-1. Revocation and Suspension of License for Drug-Related Felony Conviction.
- 4550. Records of the Board.
- 4550a. Application, Fund, and Secretary or Director.
- 4550b. Expiration Dates of Registrations; Proration of Fees.
- 4551. Fees and Expenses.
- 4551a. Persons Regarded as Practicing Dentistry.
- 4551a-1. Repealed.
- 4551b. Exceptions.
- 4551b-1. Repealed.
- 4551c. Restraining Practice in Violation of Law.
- 4551c-1. Repealed.
- 4551d. Rules and Regulations of Board.
- 4551d(1). Repealed.
- 4551e. Dental Hygienists; Regulation and Licensing.
- 4551e-1. Permitted Duties for Dental Assistants.
- 4551f. Dental Technicians and Laboratories; Regulations of Acts and Services.
- 4551g. Prescription Required.
- 4551g-1. Repealed.
- 4551h. Narcotic Drugs, Dangerous Drugs, Controlled Substances.
- 4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees.
- 4551j. Civil Immunity, Official Acts.
- 4551k. Case Histories and Physical Evaluations.
- 4551l. Equivalency Data.

**Art. 4543. Appointment; Qualifications**

Sec. 1. (a) The State Board of Dental Examiners, also known as the Texas State Board of Dental Examiners, shall consist of 12 members. Nine members must be reputable, practicing dentists who have resided in the State of Texas and have been actively engaged in the practice of dentistry for five years next preceding their appointment, none of whom shall be members of the faculty of any dental or dental hygiene school or college or of the dental or dental hygiene department of any medical school or college or shall have a financial interest in any such school or college. Three members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

- (1) is licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or
- (3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(b) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Sec. 2. The term of office of each member of said Board shall be limited to one six-year term or until their successors shall be appointed and qualify. Board terms are limited to one six-year term except that this restriction shall not prohibit those Board members holding office on May 1, 1981, from being reappointed to one additional six-year term. The terms shall be staggered with the terms of one-third of the members expiring every two years. The members of said Board shall be appointed by the Governor of the State. Before entering upon the duties of his office each member of the Board shall take the constitutional oath of office, same to be filed with the Secretary of State. At its first meeting the Board shall organize by electing one member President and one Secretary chosen to serve one year. Said Board shall hold regular meetings at least twice a year at such times and places as the Board shall deem most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. The Board may prescribe rules and regulations, in harmony with the provision of this title governing its own proceedings and the examinations of applicants for the practice of dentistry. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 3. A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the dental industry. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a trade or professional association in the profession regulated by the Board, may not serve as a member of the Board or act as the general counsel to the Board.

Sec. 4. (a) It is a ground for removal from the Board if a member:

- (1) does not have at the time of appointment the qualifications required by Section 1 of this article for appointment to the Board;
- (2) does not maintain during the service on the Board the qualifications required by Section 1 of this article for appointment to the Board;
- (3) violates a prohibition established by Section 3 of this article; or
- (4) fails to attend at least one-half of the regularly scheduled meetings held each year.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 606, c. 244, § 1; Acts 1971, 62nd Leg., p. 1391, ch. 375, § 1, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Sections 1 to 5 of the 1971 act amended this article, sections 1 and 2 of article 4550a, art. 4551 and section 6 of art. 4551 respectively. Sections 6 to 8 thereof provided:

"Sec. 6. The members of the State Board of Dental Examiners, also known as the Texas Board of Dental Examiners, holding office on the effective date of this Act continue to hold office for the terms to which they were appointed. In expanding the membership of the board, the Governor shall appoint one member for a term expiring in May, 1973, one for a term expiring in May, 1975, and one for a term expiring in May, 1977.

"Sec. 7. All laws or parts of laws in conflict herewith are hereby repealed.

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

Section 9 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the State Board of Dental Examiners on the effective date of this Act continues to hold office for the term for which the member was originally appointed.

"(b) The governor shall make initial appointments to the board of three public members. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987."

#### Art. 4543a. Application of Sunset Act

The State Board of Dental Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished effective September 1, 1993.

[Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.047, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

#### Art. 4544. Examination for License to Practice Dentistry

##### Duty to Examine; Fee; Subjects

Sec. 1. It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State. Each person applying for an examination shall pay to said Board a fee set by the Board and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination given by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the

Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require.

#### Foreign and Nonaccredited Dental School Graduates

Sec. 2. The Texas State Board of Dental Examiners may provide in its rules and regulations the procedures, fees, and requirements for graduates of foreign and/or nonaccredited Dental Schools to become licensed to practice dentistry in Texas.

#### Notification of Results or Reason for Delay

Sec. 3. Within 30 days after the day on which a licensing examination is administered under this article, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

#### Analysis of Performance

Sec. 4. If requested in writing by a person who fails the licensing examination administered under this article, the Board shall furnish the person with an analysis of the person's performance on the examination as prescribed by Board rule.

#### Continuing Education

Sec. 5. The Board may recognize, prepare, or carry out continuing education programs for persons it licenses or certifies. Participation in the programs is voluntary.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 2; Acts 1943, 48th Leg., p. 576, ch. 340, § 1; Acts 1947, 50th Leg., p. 752, ch. 371, § 1; Acts 1961, 57th Leg., p. 1101, ch. 496, § 3; Acts 1977, 65th Leg., p. 356, ch. 174, § 4, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

#### Art. 4544a. Board to Aid in Enforcing Statutes

Sec. 1. The State Board of Dental Examiners is charged with the duty of aiding in the enforcement of the Statutes of this State regulating the practice of dentistry and any member of said Board may present to a prosecuting officer complaints relating to violations of such Statutes; and said Board, through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violations of said Statutes subject to the control of the prosecuting officers.

Sec. 2. If the employees of a dentist are required pursuant to federal law to receive minimum training and achieve minimum performance standards regarding radiologic procedures and tech-

niques, the Texas State Board of Dental Examiners shall implement the provisions of said federal law relating to said employees.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 3. Amended by Acts 1983, 68th Leg., p. 333, ch. 76, § 1, eff. Aug. 29, 1983.]

#### Art. 4545. Qualifications of Applicants

Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age and shall present proof of graduation from a reputable dental college and evidence of good moral character. A dental college shall be held reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 4; Acts 1943, 48th Leg., p. 576, ch. 340, § 2; Acts 1945, 49th Leg., p. 462, ch. 292, § 1; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

#### Art. 4545a. Reciprocal Arrangements

The State Board of Dental Examiners may, in the discretion of the Board in each instance, upon payment by the applicant for registration of a fee set by the Board, grant license to practice dentistry to any reputable dentist who is a graduate of a reputable dental college or has qualified on examination for the certificate of dental qualification for a commission as a dentist in the Armed Forces of the United States and to licentiates of other States or territories having requirements for dental registration and practice equal to those established by this law. Applications for license under the provisions of this Article shall be in writing and upon a form to be prescribed by the State Board of Dental Examiners. Said application shall be accompanied by a diploma or a photograph thereof, awarded to the applicant by a reputable dental college, or a certified transcript of the certificate or license or commission issued to the applicant by the Armed Forces of the United States, or by a license or a certified copy of license to practice dentistry, lawfully issued to the applicant by some other State or territory; and shall also be accompanied by an affidavit from an executive officer of the Armed Forces of the United States, the President or Secretary of the Board of Dental Examiners who issued the said license, or by a legally constituted dental registration officer of the State or territory in which the certificate or license was granted upon which the applications for dental registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge by the Armed Forces of the United States, and that the statement of qualifications made in the application for dental registration in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to an oath in writing which

shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced dentistry in the State or territory from which the applicant removed, was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license, or commission and the said dental diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license or authority to practice dentistry in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application, pending against the applicant in any State or Federal Court for any offense which under the law of Texas is a felony.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 4. Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

**Arts. 4546, 4546a. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977**

**Art. 4547. Duplicate License**

If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may pay a reasonable fee to the board and present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

**Art. 4547a. Aid to the Board**

The Texas State Board of Dental Examiners shall have power and authority to appoint such clerks, advisors, consultants, hygienists, and/or examiners to aid the board to carry out its duties as it deems necessary and advisable and may reimburse said persons so appointed in such amounts as is reasonable and in conformity with the provisions of the general appropriations bill as enacted by the Texas Legislature.

[Acts 1977, 65th Leg., p. 969, ch. 365, § 1, eff. Aug. 29, 1977.]

**Art. 4548. License Required to Practice**

No person shall practice or offer, or attempt to practice dentistry or dental surgery in this State, without first having obtained a license from the State Board of Dental Examiners, as provided for in this law, provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing herein applies to any person legally

engaged in the practice of dentistry in Texas at the time of the passage of this law.

[Acts 1925, S.B. 84.]

**Art. 4548a. Unlawful to Practice Without 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 the members of the Board and shall have imprinted thereon the official seal of the Board.

[1925 P.C. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 13; Acts 1953, 53rd Leg., p. 721, ch. 281, § 4.]

**Art. 4548b. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981**

**Art. 4548c. 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.

[1925 P.C.]

**Art. 4548d. 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.

[1925 P.C.]

**Art. 4548e. Use of Trade Name**

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 unless included as a prominent portion of such name is the proper name used on the license, as issued by the State Board of Dental Examiners, of the dentist or dentists practicing under such corporate, company, association, or trade name. Provided, however, any corporate, company, association, or trade name used by a group of dentists in a nonprint medium shall only be required to include prominently the name of one dentist practicing under such name. Each day of violation of this Article shall constitute a separate offense.

[1925 P.C. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 15; Acts 1937, 45th Leg., p. 1346, ch. 501, § 1; Acts 1977, 65th Leg., p. 1165, ch. 444, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]



**Art. 4548f. Unlawful Advertising****False, Misleading, or Deceptive Advertising Unlawful;  
Other Advertising not Restricted**

Sec. 1. (a) It shall be unlawful for any person, firm, or corporation to engage in false, misleading, or deceptive advertising arising out of or in connection with the practice of dentistry. Provided, however, nothing herein shall be construed to restrict or prohibit:

- (1) the type of advertising medium;
- (2) the size or duration of any advertisement;
- (3) the truthful advertising of prices for any type of dental services;
- (4) the use of agents or employees in advertising;
- (5) a person's personal appearance or use of his personal voice in an advertisement.

(b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person.

**Prohibiting Advertising of Out-of-State Practice  
of Dentistry**

Sec. 2. It shall be unlawful for any person, firm, or corporation to advertise in this state or cause or permit to be advertised, published directly or indirectly, printed or circulated in this state any notice, statement or offer of, any service, skill, method, drug or fee in the practice of dentistry by any person, firm, or corporation, which is not domiciled and located in this state and subject to the laws of this state.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 16. Amended by Acts 1973, 63rd Leg., p. 1697, ch. 617, § 1, eff. June 15, 1973; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

**Art. 4548g. Unprofessional Conduct**

It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct pertaining to dentistry directly or indirectly. Any unprofessional conduct, as used herein, means and includes any one or more of the following acts:

- (1) obtaining any fee by fraud or misrepresentation;
- (2) soliciting dental business by means of verbal communication, in person or otherwise, directed to an individual or group of less than five individuals, which is primarily for the purpose of attracting the patronage of such individual or group to a particular practice of dentistry;
- (3) employing, directly or indirectly, or permitting any unlicensed person to perform dental services upon any person, except as otherwise authorized by law or the rules and regulations of the State Board of Dental Examiners;

(4) claiming or circulating any statement of professional superiority or the performance of professional services in a superior manner;

(5) 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 thereof, or making any false statement about or in securing such document, or being guilty of misusing the same;

(6) accepting employment as a dentist under any referral scheme which is false, misleading, or deceptive;

(7) advertising to perform any dental work without pain or discomfort to the patient;

(8) advertising predictions of future satisfaction or success of any dental service.

[Acts 1937, 45th Leg., p. 1346, ch. 501, § 2. Amended by Acts 1947, 50th Leg., p. 752, ch. 371, § 4; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

**Art. 4548h. Refusing, Revoking, Cancelling, and  
Suspending Licenses****Authority to Grant License**

Sec. 1. 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 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended, within twelve (12) months prior to the filing of an application for such license.

**Revocation, Cancellation, or Suspension of License**

Sec. 2. The State Board of Dental Examiners shall, 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 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended, or any amendments that may hereafter be made thereto. All revocations, cancellations or suspensions of licenses by the Texas State Board of Dental Examiners shall be made as hereinafter provided.

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. 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.

#### Appeal to Court

Sec. 3. (a) A person aggrieved by a ruling, order, or decision of the Board has the right to appeal to a district court in the county of his residence or in the county where the alleged offense occurred within thirty (30) days from the service of notice of the action of the State Board of Dental Examiners.

(b) The appeal having been properly filed, the court may request of the Board and the Board on receiving the request shall within thirty (30) days prepare and transmit to the court a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with the Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee, the appeal shall act as a supersedeas providing the appealing party files a bond as the court may direct, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the Board's ruling shall become final.

(e) Review by the court shall be by the substantial evidence rule and not de novo.

#### Additional Offices

Sec. 4. No statute relating to the practice of dentistry in this State shall be construed to prohibit any duly authorized, licensed, and registered dentist from maintaining any number of offices in this State, provided said dentist assumes full legal responsibility and liability for the dental services rendered in such offices and further provided that the dentist complies with such requirements as may be prescribed by the Board in its Rules and Regulations for the purpose of protecting the health and safety of the patients receiving dental care at such offices.

Secs. 5, 6. [Renumbered as §§ 4 and 5 and amended by Acts 1981, 67th Leg., p. 2830, ch. 763, § 2]

#### 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. Amended by Acts 1943, 48th Leg., p. 576, ch. 340, § 8; Acts 1947, 50th Leg., p. 752, ch. 371, § 3; Acts 1949, 51st Leg., p. 771, ch. 415, § 1; Acts 1951, 52nd Leg., p. 427, ch. 267, § 1; Acts 1981, 67th Leg., p. 789, ch. 291, § 62, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2830, ch. 763, § 2, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 820, ch. 291, § 149, provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Acts 1981, 67th Leg., p. 2830, ch. 763, § 2, in its introductory language stated only that it was amending §§ 3, 4 and 5 (now §§ 1, 2, and 3), but what followed included an amendment of § 6 (now, § 4).

#### Art. 4548i. Punishment

Any person who shall violate any provision of Chapter Nine, Title 71, Revised Statutes,<sup>1</sup> commits an offense. An offense under this section is a Class A misdemeanor. If it is shown at a trial of an offense under this section that the defendant was previously convicted under this section of any misdemeanor, the offense is a felony of the third degree. Each day of such violation shall be a separate offense.

[1925 P.C. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 17; Acts 1943, 48th Leg., p. 576, ch. 340, § 6; Acts 1953, 53rd Leg., p. 721, ch. 281, § 3; Acts 1983, 68th Leg., p. 334, ch. 76, § 2, eff. Aug. 29, 1983.]

<sup>1</sup> Article 4543 et seq.

Art. 4548j. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981

#### Art. 4549. Disciplinary Actions

##### Grounds for Refusal to Examine or Issue License

Sec. 1. The Texas State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a dental license or a dental hygienist license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license or certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

##### Application of Law

Sec. 2. The provisions of this Article relating to the suspension or revocation of a license do not apply to a person convicted of a felony under the

Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

##### Jurisdiction to Suspend or Revoke License, Place on Probation, or Reprimand; Grounds

Sec. 3. The Texas State Board of Dental Examiners and the District Courts of this State shall have concurrent jurisdiction and authority, after notice and hearing as hereinafter provided, to suspend or revoke a dental license or a dental hygienist license, to place on probation a person whose license or certificate is suspended, or to reprimand a licensee or certificate holder for any one or more of the following causes:

(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license or certificate of any felony or a misdemeanor involving fraud under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry or dental hygiene.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(l) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

(m) Proof of suspension, revocation, probation, reprimand, or other restriction by another State of a license or certificate to practice dentistry or dental

hygiene based upon acts by the licensee or certificate holder enumerated in this section.

(n) That the holder thereof has knowingly provided or agreed to provide dental care in a manner which violates any provision of federal or State law regulating a plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any dental care services or regulating the business of insurance.

#### Hearing and Appeal

Sec. 4.<sup>1</sup> (a) If the Board proposes to refuse to examine a person, to suspend or revoke a license or certificate, to place on probation a person whose license or certificate has been suspended, or to reprimand a licensee or certificate holder, the person is entitled to a hearing before the Board.

(b) The hearing and an appeal from the hearing are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

<sup>1</sup> Inserted as Sec. 3 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

#### Procedure

Sec. 5.<sup>1</sup> (a) All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes or rules and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes or rules.

(b) All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board or its authorized employee, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail

a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules.

(c) The Board shall keep an information file about each complaint filed with the Board relating to a licensee or certificate holder. If a written complaint is filed with the Board relating to a licensee or certificate holder, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The Board may request a dental peer review or grievance committee to submit information to the Board about the activities of the committee.

<sup>1</sup> Designated Sec. 4 by Acts 1981, 67th Leg., p. 105, ch. 52, § 5, and by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

#### Procedure in Taking Appeal

Sec. 6.<sup>1</sup> If said Board shall make and enter any order revoking or suspending any person's license or certificate, placing a person on probation, or reprimanding a person as hereinabove provided, the person may take an appeal to the District Court of the County of the residence of the person 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 Texas State Board of Dental Examiners, as defendants.

<sup>1</sup> Designated Sec. 5 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

#### Procedure in District Courts

Sec. 7.<sup>1</sup> Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to show cause why his license to practice dentistry in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other

cases and the same shall be served upon the defendant at least twenty (20) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) persons shall be summoned as in cases during term time of the court when no regular jury is available and as prescribed by law and shall be impanelled unless waived by the defendant, and the cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of cost, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 6; Acts 1941, 47th Leg., p. 1336, ch. 605, § 1; Acts 1951, 52nd Leg., p. 427, ch. 267, § 2; Acts 1977, 65th Leg., p. 799, ch. 296, § 1, eff. May 28, 1977; Acts 1981, 67th Leg., p. 105, ch. 52, § 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 334, ch. 76, § 3, eff. Aug. 29, 1983.]

1 Designated Sec. 6 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

#### Art. 4549a. False or Misleading Statements to Patients Prohibited; Posting of School Diploma

Provided further, that it shall be unlawful for any dentist, as defined in this Act, in the practice of dentistry to make any oral or other misrepresentation, or false or misleading statement to any patient or prospective patient within the office of such dentist or out of it; and, provided further, that each dental office shall have posted at or near the entrance thereof, the name, the degree or degrees, and the school or schools attended of each dentist who is practicing or offering to practice said profession in said office.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 7.]

#### Art. 4549b. Consumer Information

The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the

information available to the general public and appropriate state agencies.

[Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

#### Art. 4549-1. Revocation and Suspension of License for Drug-Related Felony Conviction

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Acts 1981, 67th Leg., p. 108, ch. 52, § 6, eff. Sept. 1, 1981.]

#### Art. 4550. Records of the Board

Sec. 1. The Board shall keep records in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. Each dentist, dental hygienist, dental laboratory, and dental technician registered with the Board shall timely notify the Board of:

- (1) any change of address of the place of business of the dentist, hygienist, laboratory, or technician; and
- (2) any change of employers by the dentist, hygienist, laboratory, or technician.

The Board is timely notified if it receives the notice within 60 days after the date the change occurs.

Sec. 2. All of the records and files of the Texas State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and shall be divulged only to persons so investigated upon completion of said investigation.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 336, ch. 76, § 4, eff. Aug. 29, 1983.]

Section 2 of the 1977 amendatory act amended art. 4548e; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

#### Art. 4550a. Application, Fund, and Secretary or Director

Sec. 1. It shall be the duty of all persons holding a dental license or dental hygienist license issued by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee as determined by said Board according to the needs of said Board, such payment to be made by each person to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. A person holding a dental hygienist license must attach to the application proof that the person has successfully completed a course in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross not earlier than one year before the date on which the license must be renewed or, in the event that the person is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant holds a valid license or certificate to practice in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice within the State of Texas unless he in fact holds a license or certificate as such practitioner issued by the State Board of Dental Examiners, as provided by this law, and unless said license or certificate is in full force and effect; and provided further, that in any prosecution for unlawful practice such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice.

Sec. 2 If any person required to register as a practitioner under the provisions hereof shall fail or refuse to apply for such registration and pay such fee on or before March 1st of each calendar year, as

hereinabove set forth, his license or certificate to practice issued to him, shall thereafter stand suspended so that thereafter in practicing he shall be subject to the penalties imposed by law upon any person unlawfully practicing. A person may renew an unexpired license or certificate by paying to the Board before the expiration of the license or certificate the required renewal fee. If a person's license or certificate has been expired for not longer than ninety (90) days, the person may renew it by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license or certificate. If a person's license or certificate has been expired for longer than ninety (90) days but less than two years, the person may renew it by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license or certificate. If a person's license or certificate has been expired for two years or longer, the person may not renew it. The person may obtain a new license or certificate by submitting to reexamination and complying with the requirements and procedures for obtaining an original license or certificate. The Board must notify each licensee in writing of that licensee's impending license expiration 30 days prior to said expiration and shall attempt to obtain from the licensee signed receipt confirming receipt of notification. Provided, however, that the requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to licensees who are on active duty with the Armed Forces of the United States of America, and are not engaged in private or civilian practice.

Sec. 3. (a) All funds collected by the State Board of Dental Examiners under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Dental Registration Fund," and all expenditures from this fund shall be on order of the State Board of Dental Examiners, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in the General Appropriations Bills.

(b) The State Auditor shall audit the financial transactions of the Board during each fiscal year.

(c) On or before the first day of January each year, the Board shall make in writing a complete and detailed report accounting for all funds received and disbursed by the Board/commission during the preceding year to the governor and to the presiding officer of each house of the legislature.

(d) The State Board of Dental Examiners shall be authorized to employ and to compensate from such special funds employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all laws of the State prohibiting the unlawful practice of dentistry, and to carry out the other purposes for which said fund is hereby appropriated. Provided, that all such prosecutions shall be subject to the

direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

Sec. 4. (a) To aid the Board in performing its duties, the Board is hereby authorized to employ an Executive Secretary or Director who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum not less than Five Thousand Dollars (\$5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such other employees as may be needed to assist the Executive Secretary or Director in performing his duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President of the Board, Secretary of said Board, or an employee designated by the Board and upon warrants drawn by the Comptroller to be paid out of said fund.

(b) The Executive Director or his designee shall develop within one year of the effective date of this Act an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least ten (10) days prior to any public posting.

(c) The Executive Director or his designee shall develop within one year of the effective date of this Act a system of annual performance evaluations based on measurable job tasks. Within two years of the effective date of this Act all merit pay authorized by the Executive Director must be based on the system established by this section.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 8. Amended by Acts 1943, 48th Leg., p. 576, ch. 340, § 3; Acts 1947, 50th Leg., p. 752, ch. 371, § 2; Acts 1961, 52nd Leg., p. 1101, ch. 496, §§ 2, 5, eff. June 17, 1961; Acts 1971, 62nd Leg., p. 1391, ch. 375, §§ 2, 3, eff. Aug. 30, 1971; Acts 1977, 65th Leg., p. 353, ch. 174, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2663, ch. 461, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1977 amendatory act amended §§ 5 and 6 of art. 4551e; § 3 amended art. 4551; § 4 amended art. 4544; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Section 11(b) of the 1981 amendatory act provides:

"The requirements under Section 4(b), Article 4550a, Revised Civil Statutes of Texas, 1925, as amended as revised by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 4(c), Article 4550a, Revised Civil Statutes of Texas, 1925, as amended, as revised by this Act, that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

#### Art. 4550b. Expiration Dates of Registrations; Proration of Fees

The board by rule may adopt a system under which registrations expire on various dates during the year. Dates of license suspension and reinstatement after failure to pay the registration fee shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before March 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new registration date, the total registration fee is payable.

[Acts 1973, 63rd Leg., p. 629, ch. 266, § 29, eff. June 11, 1973.]

#### Art. 4551. Fees and Expenses

(a) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

- (1) dental examination fee: \$150;
- (2) dental hygiene examination fee: \$75;
- (3) annual renewal fees:
  - dentists: \$75,
  - dental hygienists: \$50,
  - dental labs: \$200;
- (4) reciprocal registration fee: \$150;
- (5) duplicate license fee: \$15.

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

[Acts 1925, S.B. 84. Amended by Acts 1935, 44th Leg., p. 606, ch. 244, § 9; Acts 1957, 55th Leg., p. 755, ch. 312, § 8; Acts 1971, 62nd Leg., p. 1393, ch. 375, § 4, eff. Aug. 30, 1971; Acts 1977, 65th Leg., p. 356, ch. 174, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 2, eff. Sept. 1, 1981.]

**Art. 4551a. 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, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(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, unless otherwise provided by law.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or

fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the Texas State Board of Dental Examiners.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 10. Amended by Acts 1943, 48th Leg., p. 576, c. 340, § 4; Acts 1951, 52nd Leg., p. 427, ch. 267, § 5; Acts 1953, 53rd Leg., p. 721, ch. 281, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 97, ch. 46, § 1; Acts 1959, 56th Leg., p. 668, ch. 309, § 4; Acts 1975, 64th Leg., p. 1836, ch. 566, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1955, ch. 778, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

**Art. 4551a-1. Repealed by Acts 1975, 64th Leg., p. 1837, ch. 566, § 2, eff. June 19, 1975**

See, now, art. 4551a.

**Art. 4551b. Exceptions**

The definition of dentistry as contained in Chapter 9 of Title 71, of the Revised Civil Statutes of Texas as amended<sup>1</sup> shall not apply to (1) members of the faculty of a reputable dental college or school where such faculty members perform their services for the sole benefit of such school or college; or to (2) 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; or to (3) Persons doing laboratory work on inert matter only, and who do not solicit or obtain work, by any means, 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 of, or have any interest whatsoever in, any dental office, practice or the receipts therefrom; or to (4) physicians and surgeons legally authorized to practice medicine as defined by the law of this state; or to (5) dental hygienists legally authorized to practice dental hygiene in this state and who practice dental hygiene in strict conformity with the laws of Texas regulating the practice of dental hygiene; or to (6) those persons who as members of an established church practice healing by prayer only; or to (7) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state; or to (8) Dental Health Service Corporations legally chartered under Subsection (1) of Article 2.01 of the Texas Nonprofit Corporation Act;<sup>2</sup> or to (9) dental interns, dental residents and dental assistants as defined and regulated by the Texas State Board of Dental Examiners in its rules and regulations. Nothing in this Act 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 1935, 44th Leg., p. 606, ch. 244, § 11; Acts 1951, 52nd Leg., p. 427, ch. 267, § 7; Acts 1953, 53rd Leg., p. 721, ch. 281, § 5; Acts 1957, 55th Leg., p. 755, ch. 312, § 7; Acts 1961, 57th Leg., p. 959, ch. 418, § 3; Acts 1969, 61st Leg., 2nd C.S., p. 112, ch. 7, § 2, eff. Sept. 19, 1969.]

<sup>1</sup> Article 4543 et seq.

<sup>2</sup> Article 1396-2.01, § A(1).

**Art. 4551b-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977**

**Art. 4551c. Restraining Practice in Violation of Law**

The actual practice of dentistry in violation of the laws of this State shall be enjoined at the suit of the State. In such suits for injunction it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may or is about to be, so unlawfully practicing dentistry in this State may be made a party defendant in said suit, which must be filed in the county in which defendant is practicing or threatening to practice dentistry. The Attorney General, the District Attorney of the district or the County Attorney of the county in which the unlawful acts complained of are taking place shall have the authority and it shall be their duty and the duty of each of them, to file such suits and to represent the State therein. If on final trial it be shown that the defendant has been unlawfully practicing dentistry or is about to practice dentistry unlawfully the court shall, by injunction, permanently enjoin the defendant from

practicing or continuing the practice of dentistry in violation of law; and disobedience of said injunction shall subject the defendant to the penalties provided by law for violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution and cumulative of all other remedies provided for the prevention of the unlawful practice of dentistry. Such causes shall be advanced for trial on the docket of the trial court and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as are applicable to other suits for injunction.

[Acts 1935, 44th Leg., p. 606, ch. 244, § 12. Amended by Acts 1953, 53rd Leg., p. 721, ch. 281, § 7.]

**Art. 4551c-1. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981**

**Art. 4551d. Rules and Regulations of Board**

(a) The Texas State Board of Dental Examiners may adopt and enforce such rules and regulations not inconsistent with the laws of this state as may be necessary for the performance of its duties and/or to ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

(b) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

[Acts 1951, 52nd Leg., p. 427, ch. 267, § 8. Amended by Acts 1971, 62nd Leg., p. 1741, ch. 508, § 1, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

**Art. 4551d(1). Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981**

**Art. 4551e. Dental Hygienists; Regulation and Licensing**

#### Definitions

Sec. 1. The term "dental hygiene," and the practice thereof as used in this Act shall mean and is hereby defined as (a) the removal of accumulated matter, tartar, deposits, accretions or stains, except mottled enamel stains, from the natural and restored surfaces of exposed human teeth, and restorations therefor in the human mouth and the polishing of said surfaces; (b) the making of topical application of drugs to the surface tissues of the human mouth and to the exposed surface of human teeth; (c) the making of Dental X-rays; and (d) such

other services and procedures as may be prescribed by the Texas State Board of Dental Examiners in its Rules and Regulations; provided, however, that such services, tasks, or procedures defined as dental hygiene are performed in compliance with Section 3 of this Article.

The term "dental hygienist," as used in this Act shall mean and is hereby defined as a person who practices "dental hygiene," who possesses the qualifications prescribed by the laws of this State, and who possesses a valid license and current receipt by the Texas State Board of Dental Examiners to so practice.

#### Qualifications

Sec. 2. A dental hygienist shall be not less than eighteen (18) years of age and a graduate of an accredited high school or hold a certificate of high school equivalency (GED) and be a graduate of a recognized and accredited school or college of dentistry or dental hygiene approved by the Texas State Board of Dental Examiners in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations promulgated by the Texas State Board of Dental Examiners.

#### Delegation of Duties

Sec. 3. (a) The Texas State Board of Dental Examiners may by rule permit a licensed dentist to delegate the performance of a service, task, or procedure to a licensed hygienist under the direct or general supervision of the dentist; provided, however, that the licensed hygienist shall not be permitted to diagnose a dental disease or ailment, prescribe any treatment or a regimen thereof, prescribe, order, or dispense medication, or perform any procedure which is irreversible or which involves the intentional cutting of the soft or hard tissue by any means. Nothing herein shall be construed to prevent a dentist from authorizing a dental hygienist employed by said dentist to instruct and educate a patient in good oral hygiene technique or to provide a medication as ordered by said dentist to said patient.

(b) For the purposes of this Act, direct supervision shall mean that the supervising dentist shall, at all times during the performance of the permitted services and procedures, be physically present on the premises of the dental office.

(c) For the purposes of this Act, general supervision shall mean that the supervising dentist shall be physically present on the premises of the dental office no less than eight hours per week and shall verify the quality of the permitted services and procedures performed by a manner or method that

the dentist deems appropriate; provided that the permitted services and procedures are performed only on patients of record and the supervising dentist has examined the patient at least once within the preceding 12-month period.

(d) All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, by whom he or she must be employed, except where employed by schools, hospitals, state institutions, public health clinics or other institutions approved by the Texas State Board of Dental Examiners. It shall be unlawful for more than two dental hygienists to practice dental hygiene for one dentist at any one time, and it shall be unlawful for a dentist legally engaged in the practice of dentistry in this state to employ, under any contractual relationship whatsoever, more than two dental hygienists to practice dental hygiene at any one time.

#### Governing Board

Sec. 4. The Texas State Board of Dental Examiners is hereby designated and empowered as the official state agency on all matters concerning dental hygienists and the practice of dental hygiene, and it shall be the duty of such Board to administer the provisions of this Act. The Board shall also adopt, promulgate and enforce all rules and regulations, including rules of professional conduct for dental hygienists, as the Board may deem necessary and advisable and not inconsistent with the provisions hereof, but to carry out the purposes of this Act and for its enforcement.

#### Dental Hygiene Advisory Committee

Sec. 4A. (a) The Dental Hygiene Advisory Committee is hereby established.

(b) The Dental Hygiene Advisory Committee shall consist of not more than six dental hygienists appointed by the Texas State Board of Dental Examiners. A member of such advisory committee shall serve for a term of one year expiring on May 1 of each year.

(c) The advisory committee shall advise the Texas State Board of Dental Examiners on matters relating to dental hygiene. In order to assure that the advisory committee is able to exercise properly its advisory powers, the Texas State Board of Dental Examiners shall provide the advisory committee with timely notice of all Board meetings and a copy of the minutes of all Board meetings. In addition, the Board shall not adopt any rule relating to the practice of dental hygiene unless said proposed rule has been submitted to the advisory committee for review and comment at least thirty (30) days prior to the adoption of said rule.

**Examination**

Sec. 5. The Texas State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for licensure as dental hygienists in this State. All applicants for examination shall pay a fee set by the Board to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. An applicant must attach to the application proof that the applicant has successfully completed a course in cardiopulmonary resuscitation given or approved by the American Heart Association or American Red Cross not earlier than one year before the date on which the applicant submits the application or, in the event that the applicant is not physically capable of successfully completing such training, a written statement executed by either a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross that describes such physical incapacity. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a license permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

**Emergency Care**

Sec. 6. A dental hygienist who administers cardiopulmonary resuscitation or other emergency care in an emergency situation is not liable in damages unless the emergency care is performed in a wilful or wantonly negligent manner.

Secs. 7 to 12. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(2), eff. Sept. 1, 1981.

**Certificate Required; Practice Under Name Only**

Sec. 13. It shall be unlawful for any person to practice or offer to practice dental hygiene in this State without having first obtained a certificate so

to do from the Texas State Board of Dental Examiners authorized to grant such certificate, or to practice or offer to practice dental hygiene under any name other than that appearing on such previously granted or renewed certificate.

Sec. 14. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(2) eff. Sept. 1, 1981.

**Exceptions**

Sec. 15. The provisions of this Act shall not apply to: (1) dentists duly licensed and authorized to practice dentistry within this state and who are actively engaged in such practice except as provided in Section 3 of this Act; (2) physicians and surgeons legally authorized to practice medicine as defined by the law of this state; or (3) employees of a dentist who make dental x-rays in the dental office and under the supervision of such dentist or dentists legally engaged in the practice of dentistry in this state.

**Practice Not Violative of Dentistry Laws**

Sec. 16. Any person legally engaged in the practice of Dental Hygiene as defined in this Act shall not be considered in violation of the laws of Texas regulating the practice of dentistry.

**Courses of Study; Law Not Applicable to University School of Dentistry**

Sec. 17. Section 20 of Article 5, of House Bill No. 426, Acts of the Regular Session of the 52nd Legislature,<sup>1</sup> same being limitation on courses of study, is hereby declared not applicable to The University of Texas School of Dentistry.

<sup>1</sup> Acts 1951, 52nd Leg., p. 1469, ch. 499, art. 5, § 20.

**Penalty**

Sec. 18. Any person who shall violate any provision of this Act shall be fined not less than One Hundred (\$100.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, to be confined in jail from one (1) month to one (1) year, or both. Each day of such violation shall be a separate offense.

**Repealer**

Sec. 19. All laws or parts of laws in conflict herewith are hereby repealed.

**Partial Invalidity**

Sec. 20. If any Article, section, sub-section, sentence, clause, phrase, word or combination of words of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and each section, sub-section, sentence, clause, phrase, word or combination of words hereof, irrespective of the fact that any one or more of the

sections, sub-sections, sentences, clauses, phrases or words be declared unconstitutional.

[Acts 1951, 52nd Leg., p. 843, ch. 475. Amended by Acts 1957, 55th Leg., p. 755, ch. 312, §§ 1 to 5; Acts 1961, 57th Leg., p. 1101, ch. 496, § 4, eff. June 17, 1961; Acts 1969, 61st Leg., 2nd C.S., p. 112, ch. 7, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 1393, ch. 375, § 5, eff. Aug. 30, 1971; Acts 1977, 65th Leg., p. 355, ch. 174, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 615, ch. 225, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 970, ch. 365, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 790, ch. 291, § 63, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2839, ch. 763, §§ 4, 10(2), eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2665, ch. 461, §§ 2, 3, eff. Sept. 1, 1983.]

Section 4 of the 1983 amendatory act provides:

"This Act applies to a person taking an examination that will be held on or after the effective date of this Act."

#### Art. 4551e-1. Permitted Duties for Dental Assistants

A dental assistant is one who is employed by and works in the office of a licensed, registered, and practicing dentist and who performs one or more of the following acts or services under the direct supervision, direction, and responsibility of such dentist, to wit:

- (1) service as the dentist's chairside assistant;
- (2) topical applications of drugs prescribed by the dentist;
- (3) exposure and development of dental radiographs under the direct or general supervision of the dentist;
- (4) taking and recording of pulse, blood pressure, and temperature;
- (5) preliminary inspection of mouth and teeth using floss and mouth mirror only and charting of the findings;
- (6) receipt of removable dental prostheses for cleaning and repair;
- (7) placement or removal of celluloid or plastic strips between teeth for subsequent placement of filling by the dentist, placement or removal of temporary nonmetallic separating devices, placement or removal of preformed crowns or bands for determining size only; the dentist shall shape, festoon, contour, fit, seat, or cement all crowns and bands;
- (8) placement of ligature wires only on those sections of arch wires which have been securely seated in the bracket or tube by the dentist;
- (9) removal of ligatures, cutting and tucking ligatures, and removal of tension devices and any loose or broken bands or arch wires;
- (10) placement in the patient's mouth of a retaining device usually or normally placed in the mouth of a patient by such patient; a retaining device not controllable by the patient shall only be placed or activated by the dentist;
- (11) placement or removal of rubber dam;
- (12) removal of sutures;

(13) removal of cement, food, and loose debris from dental restorations and appliances from the tooth crown and soft tissues with hand instruments or consumer items available to the public;

(14) insertion of temporary medicinal fillings with hand instruments under the direct or general supervision of the dentist; this does not include alloy, gold, plastics, porcelain, composites, or other restorative material;

(15) removal of temporary medicinal fillings with hand instruments, such fillings not to include alloy, gold, plastics, porcelain, composites, or other restorative material;

(16) removal of socket dressing;

(17) removal of periodontal pack;

(18) making of dental plaque or oral mucosal smears;

(19) application of topical fluoride immediately after oral prophylaxis by the dentist or the dental hygienist.

Note A: The fitting, adaptation, seating, and cementation of any fixed dental appliance or restoration, including but not limited to inlays, crowns, bands, space maintainers or retainers, habit devices, or splints, whether temporary or permanent, shall only be done by the dentist.

[Acts 1981, 67th Leg., p. 2842, ch. 763, § 5, eff. Sept. 1, 1981.]

#### Art. 4551f. Dental Technicians and Laboratories; Regulation of Acts and Services

##### Dental Technician; Definition

(1). A Dental Technician is any person who makes, assembles, fabricates, processes, constructs, creates, produces, reproduces, duplicates, repairs, relines, adjusts, or fixes, or who offers or undertakes in any manner, or who aids or abets or causes another person to offer, or undertake in any manner to make, assemble, fabricate, process, construct, create, produce, reproduce, duplicate, repair, reline, adjust, or fix any prosthetic or orthodontic dental appliance, any full or partial denture, any fixed or removable dental bridge, any dental plate of false teeth, any artificial restoration, or any substitute or corrective device for the human teeth, gums, jaws, alveolar process or any part thereof; or who offers or undertakes in any manner, or who aids or abets or causes another person to offer or undertake in any manner, to fit any such dental appliance, denture, bridge, plate, false teeth, artificial restoration, or substitute, or corrective device for the human teeth, gums, or jaws, to or on any dental model, impression, or cast of the human teeth, gums, jaws, alveolar process or any part thereof.

##### Dental Laboratory; Definition

(2). A Dental Laboratory is any place where a person offers or undertakes to perform or accom-

plish any act or service listed in Section 1 of this Act.

**Necessity of Work-order or Prescription; Requisites; Filing; Inspection of Records**

(3). (a) It shall be unlawful from and after the effective date of this Act for a dental technician, or for an owner, manager or employee of a dental laboratory, to accept from or deliver to any person or place, or to aid or abet any person so to do, any article, material, or thing upon or with which any act or service listed in Section 1 of this Act is, will be, or has been offered, ordered, undertaken, or performed in any manner except to or from a dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where he actually maintains his dental office and engages in the practice of dentistry or to or from an employee of such dentist for and on behalf of such dentist only and unless such dental laboratory owner, manager, or technician has been furnished with a written work-order or prescription by such dentist which work-order or prescription shall contain the (1) signature and Dental License number of such dentist; (2) the date such was signed; (3) the name and address of the patient for whom the act or service is ordered; (4) a description of the kind and type of act, service, or material ordered. Any farm-outs of the acts or services listed in Section 1 of this Act shall be accompanied by a written statement that such a prescription or work-order is on file in the laboratory originally receiving such order.

(b) It shall be the duty of each dental laboratory owner and manager to keep, for a period of two (2) years, the work-order or prescription furnished as hereinbefore required, in alphabetical order in a separate file or place at and on the premises of each such dental laboratory as a part of the records of such dental laboratory.

(c) During regular office hours the premises of each dental laboratory and all dental laboratory and dental technician records pertaining to work-orders, dentists' prescriptions, and farm-out records of each dental technician and of the owner or manager of each dental laboratory shall be open and available for inspection by the members, officers, employees, investigators, and agents of the Texas State Board of Dental Examiners for the purposes of enforcing the provisions of this Act.

**Transportation and Shipment of Dental Material**

(4). Nothing in this Act shall prohibit those who are subject to and in compliance with the provisions of this Act from using the services of the United States Mail, Railway Express Agency, Western Union, Messengers, or common or contract carriers to accept from, handle, ship, transport, or deliver to any dentist or another dental laboratory, any article, material, or thing in any form or state of completion upon or with which any act or service listed in Section 1 of this Act is, will be, or has been

offered, ordered, undertaken, or performed in any manner.

**Exemption**

(5). A dentist legally engaged in the practice of dentistry in this state who performs for himself only any of the services listed in Section 1 of this Act shall be exempt from the provisions of this Act.

**Registration; Offenses**

(6). (a) It shall be the duty of the owner, owners, and manager of each dental laboratory in this State to annually apply to and register each dental laboratory in this State with which he has any connection or interest with the Texas State Board of Dental Examiners and to pay in connection with such application a fee as determined by the Board according to the needs of the Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require, including the names and addresses of each dental technician employed by said dental laboratory.

(b) From and after the effective date of this Act, it shall be unlawful for anyone other than a dental laboratory or dental technician duly registered hereunder, to fill any prescription for a dental prosthetic appliance or the repair thereof, to be delivered by a licensed dentist in this State to a dental patient. At the time said dental prosthetic appliance is delivered to the dentist, the dental laboratory which prepared or repairs the appliance shall provide to the dentist in writing its registration number as assigned by the Texas State Board of Dental Examiners.

(c) It shall be unlawful for any person, firm, association, corporation, or combination thereof to offer or undertake in any manner to operate a dental laboratory or to do or perform any of the acts described in this Article in this State without having first obtained a certificate from the Texas State Board of Dental Examiners so to do.

(d) The Board shall have the authority to commence in its name injunctive proceedings to enjoin any person, firm, association, corporation, or combination thereof in violation of this Act.

(e) The Board may refuse to issue or to renew or may suspend or revoke any certificate or license provided in this Act where, after notice and hearing, it has been determined by the Board that any person requesting or possessing such license or certificate has violated any of the provisions of this Act, and the procedures to be followed in any complaint or disciplinary action, including the right of appeal for failure to issue or to renew or the suspension or revocation of a certificate or license hereunder, shall be the same as those prescribed for dentists and dental hygienists by Sections 3, 4, 5, and 6, Article 4549, Revised Civil Statutes of Texas, 1925, as amended.

(f) From and after the effective date of this Act, it shall be unlawful for a dentist licensed in this State knowingly to prescribe, order, or receive any

dental prosthetic appliance which is to be prepared or repaired by a dental laboratory not registered as required herein.

(g) The Texas State Board of Dental Examiners shall have no rule-making authority as it applies to the dental laboratories except for the following provisions: processing applications for registration; prescribing the form and content of applications and other forms necessary to administer this Article; prescribing fees in accordance with this Article and prescribing procedures for renewal of registrations; and monitoring any records as necessary to administer this Article.

[Acts 1959, 56th Leg., p. 668, ch. 309, § 1. Amended by Acts 1973, 63rd Leg., p. 128, ch. 65, § 2, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 2843, ch. 763, § 6, eff. Sept. 1, 1981.]

Sections 3 to 5 of the 1973 Act provided:

"Sec. 3. The income received from fees authorized by this Act is hereby appropriated to the Texas State Board of Dental Examiners for the fiscal years ending 1974 and 1975 for its expenditure for the implementation of this Act and for the purposes listed in the General Appropriations Bill as passed by the 63rd Legislature.

"Sec. 4. All laws or parts of laws in conflict herewith are hereby repealed.

"Sec. 5. If any article, section, subsection, sentence, clause, phrase, word, or combination of words of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed this Act and each section, subsection, sentence, clause, phrase, word, or combination of words hereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, phrases, or words be declared unconstitutional."

#### Art. 4551g. Prescription Required

From and after the effective date of this Act every dentist requiring the making, fabricating, processing, constructing, producing, reproducing, duplicating, repairing, relining, or fixing of any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof, shall prepare and deliver a prescription or work-order for same directed to the person, firm, or association, or other business entity which is to perform such work or service and such work-order or prescription shall contain (1) the signature and Texas dental license number of such dentist; (2) the date such was signed; (3) the name and address of the patient for whom the act or service is ordered; and (4) a description of the kind and type of act, service, or material ordered. It shall be the duty of each dentist to keep a copy of each work-order or prescription for a period of two years, and maintain a separate file therefor in his dental office which shall be available for inspection by the officers, agents, or employees of the Texas State Board of Dental Examiners.

[Acts 1959, 56th Leg., p. 668, ch. 309, § 2.]

Art. 4551g-1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

#### Art. 4551h. Narcotic Drugs, Dangerous Drugs, Controlled Substances

It shall be unlawful for a dentist to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person, narcotic drugs, dangerous drugs or any controlled substances not necessary or required, or where the use or possession of same would promote or further addiction thereto, or to aid, abet, or cause any of same to be done in any manner. For purposes of this article the terms narcotic drugs, dangerous drugs, and controlled substances shall mean those defined or recognized as such by any law of the State of Texas or of the United States.

[Acts 1961, 57th Leg., p. 1101, ch. 496, § 1, eff. June 17, 1961. Amended by Acts 1977, 65th Leg., p. 615, ch. 225, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 336, ch. 76, § 5, eff. Aug. 29, 1983.]

Sections 2 and 3 of the 1977 amendatory act amended §§ 2 and 3 of art. 4551e; § 4 repealed arts. 4546, 4546a, 4551b-1, and 4551g-1; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

#### Art. 4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees

In the absence of fraud, conspiracy, or malice, the elected members of the dental peer review, judicial or grievance committees of a dental society or association which has not less than 75 percent of the licensed dentists in such area as members, shall not be subject to suit or suits for damages for alleged injury, wrong, loss, or damage for and while performing duties of investigating disagreements or complaints, holding hearings to determine facts, or in making evaluations, recommendations, decisions, or awards involving dentists, dental patients and/or third parties. The Texas State Board of Dental Examiners shall determine the various areas and shall certify the percentage requirements from its records of the dental licensees in such area or areas. This immunity is enacted to relieve and protect the persons named herein from being harassed and threatened with legal action while attempting to perform required duties.

[Acts 1977, 65th Leg., p. 1150, ch. 436, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act added art. 4551j; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitu-

tional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

#### Art. 4551j. Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas State Board of Dental Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of any of said persons performing assigned, designated, official, or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Acts 1977, 65th Leg., p. 1151, ch. 436, § 2, eff. Aug. 29, 1977.]

#### Art. 4551k. Case Histories and Physical Evaluations

A qualified dentist is authorized to take complete case histories and perform complete physical evaluations, which may be used for the purpose of admitting patients to hospitals for the practice of dentistry, to the extent such activities are necessary in the exercise of due care in conjunction with the practice of dentistry as defined by this Chapter, provided further that no dentist shall be automatically entitled to membership on the medical staff or to the exercise of any clinical privileges at a hospital merely because he has a license to practice dentistry or because he is authorized to take case histories and perform physical evaluations as stated herein nor shall any dentist be denied membership on the medical staff or the right to the exercise of any clinical privileges at a hospital on the ground that the dentist holds a license to practice dentistry in this state rather than a license to practice medicine in this state.

[Acts 1981, 67th Leg., p. 2843, ch. 763, § 7, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 337, ch. 76, § 6, eff. Aug. 29, 1983.]

#### Art. 4551l. Equivalency Data

The Texas State Board of Dental Examiners shall annually collect and licensed dentists shall provide their name, age, practice location(s), hours worked per week, weeks worked per year, and number and type of auxiliaries employed. Such information shall be compiled by practice composition and by county in report form with overall full-time equivalency tabulations as defined by the Department of Health and Human Services.

[Acts 1981, 67th Leg., p. 2844, ch. 763, § 8, eff. Sept. 1, 1981.]

## CHAPTER TEN. OPTOMETRY

### ARTICLE 1. GENERAL PROVISIONS

#### Art.

- 4552-1.01. Short Title.
- 4552-1.02. Definitions.

### ARTICLE 2. TEXAS OPTOMETRY BOARD

- 4552-2.01. Board Created.
- 4552-2.01a. Application of Sunset Act.
- 4552-2.02. Qualifications of Members.
- 4552-2.03. Terms of Office.
- 4552-2.04. Organization of Board.
- 4552-2.05. Meetings.
- 4552-2.06. Records.
- 4552-2.07. Committees.
- 4552-2.08. Employees of Board.
- 4552-2.09. Suit for Injunction.
- 4552-2.10. Proceedings; Subpoenas; Oaths.
- 4552-2.11. Bond of Secretary-Treasurer.
- 4552-2.12. Seal; Design of License.
- 4552-2.13. Office.
- 4552-2.14. Rules and Regulations.
- 4552-2.15. Disposition of Fees.

### ARTICLE 3. EXAMINATIONS

- 4552-3.01. Must Pass Examination.
- 4552-3.02. Application.
- 4552-3.03. Fees.
- 4552-3.04. Notice of Examination.
- 4552-3.05. Subjects of Examination.
- 4552-3.06. Conduct of Examination.
- 4552-3.07. Those Passing Entitled to License.

### ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

- 4552-4.01. Annual Renewal.
- 4552-4.01A. Expiration Dates of Licenses; Proration of Fees.
- 4552-4.01B. Educational Requirement for Renewal.
- 4552-4.02. Renewal After Discharge From Military.
- 4552-4.03. Lost or Destroyed License.
- 4552-4.04. Revocation, Suspension, etc.

### ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS

- 4552-5.01. Display of License.
- 4552-5.02. Recordation of License.
- 4552-5.03. Optometry Register.
- 4552-5.04. Practice Without License; Fraud; House-to-House.
- 4552-5.05. Treating Diseased Eyes.
- 4552-5.06. Spectacles as Premiums.
- 4552-5.07. Prescribing Without Examination.
- 4552-5.08. Practice While Suffering from Contagious Disease.
- 4552-5.09. Deceptive Advertising.
- 4552-5.10. Board Rules Restricting Advertising.
- 4552-5.11. Control of Optometry Prohibited.
- 4552-5.12. Basic Competence.
- 4552-5.13. Professional Responsibility.
- 4552-5.14. Lease of Premises from Mercantile Establishment.
- 4552-5.15. Relationships of Optometrists with Dispensing Opticians.
- 4552-5.16. Leasing Space on Percentage Basis; Transferring Accounts Receivable.
- 4552-5.17. Exceptions.

Art.  
4552-5.18. Practice of Optometry Without a License.  
4552-5.19. Penalty.

#### ARTICLE 6. MISCELLANEOUS PROVISIONS

4552-6.01. Board of Examiners Abolished.  
4552-6.02. Severability.  
4552-6.03. Repealer.  
4552-6.04. Effective Date.

*Former Chapter 10, entitled Optometry, which consisted of articles 4552 to 4566-1, was repealed by Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.03 (art. 4552-6.03).*

*Articles 4552-1.01 to 4552-6.04, incorporated in Chapter 10, entitled Optometry, were enacted by Acts 1969, 61st Leg., p. 1298, ch. 401.*

#### DISPOSITION TABLE

The following table shows the disposition of the repealed articles of former chapter 10 in the new chapter 10.

Former Articles	New Articles
4552	4552-1.02
4553	4552-2.01, 4552-2.02
4554	4552-2.03
4555	4552-2.04, 4552-2.05
4556	4552-2.06 to 4552-2.14
4557	4552-3.01, 4552-3.02
4558	4552-3.05
4559	4552-3.04, 4552-3.06, 4552-3.07
4560	Repealed 1939
4561	4552-5.02
4562	4552-5.03
4563	4552-4.04
4564	4552-5.01
4565	4552-2.15, 4552-3.03
4565a	4552-4.01 to 4552-4.03
4565b	Repealed 1939
4565c	4552-1.02
4565d	4552-1.02
4565e	4552-1.02, 4552-5.17
4565f	4552-5.07, 4552-5.08
4565g	4552-5.10
4565h	4552-5.06
4566	4552-5.17
4566-1	4552-5.16

#### ARTICLE 1. GENERAL PROVISIONS

##### Art. 4552-1.01. Short Title

This Act may be cited as the Texas Optometry Act.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 1.01, eff. Sept. 1, 1969.]

##### Art. 4552-1.02. Definitions

As used in this Act:

(1) 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 nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this state. Nothing herein shall be construed to prevent selling ready-to-wear spectacles or eyeglasses as merchandise at retail, nor to prevent simple repair jobs.

(2) "Ascertaining and measuring the powers of vision of the human eye" shall be construed to include:

(A) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

(B) The employment of any objective or subjective means to determine the accommodative or refractive condition or the range or powers of vision of muscular equilibrium of the human eye, or

(C) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this subdivision; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this state.

(3) "Fitting lenses or prisms" shall be construed to include:

(A) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof; provided, however, that nothing in this Act shall be construed so as to prevent an ophthalmic dispenser, who does not practice optometry, from measuring interpupillary distances or from making facial measurements for the purpose of dispensing, or adapting ophthalmic prescriptions or lenses, products and accessories in accordance with the specific directions of a written prescription signed by a licensed physician or optometrist; provided, however, the fitting of contact lenses shall be done only by a licensed physician or licensed optometrist as defined by the laws of this state, but the lenses may be dispensed by an ophthalmic dispenser



on a fully written contact lens prescription issued by a licensed physician or optometrist, in which case the ophthalmic dispenser may fabricate or order the contact lenses and dispense them to the patient with appropriate instructions for the care and handling of the lenses, and may make mechanical adjustment of the lenses, but shall make no measurements of the eye or the cornea or evaluate the physical fit of the lenses, by any means whatsoever; provided that the physician or optometrist who writes or issues the prescription shall remain professionally responsible to the patient.

(B) The adaption or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

(C) It shall be construed as a violation of this Act for any person not a licensed optometrist or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this Article.

(4) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(5) For the purposes of this Act, "dispensing optician" or "ophthalmic dispenser" means a person not licensed as an optometrist or physician who sells or delivers to the consumer fabricated and finished spectacle lenses, frames, contact lenses, or other ophthalmic devices prescribed by an optometrist or physician.

(6) Nothing in this Act shall be construed as preventing a licensed optometrist from performing vision therapy, hand-eye coordination exercises, visual training, and developmental vision therapy, or from the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 1.02, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 1, eff. Aug. 31, 1981.]

## ARTICLE 2. TEXAS OPTOMETRY BOARD

### Art. 4552-2.01. Board Created

The Texas Optometry Board is created. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.01, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

### Art. 4552-2.01a. Application of Sunset Act

The Texas Optometry Board is subject to the Texas Sunset Act as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

[Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.039, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

### Art. 4552-2.02. Qualifications of Members

(a) Six members must be licensed optometrists who have been residents of this state actually engaged in the practice of optometry in this state for the period of five years immediately preceding their appointment. Three of the six optometrist members must be affiliated with the Texas Optometric Association, Inc., and the other three optometrist members must be affiliated with the Texas Association of Optometrists, Inc. A board member may not simultaneously be a member of both the Texas Optometric Association, Inc., and the Texas Association of Optometrists, Inc.

(b) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) A member or employee of the board may not be:

(1) a member of the faculty of any college of optometry, an agent, paid consultant, officer, or employee of any wholesale optical company, or have a financial interest in such a college or company;

(2) an officer, employee, or paid consultant of a trade association in the health-care industry; or

(3) related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the field of health care.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(e) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section for appointment to the board;

(2) does not maintain during his service on the board the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the board; or

(3) fails to attend at least half of the regularly scheduled board meetings held on calendar year, excluding meetings held while the person was not a board member.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(g) It shall be the duty of any board member who no longer maintains the qualifications required by Subsection (a), (b), (c), or (d) of this section to immediately inform the governor and the attorney general of that fact and to resign from the board.

(h) Upon complaint by any person to the attorney general that a member of the board no longer maintains the qualifications required by Subsection (a), (b), (c), or (d) of this section, the attorney general shall investigate the complaint; and if the attorney general determines that there is reason to believe the complaint is valid, the attorney general shall institute suit in Travis County district court to have the board member in question removed from office.

(i) No person may serve more than a total of 12 years on the board. Time served on the board prior to September 1, 1981, shall not count toward this limitation.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.02, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Subsections (a) to (e) of § 4 of the 1981 amendatory act provide:

"(a) A person who holds office as a member of the Texas Optometry Board on the effective date of this Act shall continue to hold the office for the term for which the member was originally appointed and shall for the balance of the member's current term be deemed to satisfy the qualifications for office set forth in Section 2.02, Texas Optometry Act, as amended (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), if the member satisfies the qualifications for office under the Texas Optometry Act as it existed immediately prior to the effective date of this Act.

"(b) After the effective date of this Act, the governor shall appoint two initial public members and one initial optometrist member affiliated with the Texas Association of Optometrists, Inc., to the board. The governor shall designate one public member for a term expiring January 31, 1985, one public member for a term expiring January 31, 1987, and the initial optometrist member affiliated with the Texas Association of Optometrists, Inc., for a term expiring January 31, 1985.

"(c) After January 31, 1983, the governor shall appoint one optometrist member affiliated with the Texas Association of Optometrists, Inc., to fill the office of an incumbent optometrist member whose term expires January 31, 1983. After January 31, 1983, the governor shall appoint one public member to fill the office of an incumbent optometrist member whose term expires January 31, 1983.

"(d) After January 31, 1985, the successor of one of the incumbent optometrist members whose terms expire January 31, 1985, shall be appointed by the governor for a term expiring January 31, 1989.

"(e) Successors of board members whose terms expire on January 31, 1981, shall be appointed by the governor under the optometry laws existing immediately prior to the effective date of this Act."

#### Art. 4552-2.03. Terms of Office

The members of the board hold office for staggered terms of six years, with the terms of one member affiliated with the Texas Optometric Association, Inc., one member affiliated with the Texas Association of Optometrists, Inc., and one public member expiring on January 31 of each odd-numbered year.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.03, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

For transition provisions of the 1981 amendatory act relating to terms of office, see note under art. 4552-2.02.

#### Art. 4552-2.04. Organization of Board

Every two years the board shall elect a chairman, a vice-chairman, and a secretary-treasurer, provided that the chairman and vice-chairman shall not be from the same group of the three groups represented on the board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.04, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-2.05. Meetings

(a) The board shall hold regular meetings at least twice a year at which examinations of applicants for licenses shall be given.

(b) Special meetings shall be held upon the request of five members of the board or upon the call of the chairman.

(c) Five members constitute a quorum for the transaction of business. If a quorum is not present on the day set for any meeting, those present may adjourn from day to day until a quorum is present, but this period may not be longer than three successive days.

(d) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.05, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-2.06. Records

(a) The board shall preserve a record of its proceedings in a book kept for that purpose.

(b) A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the

school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The secretary of the board shall on or before March 1 of each year send a certified copy of said record to the secretary of state for permanent record. A certified copy of said record with the hand and seal of the secretary of said board to the secretary of state, shall be admitted as evidence in all courts.

(c) Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary of the board.

(d) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(e) Within a reasonable time after the completion of an examination of each patient, the examining optometrist shall present to the patient a prescription, a bill, or a receipt containing the license number and name of the optometrist performing the examination. Individual professional liability of the examining optometrist is not affected by this subsection.

(f) The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.06, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-2.07. Committees

The board shall have power to appoint committees from its own membership. The duties of such committees shall be to consider such matters pertaining to the enforcement of this Act and the regulations promulgated in accordance therewith, as shall be referred to said committees, and they shall make recommendations to the board with respect thereto.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.07, eff. Sept. 1, 1969.]

#### Art. 4552-2.08. Employees of Board

(a) The board shall have the power to employ an executive director as the executive head of the agency and to employ the services of stenographers, secretaries, inspectors, legal assistants, and other personnel necessary to carry out the provi-

sions of this Act. In all hearings before the board, and in all suits in the courts in which the board is a party, the staff attorney employed by the board may at the board's discretion be an attorney of record for the board; provided, however, that when the county attorney, district attorney, or attorney general is also an attorney of record, the board's staff attorney shall be subordinate to such county attorney, district attorney, or attorney general, and nothing herein shall be construed to deprive, limit, or exclude the county attorney, district attorney, or attorney general from their right to appear as the board's attorney in the respective courts to which they are assigned by the constitution to represent the state. In all suits in which the board is a party, the board's staff attorney may also be appointed as special assistant to the county attorney, district attorney, or attorney general, provided, however, that such members of the board's staff shall be paid by the board.

(b) The executive director of the board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive director of the board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.08, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Section 4(g) of the 1981 amendatory act provides:

"The requirements under Subsections (b) and (c), Section 2.08, Texas Optometry Act (Article 4552-2.08, Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented within one year of the effective date of this Act. The requirement under Subsection (c), Section 2.08, that merit pay be based on the performance evaluation system shall be implemented within two years of the effective date of this Act."

#### Art. 4552-2.09. Suit for Injunction

The board may sue in its own name to enjoin the violation of any provision of this Act. This remedy is in addition to any other action, proceeding, or remedy authorized by law.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.09, eff. Sept. 1, 1969.]

#### Art. 4552-2.10. Proceedings; Subpoenas; Oaths

The board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination

shall be founded upon sufficient legal evidence to sustain it.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.10, eff. Sept. 1, 1969.]

**Art. 4552-2.11. Bond of Secretary-Treasurer**

Before entering upon the discharge of the duties of his office, the secretary-treasurer of the board shall give such bond for the performance of his duties as the board may require, the premium of which is to be paid from funds in the possession of the board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.11, eff. Sept. 1, 1969.]

**Art. 4552-2.12. Seal; Design of License**

The board shall adopt an official seal and a license of suitable design.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.12, eff. Sept. 1, 1969.]

**Art. 4552-2.13. Office**

The board shall maintain an office where all the permanent records are kept.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.13, eff. Sept. 1, 1969.]

**Art. 4552-2.14. Rules and Regulations**

(a) The board may by a majority vote of a quorum promulgate procedural rules and regulations. The board may by a majority vote of each of the three groups represented on the board promulgate substantive rules and set fees. However, the board may not promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or make any rule or regulation which is unreasonable, arbitrary, capricious, or illegal. The board may not promulgate any substantive rule prior to submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that subsection, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.14, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Sections 4(f) and 5 of the 1981 amendatory act provide:

"Sec. 4. (f) The portion of Section 2.14, Texas Optometry Act, as amended (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes), which authorizes the board to promulgate substantive rules shall not become effective until January 31, 1983.

"Sec. 5. A rule adopted by the Texas Optometry Board before the effective date of this Act that conflicts with the Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes),

as amended by this Act, is void. Within 90 days after the effective date of this Act, the board shall repeal the rule."

**Art. 4552-2.15. Disposition of Fees**

(a) Except as provided by Subsection (b) of this section, the fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the board, and the remainder shall be applied, by order of the board, to compensate members of the board. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. Each board member shall make out, under oath, a complete statement of the number of days engaged and the amount of his expenses when presenting same for payment.

(b) The funds realized from annual renewal fees shall be distributed as follows: \$10 of each renewal fee collected by the board shall be dedicated to the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the School of Optometry.

The remainder of the fees attributable to annual renewal fees and all other fees payable under this Act shall be placed in the state treasury to the credit of a special fund to be known as the "Optometry Fund," and the comptroller shall upon requisition of the board from time to time draw warrants upon the state treasurer for the amounts specified in such requisition; provided, however, the fees from this optometry fund shall be expended as specified by itemized appropriation in the General Appropriations bill and shall be used by the Texas Optometry Board, and under its direction in carrying out its statutory duties.

(c) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(d) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed annual report accounting for all funds received and disbursed by the board during the preceding year.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 2.15, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**ARTICLE 3. EXAMINATIONS**

**Art. 4552-3.01. Must Pass Examination**

Every person hereafter desiring to be licensed to practice optometry in this state shall be required to

pass the examination given by the Texas Optometry Board. However, the board may adopt substantive rules to authorize the waiver of this or other license requirements for an applicant with a valid license from another state having, at the time of the applicant's initial licensure in that state, license requirements and continuing education requirements substantially equivalent to those currently required in this state.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.01, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-3.02. Application**

(a) The applicant shall make application, furnishing to the secretary of the board, on forms to be furnished by the board, satisfactory sworn evidence that he has attained the age of majority, is of good moral character, and has at least graduated from a first grade high school, or has a preliminary education equivalent to permit him to matriculate in The University of Texas, and that he has attended and graduated from a reputable university or college of optometry which meets with the requirements of the board, and such other information as the board may deem necessary for the enforcement of this Act.

(b) A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be equivalent to not less than six terms of eight months each, and approved by the board. Provided, however, that the provisions of this subsection shall only apply to those students enrolling in school from and after the effective date of this Act.

(c) Any person who has met all requirements of Subsection (a) above shall be eligible to take the examination given by the Texas Optometry Board. The board may cancel, revoke, or suspend the license of such person if it finds that such licensee has violated any provision of Section 4.04 of this Act.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.02, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 2492, ch. 815, § 1, eff. June 8, 1971; Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-3.03. Fees**

The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1. Examination	\$ 55
2. Re-examination	20
3. License	40
4. License renewal	135
5. Lost license	15

The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance

with this requirement. If anyone successfully passing the examination and meeting the requirements of the board has not paid the fee for issuance of a license within 90 days after having been notified by registered mail at the address given on his examination papers, or at the time of the examination that he is eligible for same, such person shall by his own act have waived his right to obtain his license, and the board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.03, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-3.04. Notice of Examination**

Each applicant shall be given due notice of the date and place of the examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.04, eff. Sept. 1, 1969.]

**Art. 4552-3.05. Subjects of Examination**

The examination shall consist of written, oral or practical tests, in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology and pathology of the eye as applied to optometry and in such other subjects as may be regularly taught in all recognized standard optometric universities or schools.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.05, eff. Sept. 1, 1969.]

**Art. 4552-3.06. Conduct of Examination**

All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examination. Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.06, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-3.07. Those Passing Entitled to License**

Every candidate successfully passing the examination and meeting all requirements of the board shall be registered by the board as possessing the qualifications required by this law and shall receive from this board a license to practice optometry in the state.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 3.07, eff. Sept. 1, 1969.]

**ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.****Art. 4552-4.01. Annual Renewal**

(a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board. A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee. If a person's license has been expired for not more than 180 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 180 days but less than three years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for three years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(b) On receipt of the required fees, the board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed, and such other information from the records of the board as said board may deem necessary for the proper enforcement of this Act.

(c) When the person's license has been expired for three years, the board shall notify the county clerk of the county in which such license may have been recorded of the cancellation, and such clerk, upon receipt of such notice from said board, shall enter upon the optometry register of such county the fact that such license has been cancelled for nonpayment of annual renewal fee and shall notify the board in writing that such entry has been made.

(d) Practicing optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be

subject to all penalties of practicing optometry without a license.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.01, eff. Sept. 1, 1969. Amended by Acts 1977, 65th Leg., p. 199, ch. 98, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-4.01A. Expiration Dates of Licenses; Proration of Fees**

The board by rule may adopt a system under which licenses expire on various dates during the year, and the final date for payment, the date for notice of nonpayment, and the date for license cancellation shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on or before January 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

[Acts 1973, 63rd Leg., p. 625, ch. 266, § 9, eff. June 11, 1973.]

**Art. 4552-4.01B. Educational Requirement for Renewal**

(a) Each optometrist licensed in this state shall take annual courses of study in subjects relating to the utilization and application of scientific, technical, and clinical advances in vision care, vision therapy, visual training, and other subjects relating to the practice of optometry regularly taught by recognized optometric universities and schools.

(b) The length of study required is 12 hours per calendar year.

(c) The continuing education requirements established by this section shall be fulfilled by attendance in continuing education courses sponsored by an accredited college of optometry or in a course approved by the board. Attendance at a course of study shall be certified to the board on a form provided by the board and shall be submitted by each licensed optometrist in conjunction with his application for renewal of his license and submission of renewal fee.

(d) The board may take action necessary in order to qualify for funds or grants made available by the United States or an agency of the United States for the establishment and maintenance of programs of continuing education.

(e) Licensees who have not complied with the requirement of this section may not be issued a renewal license, except for the following persons who are exempt:

- (1) a person who holds a Texas license but who does not practice optometry in Texas;
- (2) a licensee who served in the regular armed forces of the United States during part of the 12

months immediately preceding the annual license renewal date;

(3) a licensee who submits proof that he suffered a serious or disabling illness or physical disability which prevented him from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee first licensed within the 12 months immediately preceding the annual renewal date.

[Acts 1975, 64th Leg., p. 1875, ch. 591, § 1, eff. Sept. 1, 1975.]

#### Art. 4552-4.02. Renewal After Discharge From Military

Any licensed optometrist whose renewal certificate has expired while he has been engaged in active duty with any United States military service or with the United States Public Health Service, engaged in full-time federal service, or engaged in training or education under the supervision of the United States, preliminary to induction into the military service, may have his renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the board with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.02, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-4.03. Lost or Destroyed License

If any license issued under this law shall be lost or destroyed, the holder of said license shall make an affidavit of its loss or destruction, and that he is the same person to whom such license was issued, and such other information as may be desired by the board, and shall upon payment of a fee of \$10 be granted a license under this law.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.03, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-4.04. Revocation, Suspension, etc.

(a) By five or more votes, the board may refuse to issue a license to an applicant, revoke or suspend a license, probate a license suspension, or reprimand a licensee if it finds that:

(1) the applicant or licensee is guilty of any fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in his seeking admission to such practice;

(2) the applicant or licensee is unfit or incompetent by reason of negligence;

(3) the applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(4) the applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(5) the licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this state, to so practice;

(6) the licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

(7) the licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this state;

(8) the applicant or licensee has willfully or repeatedly violated any of the provisions of this Act;

(9) the licensee has willfully or repeatedly represented to the public or any member thereof that he is authorized or competent to cure or treat diseases of the eye; or

(10) the licensee has his right to practice optometry suspended or revoked by any federal agency for a cause which in the opinion of the board warrants such action.

(b) Any person may begin proceedings under this section by filing charges with the board in writing and under oath. If charges are filed against a person or if the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board. Except as provided by Subsection (c) of this section, proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charges were filed.

(d) Upon application, the board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one year after the revocation and shall be made in such manner and form as the board may require.

(e) Nothing in this Act shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist from working for such person during the administration of the estate when the legal representative thereof has been au-

thorized by the county judge to continue the operation of such practice.

(f) A violation of this Act which occurs four or more years prior to the filing of a complaint which results in a disciplinary hearing before the board on that complaint shall not be considered a violation for purposes of disciplinary action under Subdivisions (8) and (9) of Subsection (a) of this section.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 4.04, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS

##### Art. 4552-5.01. Display of License

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 such license or certificate to said board, 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 the same respectively.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.01, eff. Sept. 1, 1969.]

##### Art. 4552-5.02. Recordation of License

It shall be unlawful for any person to practice optometry within the limits of this state who has not registered and recorded his license in the office of the county clerk of the county in which he resides, and in each county in which he practices, 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 endorsed by the county clerk upon the license. The absence of record of such license in the office of the county clerk shall be prima facie evidence of the lack of the possession of such license to practice optometry.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.02, eff. Sept. 1, 1969.]

##### Art. 4552-5.03. Optometry Register

Each county clerk in this state shall purchase a book of suitable size, to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist, and record in said optometry register the name and record of each optometrist who presents for record a license or certificate issued by the state board. When an optometrist shall have his license revoked, suspended, or cancelled, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the optometry register, which entry shall close the record and be

prima facie evidence of the fact that the license has been so cancelled, suspended or revoked. The county clerk of each county shall, upon the request of the secretary of the board, certify to the board a correct list of the optometrists then registered in the county, together with such other information as the board may require.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.03, eff. Sept. 1, 1969.]

##### Art. 4552-5.04. Practice Without License; Fraud; House-to-House

It shall be unlawful for any person to:

(1) falsely impersonate any person duly licensed as an optometrist under the provisions of this Act or to falsely assume another name;

(2) buy, sell, or fraudulently obtain any optometry diploma, license, record of registration or aid or abet therein;

(3) 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;

(4) practice optometry during the time his license shall be suspended or revoked;

(5) 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.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.04, eff. Sept. 1, 1969.]

##### Art. 4552-5.05. Treating Diseased Eyes

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 by law. 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 1969, 61st Leg., p. 1298, ch. 401, § 5.05, eff. Sept. 1, 1969.]

##### Art. 4552-5.06. Spectacles as Premiums

It shall be unlawful for any person in this state to give, or cause to be given, deliver, or cause to be delivered, in any manner whatsoever, any spectacles or eyeglasses, separate or together, as a prize or premium, or as an inducement to sell any book,



paper, magazine or any work of literature or art, or any item of merchandise whatsoever.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.06, eff. Sept. 1, 1969.]

**Art. 4552-5.07. Prescribing Without Examination**

No licensed optometrist shall sign, or cause to be signed, a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person for whom the prescription is made.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.07, eff. Sept. 1, 1969.]

**Art. 4552-5.08. Practice While Suffering from Contagious Disease**

No licensed optometrist shall practice optometry while knowingly suffering from a contagious or infectious disease.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.08, eff. Sept. 1, 1969.]

**Art. 4552-5.09. Deceptive Advertising**

(a) A person may not publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, billboard, window display, or any other means or medium, any statement or advertisement concerning ophthalmic services or materials, including but not limited to lenses, frames, spectacles, contact lenses, or parts thereof, which is false, deceptive, or misleading.

(b) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.

(c) Any advertisement of the price of prescription spectacles or contact lenses is required to contain the following information:

(1) a statement of whether or not the cost of an examination by an eye doctor is included in the price;

(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, the advertisement shall state the time limitation on the offer;

(3) if the advertised goods are to be available to the public in limited quantities and no rainchecks are given upon total depletion of the inventory of the goods advertised, the advertisement shall state the total quantity available to all customers; and

(4) if the advertised goods are to be available to the public at a limited number per customer, the advertisement shall state the limit per customer.

(d) Any person who fails to satisfy the requirements of Subsection (b) or (c) above shall be deemed to have published a false, deceptive, or misleading statement within the meaning of this section.

(e) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court of the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

(f) The attorney general or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$10,000 per violation, plus costs of court and reasonable attorney's fees.

(g) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).<sup>1</sup>

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.09, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

**Art. 4552-5.10. Board Rules Restricting Advertising**

The board may not adopt substantive rules restricting competitive bidding or advertising by a person regulated by the board except to adopt such rules as are necessary to prevent false, misleading, or deceptive practices.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.10, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

**Art. 4552-5.11. Control of Optometry Prohibited**

(a) Any person who is a manufacturer, wholesaler, or retailer of ophthalmic goods is prohibited from:

(1) directly or indirectly controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist; or

(2) directly or indirectly employing or hiring or contracting for the services of an optometrist if any part of such optometrist's duties involve the practice of optometry; or

(3) directly or indirectly making any payment to an optometrist for any service not actually rendered.

(b) For purposes of this section "controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist" shall include but not be limited to:

(1) setting or attempting to influence the professional fees of an optometrist;

(2) setting or attempting to influence the office hours of an optometrist;

(3) restricting or attempting to restrict an optometrist's freedom to see patients on an appointment basis;

(4) terminating or threatening to terminate any lease, agreement, or other relationship in an effort to control the professional judgment, manner of practice, or practice of an optometrist;

(5) providing, hiring, or sharing employees or business services or similar items to or with an optometrist; or

(6) making or guaranteeing a loan to an optometrist in excess of the value of the collateral securing the loan.

(c) It is the intent of the legislature to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or the practice of an optometrist, and the provisions of this section shall be liberally construed to carry out this intent.

(d) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement of this section by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees. Where a manufacturer, wholesaler, or retailer of ophthalmic goods has been found to be in violation of this section, any person injured as a result of such violation, including any optometrist who is a lessee of such manufacturer, wholesaler, or retailer, shall be entitled to all remedies in this section.

(e) The attorney general or the Texas Optometry Board may institute suit against a manufacturer, wholesaler, or retailer of ophthalmic goods in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$1,000 for each day that a violation of this section is found to have occurred, plus costs of court and reasonable attorney's fees.

(f) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).<sup>1</sup>

(g) This section shall not apply where the manufacturer, wholesaler, or retailer of ophthalmic goods is a licensed optometrist or a licensed physician or legal entity 100 percent owned and controlled by one or more licensed optometrists or licensed physicians; however, the exception set forth in this subsection shall not apply where the optometrist or legal entity has offices at more than three locations.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.11, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

#### Art. 4552-5.12. Basic Competence

(a) In order to insure an adequate examination of a patient for whom an optometrist signs or causes

to be signed a prescription for an ophthalmic lens, in the initial examination of the patient the optometrist shall make and record, if possible, the following findings of the condition of the patient:

(1) Case History (ocular, physical, occupational and other pertinent information).

(2) Far point acuity, O.D., O.S., O.U., unaided; with old glasses, if available, and with new glasses, if any.

(3) External examination (lids, cornea, sclera, etc.).

(4) Internal ophthalmoscopic examination (media, fundus, etc.).

(5) Static retinoscopy, O.D., O.S.

(6) Subjective findings, far point and near point.

(7) Phorias or ductions, far and near, lateral and vertical.

(8) Amplitude or range of accommodation.

(9) Amplitude or range of convergence.

(10) Angle of vision, to right and to left.

(b) Every prescription for an ophthalmic lens shall include the following information: interpupillary distance, far and near; lens prescription, right and left; color or tint; segment type, size and position; the optometrist's signature.

(c) The willful or repeated failure or refusal of an optometrist to comply with any of the foregoing requirements shall be considered by the board to constitute prima facie evidence that he is unfit or incompetent by reason of negligence within the meaning of Section 4.04(a)(3) of this Act,<sup>1</sup> and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instances in which it is alleged that the rule was not complied with. At a hearing pursuant to the filing of such charges, the person charged shall have the burden of establishing that compliance with the rule in each instance in which proof is adduced that it was not complied with was not necessary to a proper examination of the patient in that particular case.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.12, eff. Sept. 1, 1969.]

<sup>1</sup> Article 4552-4.04(a)(3).

#### Art. 4552-5.13. Professional Responsibility

(a) The provisions of this section are adopted in order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility, and further safeguard the doctor-patient relationship.

(b) No optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist from paying an employee in the regular course of

employment, and provided further, that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

(c) No optometrist shall divide, share, split or allocate, either directly or indirectly, any fee for optometric services or materials with another optometrist or with a physician except upon a division of service or responsibility provided that this rule shall not be interpreted to prevent partnerships for the practice of optometry. This Act does not prohibit an optometrist from being employed on a salary, with or without bonus arrangements, by a licensed optometrist or physician, regardless of the amount of supervision exerted by the employing optometrist or physician over the office in which the employed optometrist works, provided such bonus arrangements, if any, shall not be based in whole or in part on the business or income of any optical company.

(d) An optometrist may practice optometry under a trade name or an assumed name or under the name of a professional corporation or a professional association. Every optometrist practicing in the State of Texas, including those practicing under a trade or assumed name, shall be required to display the actual name under which he is licensed by the board in a manner such that his name will be visible to the public prior to entry of the optometrist's office reception area.

(e) No optometrist shall use, cause or allow to be used, his name or professional identification, as authorized by Article 4590e, as amended, Revised Civil Statutes of Texas, 1925, on or about the door, window, wall, directory, or any sign or listing whatsoever, of any office, location or place where optometry is practiced, unless said optometrist is actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(f) No optometrist shall practice or continue to practice optometry in any office, location or place of practice where any name, names or professional identification on or about the door, window, wall, directory, or any sign or listing whatsoever, or in any manner used in connection therewith, shall indicate or tend to indicate that such office, location or place of practice is owned, operated, supervised, staffed, directed or attended by any person not actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(g) The requirement of Subsections (e) and (f) of this section that an optometrist be "actually present" in an office, location or place of practice holding his name out to the public shall be deemed satisfied if the optometrist is, as to such office, location or place of practice, either:

(1) physically present therein more than half the total number of hours such office, location, or place of practice is open to the public for the practice of optometry during each calendar month for at least nine months in each calendar year; or

(2) physically present in such office, location, or place of practice for at least one-half of the time such person conducts, directs, or supervises any practice of optometry.

(h) Nothing in this section shall be interpreted as requiring the physical presence of a person who is ill, injured, or otherwise incapacitated temporarily.

(i) The requirement of Subsections (e) and (f) of this section that an optometrist be "practicing optometry" at an office, location, or place of practice holding his name out to the public shall be deemed satisfied if the optometrist regularly makes personal examination at such office, location, or place of practice of the eyes of some of the persons prescribed for therein or regularly supervises or directs in person at such office, location or place of practice such examinations.

(j) The willful or repeated failure or refusal of an optometrist to comply with any of the provisions of this section shall be considered by the board to constitute prima facie evidence that such optometrist is guilty of violation of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instance or instances in which it is alleged that the rule was not complied with. Alternatively, or in addition to the above, it shall be the duty of the board to institute and prosecute an action in a court of competent jurisdiction to restrain or enjoin the violation of any of the preceding rules.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.13, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-5.14. Lease of Premises from Mercantile Establishment

(a) In order to safeguard the visual welfare of the public and the optometrist-patient relationship, fix professional responsibility, establish standards of professional surroundings, more nearly secure to the patient the optometrist's undivided loyalty and service, and carry out the prohibitions of this Act against placing an optometric license in the service or at the disposal of unlicensed persons, the provisions of this section are applicable to any optometrist who leases space from and practices optometry on the premises of a mercantile establishment.

(b) The practice must be owned by a Texas-licensed optometrist. Every phase of the practice and the leased premises shall be under the exclusive control of a Texas-licensed optometrist.

(c) The prescription files and all business records of the practice shall be the sole property of the optometrist and free from involvement with the

mercantile establishment or any unlicensed person. Except, however, that those business records essential to the successful initiation or continuation of a percentage of gross receipts lease of space may be inspected by the applicable lessor.

(d) The lease space shall be definite and apart from the space occupied by other occupants of the premises. It shall be separated from space used by other occupants of the premises by solid, opaque partitions or walls from floor to ceiling. Railings, curtains, and other similar arrangements are not sufficient to comply with this requirement.

(e) The leased space shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. The aisle of a mercantile establishment does not comply with this requirement. An entrance to the leased space is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

(f) No phase of the optometrist's practice shall be conducted as a department or concession of the mercantile establishment; and there shall be no legends or signs such as "Optical Department," "Optometrical Department," or others of similar import, displayed on any part of the premises or in any advertising.

(g) The optometrist shall not permit his name or his practice to be directly or indirectly used in connection with the mercantile establishment in any advertising, displays, signs, or in any other manner.

(h) All credit accounts for patients shall be established with the optometrist and not the credit department of the mercantile establishment. However, nothing in this subsection prevents the optometrist from thereafter selling, transferring, or assigning any such account.

(i) Repealed by Acts 1981, 67th Leg., p. 2811, ch. 758, § 6, eff. Aug. 31, 1981.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.14, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2811, ch. 758, § 6, eff. Aug. 31, 1981.]

#### Art. 4552-5.15. Relationships of Optometrists with Dispensing Opticians

(a) The purpose of this section is to insure that the practice of optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.

(b) If an optometrist occupies space for the practice of optometry in a building or premises in which any person, firm, or corporation engages in the business of a dispensing optician, the space occupied by the optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The space occupied by the optometrist shall have a patient's

entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. An entrance is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

(c) An optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the books, records, and accounts of the firm or corporation must be kept separate and distinct from the books, records, and accounts of the practice of the optometrist.

(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist for the practice of optometry other than a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist, he shall maintain a completely separate set of books, records, files, and accounts in connection therewith.

(e) If, after examining a patient, an optometrist believes that lenses are required to correct or remedy any defect or abnormal condition of vision, the optometrist shall so inform the patient and shall expressly indicate verbally or by other means that the patient has two alternatives for the preparation of the lenses according to the optometrist's prescription: First, that the optometrist will prepare or have the lenses prepared according to the prescription; and second, that the patient may have the prescription filled by any dispensing optician but should return for an optometrical examination of the lenses.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.15, eff. Sept. 1, 1969. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

#### Art. 4552-5.16. Leasing Space on Percentage Basis; Transferring Accounts Receivable

It shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.16, eff. Sept. 1, 1969.]

#### Art. 4552-5.17. Exceptions

Nothing in this Act shall be construed to apply to persons who sell ready-to-wear spectacles and eye-

glasses as merchandise at retail or officers or agents of the United States or the State of Texas, in the discharge of their official duties. Nothing in this Act shall prevent, limit, or interfere with the right of a physician duly licensed by the Texas State Board of Medical Examiners to treat or prescribe for his patients or to direct or instruct others under the control, supervision, or direction of such a physician to aid or minister to the needs of his patients according to the physician's specific directions, instructions or prescriptions; and where such directions, instructions, or prescriptions are to be followed, performed, or filled outside or away from the physician's office such directions, instructions, or prescriptions shall be in writing.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.17, eff. Sept. 1, 1969.]

#### Art. 4552-5.18. Practice of Optometry Without a License

(a) It shall be a violation of this Act for any person who is not a licensed optometrist or a licensed physician to engage in the practice of optometry as such practice is defined by this Act.

(b) Any person who shall be injured by another person who violates this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

(c) The attorney general's office or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed \$10,000 per violation, plus costs of court and reasonable attorney's fees.

(d) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).<sup>1</sup>

[Acts 1981, 67th Leg., p. 2810, ch. 758, § 3, eff. Aug. 31, 1981.]

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

Former art. 4552-5.18 was renumbered by Acts 1981, 67th Leg., p. 2810, ch. 758, § 3. See, now, art. 4558-5.19.

#### Art. 4552-5.19. Penalty

A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500 or by confinement in the county jail for not less than two months nor more than six months, or both. A separate offense is committed each day a violation of this Act occurs or continues.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 5.18, eff. Sept. 1, 1969. Renumbered from art. 4552-5.18 by Acts 1981, 67th Leg., p. 2810, ch. 758, § 3, eff. Aug. 31, 1981.]

### ARTICLE 6. MISCELLANEOUS PROVISIONS

#### Art. 4552-6.01. Board of Examiners Abolished

The Texas State Board of Examiners in Optometry is abolished. All property, equipment, records, files, and papers in the possession of that board are transferred to the Texas Optometry Board created by this Act. All references in the statutes to the Texas State Board of Examiners in Optometry shall be construed to mean the Texas Optometry Board.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.01, eff. Sept. 1, 1969.]

#### Art. 4552-6.02. Severability

If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.02, eff. Sept. 1, 1969.]

#### Art. 4552-6.03. Repealer

Chapter 10, Title 71, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and Chapter 5, Title 12, Penal Code of Texas, 1925, as amended,<sup>2</sup> and all other laws and parts of laws in conflict with this Act are hereby repealed.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.03, eff. Sept. 1, 1969.]

<sup>1</sup> Articles 4552, 4553 to 4566-1.

<sup>2</sup> Penal Code (1925), arts. 735 to 738a.

#### Art. 4552-6.04. Effective Date

This Act takes effect September 1, 1969.

[Acts 1969, 61st Leg., p. 1298, ch. 401, § 6.04, eff. Sept. 1, 1969.]

### CHAPTER TEN A. HEARING AIDS

Art.	
4566-1.01.	Definitions.
4566-1.02.	Board of Examiners.
4566-1.03.	Board Organization and Meetings.
4566-1.04.	Powers and Duties of the Board.
4566-1.04A.	Personnel Policies.
4566-1.04B.	Legislative Review of Rules.
4566-1.05.	Records.
4566-1.06.	Examination: Application.
4566-1.07.	Repealed.
4566-1.08.	Reciprocal Arrangements.
4566-1.09.	Temporary Training Permit.
4566-1.10.	Grounds for Disciplinary Action.
4566-1.11.	Disciplinary Actions.
4566-1.12.	Fees and Expenses.
4566-1.12A.	Advertisements
4566-1.12B.	Consumer Information and Complaints.
4566-1.13.	Renewal of License.
4566-1.13A.	Expiration Dates of Licenses; Proration of Fees.
4566-1.14.	Duty of a Licensee.
4566-1.15.	Prohibited Acts.

**Art.**

- 4566-1.16. Penalty.  
 4566-1.17. Treatment of Ear Defects and Administration of Drugs.  
 4566-1.18. Employment of Licensee.  
 4566-1.19. Exceptions.  
 4566-1.20. Repealed.  
 4566-1.21. Severability.  
 4566-1.22. Effective Date.

**Art. 4566-1.01. Definitions**

In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

(g) "30-day trial period" means the period in which a person may cancel the purchase of a hearing aid.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 1, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

**Art. 4566-1.02. Board of Examiners**

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created. The Board shall be composed of nine members appointed by the Governor with the advice and consent of the Senate. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board members must have the following qualifications, to-wit:

(1) Five of such members shall possess the necessary qualifications to fit and dispense hearing aids

in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such five members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) Two Board members must be members of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) Members hold office for staggered terms of six years, and each member shall continue until a successor is appointed and qualifies.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the hearing aid industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(h) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3) violates a prohibition established by Subsection (f) or (g) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(i) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(j) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(k) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 2, eff. Jan. 1, 1970. Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.028, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides: "A person holding office as a member of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act continues to hold the office for the term for which the member was originally appointed."

#### Art. 4566-1.03. Board Organization and Meetings

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting

and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Special meetings of the Board shall be held upon request of a majority of the members or upon the call of the President. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 3, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

#### Art. 4566-1.04. Powers and Duties of the Board

(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties.

(b) The Board shall have the power to appoint committees from its own membership, the duties of which shall be to consider such matters, pertaining to the enforcement of this Act, as shall be referred to said committees, and they shall make recommendations to the Board in respect thereto.

(c) The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions of this Act.

(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.

(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.

(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.

(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.

(i) The Board by rule shall adopt requirements for the continuing education of licensees under this Act in subjects pertaining to the fitting and dispensing of hearing aids. The Board by rule may approve specific courses of instruction or establish minimum content requirements of courses of continuing professional education and provide programs for continuing education.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 4, eff. Jan. 1, 1970. Amended by Acts 1983, 68th Leg., p. 3864, ch. 611, § 1, eff. Aug. 29, 1983.]

Section 3 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides: "A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect; the rule is repealed effective on the date the board/commission receives the committee's statements."

#### Art. 4566-1.04A. Personnel Policies

(a) The President of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(b) The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

The Board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

[Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Section 8(b) of Acts 1981, 67th Leg., p. 2912, ch. 774, provides: "The requirements under Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as added by this Act, that the president of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Section 4A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

#### Art. 4566-1.04B. Legislative Review of Rules

If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective

on the date the Board receives the committees' statements.

[Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Section 3 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides: "A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect; the rule is repealed effective on the date the board/commission receives the committee's statements."

#### Art. 4566-1.05. Records

(a) The Board shall preserve an accurate record of all meetings and proceedings of the Board.

(b) A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.

(c) The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.

(d) The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 5, eff. Jan. 1, 1970.]

#### Art. 4566-1.06. Examination: Application

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of majority and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests that shall be objective in method and applied in a consistent manner. The examina-



tion shall cover the following areas as they relate to the fitting and dispensing of hearing aids:

- (1) Basic physics of sound;
- (2) The structure and function of hearing aids;
- (3) Fitting of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice and/or record voice speech audiometry;
- (6) Masking when indicated;
- (7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;
- (8) Selection and adaption of hearing aids and testing of hearing aids; and
- (9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. Upon reexamination, a person who has previously failed shall be examined only on those portions of the examination which he failed. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

(f) The Board, in its discretion, may refuse to examine an applicant if he has been convicted of a felony or a misdemeanor that involved moral turpitude.

(g) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act,

the Board shall furnish the person with an analysis of the person's performance on the examination.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 6, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

**Art. 4566-1.07. Repealed by Acts 1981, 67th Leg., p. 2912, ch. 774, § 5, eff. Sept. 1, 1981**

**Art. 4566-1.08. Reciprocal Arrangements**

(a) Upon proper application, the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids shall grant a license to fit and dispense hearing aids without requiring an examination to licentiates of other states or territories having requirements equivalent to or higher than those in effect pursuant to this Act for fitting and dispensing hearing aids.

(b) Applications for license under the provisions of this section shall be in writing and upon a form prescribed by the Board. Such applications shall be filed with the Secretary-Treasurer of the Board. The application shall be accompanied by a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct.

(c) Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 8, eff. Jan. 1, 1970.]

**Art. 4566-1.09. Temporary Training Permit**

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of

this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 9, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

#### Art. 4566-1.10. Grounds for Disciplinary Actions

The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations:

(1) The temporary trainee or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

(2) The temporary trainee or licensee is convicted of a felony or a misdemeanor which involves moral turpitude.

(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers by reason of incompetence, age, illness, drunkenness, excessive use of drugs,

narcotics, chemicals, or any other type of material or as a result of any condition causing the temporary trainee or licensee to become mentally or physically incapable as determined by a court of competent jurisdiction.

(4) The temporary trainee or licensee has violated any of the provisions of this Act or Board rules.

(5) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(6) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(7) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(8) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or false information. It is the intention of the Legislature that the provisions of this subdivision be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

(9) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(10) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(11) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(12) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(13) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(14) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(15) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 10, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

**Art. 4566-1.11. Disciplinary Actions**

(a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) Proceedings shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(d) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(e) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(f) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(g) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(h) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(i) Appeal from the judgment of such district court will lie as other civil cases.

(j) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but

such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 11, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

**Art. 4566-1.12. Fees and Expenses**

(a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1. Temporary Training Permit	\$ 40
2. Examination Fee	125
3. License Fee	75
4. License Renewal Fee	195
5. Duplicate Document Fee	10

(b) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(c) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

(d) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

(e) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(f) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applica-

tions for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(g) Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The State Auditor shall audit the financial transactions of the Board each fiscal year.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 12, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2456, ch. 796, § 1, eff. June 8, 1971; Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2048, ch. 802, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

#### Art. 4566-1.12A. Advertisements

The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

[Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

#### Art. 4566-1.12B. Consumer Information and Complaints

(a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a licensed hearing aid fitter and dispenser shall contain the name, mailing address, and telephone number of the Board. There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

(c) The Board shall establish guidelines for a 30-day trial period on every hearing aid purchased from a licensed hearing aid fitter and dispenser.

(d) The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the

Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

[Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

#### Art. 4566-1.13. Renewal of License

*Text of article effective until September 1, 1984*

(a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before a license can be renewed, the Board shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

(g) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(h) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 13, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2456, ch. 796, § 2, eff. June 8, 1971; Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

*For text of article effective September 1, 1984, see art. 4566-1.13, post*

**Art. 4566-1.13. Renewal of license**

*Text of article effective September 1, 1984*

(a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before a license can be renewed, the Board shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

(g) Before a license can be renewed, a licensee must demonstrate compliance with the requirements of continuing education established by the Board under Subsection (i) of Section 4 of this Act.<sup>1</sup>

On written request, the Board shall provide an alternative mechanism for meeting the continuing education requirement through examination.

The Board may waive compliance with the continuing education requirement for license renewal in an individual case upon evidence of hardship or inability to meet the requirement. The waiver may be granted after review by the Board on an annual basis.

(h) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(i) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 13, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2456, ch. 796, § 2, eff. June 8, 1971; Acts 1977, 65th Leg., p. 1750, ch. 699, § 2, eff. Aug. 29, 1977; 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 3864, ch. 611, § 2, eff. Sept. 1, 1984.]

<sup>1</sup> Article 4566-1.04(i).

*For text of article effective until September 1, 1984, see art. 4566-1.13, ante*

**Art. 4566-1.13A. Expiration Dates of Licenses; Proration of Fees**

The board by rule may adopt a system under which licenses expire on various dates during the year, and the date of notice and cancellation upon failure to pay shall be adjusted accordingly. For the year in which the expiration date is changed, license fees payable on or before January 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

[Acts 1973, 63rd Leg., p. 624, ch. 266, § 6, eff. June 11, 1973.]

**Art. 4566-1.14. Duty of a Licensee**

(a) Every person engaged in the fitting and dispensing of hearing aids in this state shall display his license in a conspicuous place in his principal office and whenever required, exhibit such license to the Board or its authorized representatives.

(b) Every licensee shall deliver to each person supplied with a hearing aid, by the licensee or under his direction, a bill of sale which shall contain his signature, his printed name, the address of his principal office, the number of his license, a description of the make and model of the hearing aid furnished and the amount charged therefor, and whether the hearing aid is new, used or rebuilt.

(c) Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:

"The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."

(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.

(e) Any individual licensed under this Act shall seek personally or through proper referral channels

to obtain the following minimal information on each prospective candidate for amplification:

- (1) pertinent case history;
- (2) otoscopic inspection of the outer ear, including canal and drumhead;
- (3) evaluation of hearing acuity utilizing puretone techniques via air and bone conduction pathways through a calibrated system; and
- (4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 14, eff. Jan. 1, 1970. Amended by Acts 1981, 67th Leg., p. 2912, ch. 774, § 7, eff. Sept. 1, 1981.]

#### Art. 4566-1.15. Prohibited Acts

(a) It is unlawful for any person to:

- (1) buy, sell, or fraudulently obtain a license to fit and dispense hearing aids or aid or abet therein;
- (2) alter a license to fit and dispense hearing aids with the intent to defraud;
- (3) willfully make a false statement in an application to the Texas Board of Examiners of Fitters and Dispensers of Hearing Aids for a license, a temporary training permit or for the renewal of a license;
- (4) falsely impersonate any person duly licensed as a fitter and dispenser of hearing aids under the provisions of this Act;
- (5) offer or hold himself out as authorized to fit and dispense hearing aids, or use in connection with his name any designation tending to imply that he is authorized to engage in the fitting and dispensing of hearing aids, if not so licensed under the provisions of this Act;
- (6) engage in the fitting and dispensing of hearing aids during the time his license shall be cancelled, suspended or revoked;
- (7) dispense or fit a hearing aid on any individual who has ordered such hearing aid or device by mail unless the person dispensing and fitting such hearing aid or device is licensed under this Act.

(b) It is unlawful for any person not a licensed fitter and dispenser of hearing aids or holder of a temporary training permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in Subsection (b) of Section 1 of this Act.<sup>1</sup>

(c) It is unlawful for any licensee to:

- (1) fail to clearly disclose his name, business address, and the purpose of the communication in any telephone solicitation of potential customers;
- (2) use or purchase for use a list of names of potential customers compiled by a person by telephone other than the licensee, his authorized agent or another licensee;

(3) do any act which requires a license from the Texas Optometry Board or the Texas State Board of Medical Examiners.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 15, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2457, ch. 796, §§ 3, 5, eff. June 8, 1971; Acts 1981, 67th Leg., p. 2912, ch. 774, § 6, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 598, ch. 125, § 2, eff. Aug. 29, 1983.]

<sup>1</sup> Article 4566-1.01(b).

#### Art. 4566-1.16. Penalty

Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 16, eff. Jan. 1, 1970.]

#### Art. 4566-1.17. Treatment of Ear Defects and Administration of Drugs

Nothing contained in this Act shall be construed to permit persons licensed under this Act to treat the ear for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever unless the licensee is a duly qualified physician and surgeon and licensed to practice by the Texas State Board of Medical Examiners. Nothing in this Act shall be construed to amend or modify the laws regulating the practice of medicine as defined by Article 4510, Revised Civil Statutes of Texas.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 17, eff. Jan. 1, 1970.]

#### Art. 4566-1.18. Employment of Licensee

(a) Nothing in this Act shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business in this state from engaging in the practice of fitting and dispensing hearing aids at retail or selling or offering for sale hearing aids at retail without a license, provided that it employs only persons licensed under this Act in the direct fitting and dispensing of such products, instruments or devices.

(b) Any person licensed under this Act who is employed by a corporation, partnership, trust, association or other like organization to sell and/or fit hearing aids shall supply the Board with the name and address of such employer at the time such licensee applies for an annual renewal of his license.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 18, eff. Jan. 1, 1970.]

#### Art. 4566-1.19. Exceptions

Nothing in this Act shall be construed to apply to the following:

- (1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

(2) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(3) An individual with a master's or doctorate degree in audiology from an accredited college or university may engage in the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections and adaptations of or recommendations for a hearing aid and the making of impressions for earmolds to be used as part of a hearing aid, provided such persons do not sell hearing aids.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 19, eff. Jan. 1, 1970. Amended by Acts 1971, 62nd Leg., p. 2457, ch. 796, § 4, eff. June 8, 1971; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 597, ch. 125, § 1, eff. Aug. 29, 1983.]

**Art. 4566-1.20. Repealed by Acts 1981, 67th Leg., p. 2912, ch. 774, § 5, eff. Sept. 1, 1981**

**Art. 4566-1.21. Severability**

If any portion of this Act or the application thereof to any person, case or circumstance is held invalid, such invalidity shall not affect any other provision or application which can be given effect without the invalid provision or application, and to this end this provision of this Act is declared to be severable.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 21, eff. Jan. 1, 1970.]

**Art. 4566-1.22. Effective Date**

This Act shall become effective January 1, 1970.

[Acts 1969, 61st Leg., p. 1122, ch. 366, § 22, eff. Jan. 1, 1970.]

**CHAPTER ELEVEN. PODIATRY**

**Art.**

- 4567. Definitions.
- 4567a. Change of Name to Podiatry.
- 4567b. Practice of Podiatry; Penalty.
- 4567c. Improper Practice; Penalty.
- 4567d. Exceptions.
- 4568. State Board of Podiatry Examiners; Appointment; Terms of Members; Oath; Bond of Secretary-Treasurer; Meetings; Regulations and Bylaws; Powers; Records.
- 4568a. Approval of Names Under Which Podiatrists Practice.
- 4568b. Application of Sunset Act.
- 4569. Examination Grades; Fee; Subjects; Re-examination.
- 4569a. Licensure of Podiatry Faculty Members.
- 4570. Application for License.
- 4571. Licenses.
- 4571a, 4572. Repealed.
- 4573. Revocation, Probation, Cancellation, and Suspension of License; Complaints.
- 4573a. Revocation and Suspension of License for Drug-Related Felony Conviction.
- 4574. Compensation and Expenses.
- 4575. Exceptions.
- 4575a. Enjoining Violation of Chapter.

**Art.**

- 4575b. Advertising.
- 4575c. Consumer Information.

**Art. 4567. Definitions**

Any person shall be regarded as practicing chiropody within the meaning of this law, and shall be deemed and construed to be a chiropodist, who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a chiropodist, podiatrist, pedicurist, foot specialist, doctor or use any title, degree, letter, syllable, word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of chiropody.

[Acts 1925, S.B. 84. Amended by Acts 1951, 52nd Leg., p. 219, ch. 132, § 1.]

**Art. 4567a. Change of Name to Podiatry**

Sec. 1. The name of the Texas State Board of Chiropody Examiners, created by the provisions of Article 4568, Revised Civil Statutes of Texas, 1925, as amended, is changed to the Texas State Board of Podiatry Examiners. The Texas State Board of Podiatry Examiners has the powers heretofore conferred on the Texas State Board of Chiropody Examiners.

Sec. 2. The word chiropody, wherever used in the laws of the State of Texas, shall hereafter be construed to mean podiatry. The definition of the practice of podiatry is the same as the definition heretofore of the practice of chiropody, as defined in Article 4567, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 3. The word chiropodist, wherever used in the laws of the State of Texas, shall hereafter be construed to mean podiatrist, and any person heretofore licensed as a chiropodist shall be referred to as a licensed podiatrist.

[Acts 1967, 60th Leg., p. 181, ch. 96, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 181, ch. 96, § 4 increased the annual license renewal fee and is set out as a note under article 4571; section 5 thereof increased the per diem allowance for members of the Board of Podiatry Examiners and is set out as a note under article 4574; and section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

**Art. 4567b. Practice of Podiatry; Penalty**

Any person shall be regarded as practicing podiatry within the meaning of this law, and shall be deemed and construed to be a podiatrist, who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a chiropodist, podiatrist, pedicurist, foot specialist, doctor or use any title, degree, letter, syllable,

word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of podiatry. Whoever professes to be a podiatrist, practices or assumes the duties incident to the practice of podiatry within the meaning of this law or Article, without first obtaining from the Texas State Board of Podiatry Examiners a license authorizing such person to practice podiatry, shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), or by imprisonment in the county jail of not less than thirty (30) days, nor more than six (6) months, or by both fine and imprisonment.

[1925 P.C. Amended by Acts 1939, 46th Leg., p. 368, § 6; Acts 1951, 52nd Leg., p. 219, ch. 132, § 7; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

#### Art. 4567c. Improper Practice; Penalty

If any licensed podiatrist shall amputate the human foot, he 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.

[1925 P.C. Amended by Acts 1951, 52nd Leg., p. 219, ch. 132, § 9; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

#### Art. 4567d. 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.

[1925 P.C.]

Acts 1973, 63rd Leg., p. 67, ch. 44, § 1, enacting article 4568a, provides in subd. (f) that the provisions of said article are cumulative of and supplementary to this article and do not repeal or supersede it.

#### Art. 4568. State Board of Podiatry Examiners; Appointment; Terms of Members; Oath; Bond of Secretary-Treasurer; Meetings; Regulations and Bylaws; Powers; Records

(a) The Texas State Board of Podiatry Examiners shall consist of nine (9) members. Six (6) members must be reputable practicing podiatrists who have resided in this state and who have been actively engaged in the practice of podiatry for five (5) years immediately preceding their appointment. Three (3) members must be representatives of the general public. However, a public member may not participate in any part of the examination process for applicants for a license issued by the Board that requires knowledge of the practice of podiatry. Appointments to the Board shall be made by the Governor without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) has, other than as a consumer, a financial interest in a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes) may not serve as a member of the Board or act as the general counsel to the Board.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section (a) or (b) of this article for appointment to the Board;

(2) violates Section (c) or (d) of this article; or

(3) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board Member.

(f) If a ground for removal of a member of the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

(g) The term of office of each member of said Board shall be six (6) years. At the expiration of the term of each member, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the Texas State Board of Podiatry Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is



filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars (\$5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Texas State Board of Podiatry Examiners.

(h) Said Texas State Board of Podiatry Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Five (5) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present.

(i) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(j) The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent with the law regulating the practice of podiatry, the laws of this State, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that subsection, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of the law regulating the practice of podiatry and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto. The Board may contract with the Texas State Board of Medical Examiners or any other appropriate state agency for the provision of some or all of the services necessary to carry out the activities of the Board. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure

or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of the law regulating the practice of podiatry or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of podiatry from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the Board. The records shall be kept by the Board.

The Board shall cause the prosecution of all persons violating any of the provisions of the law regulating the practice of podiatry and may incur the expense reasonably necessary in that behalf.

(k) Offices of the Board shall be located in Austin, Travis County, Texas.

(l) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 368, § 1; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Sections 5 and 6 of Acts 1981, 67th Leg., p. 3015, ch. 789, provide:

"Sec. 5. A rule adopted by the Texas State Board of Podiatry Examiners before September 1, 1981, that conflicts with laws relating to the regulation and practice of podiatry, as amended by this Act, is void. Not later than the 90th day after September 1, 1981, the board shall repeal the rule.

"Sec. 6. (a) A person holding office as a member of the Texas State Board of Podiatry Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring on the regular expiration date in 1983, one for a term expiring on the regular expiration date in 1985, and one for a term expiring on the regular expiration date in 1987."

**Art. 4568a. Approval of Names Under Which Podiatrists Practice**

(a) In addition to its other rule-making powers, the Texas State Board of Podiatry Examiners is authorized to adopt rules establishing standards or guidelines for the names, including trade names and assumed names, under which podiatrists may conduct their practices in this state. In its rules, the Board may also establish procedures for it to review and make determinations approving or disapproving specific names submitted to the Board by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the Board by this Article extends to and includes any and all forms of business organizations under which podiatrists conduct their practices, including without limitation sole proprietorships, associations, partnerships, professional corporations, clinics, health maintenance organizations, and group practices with practitioners of other branches of the healing art.

(c) After the Texas State Board of Podiatry Examiners adopts rules or makes determinations as authorized by this Article, no podiatrist may practice podiatry in this State under any name, including any trade name or assumed name, unless the name is in compliance with the applicable rules or determinations.

(d) Any person who violates any provision of this Article or of any rule or determination of the Board adopted pursuant to this Article is subject to a civil penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each day of violation, as the court may deem proper, to be recovered in the manner provided in Section (e) of this Article.

(e) Whenever it appears that a person has violated or is violating any provision of this Article or of a rule adopted or determination made by the Board pursuant to Section (a) of this Article, then the Board may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation, or for the assessment and recovery of a civil penalty of not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. At the request of the Board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty.

(f) The provisions of this Article are cumulative of and supplementary to Article 4568, Revised Civil Statutes of Texas, 1925, as amended, Section 6, Chapter 96, Acts of the 60th Legislature, Regular Session, 1967 (Article 4575a, Vernon's Texas Civil

Statutes), and do not repeal or supersede either of those Articles, either in whole or in part.

[Acts 1973, 63rd Leg., p. 67, ch. 44, § 1, eff. April 18, 1973.]

**Art. 4568b. Application of Sunset Act**

The Texas State Board of Podiatry Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the board is abolished effective September 1, 1993.

[Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.044, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

**Art. 4569. Examination Grades; Fee; Subjects; Re-examination**

(a) Except as provided in Article 4569a, Revised Civil Statutes of Texas, 1925, all applicants for license to practice podiatry in this State must successfully pass an examination by the Texas State Board of Podiatry Examiners.

(b) The Board is authorized to adopt and enforce rules of procedure for administering this Article that are not inconsistent with the statutory requirements.

(c) The examinations shall be written and practical and in the English language, and all applicants that possess the qualifications required for an examination and who shall pass the examinations prescribed with a general average of seventy-five per cent (75%) in all subjects and not less than sixty per cent (60%) in any one subject shall be issued a license by the Board to practice podiatry in this State.

(d) The subjects the applicant must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, microbiology, orthopedics and podiatry, limited in their scope to ailments of the human foot.

(e) The Board shall determine the credit to be given on the answers turned in on the subjects in which examined and the discretion of the Board on the examinations shall be final.

(f) All applicants shall pay to the secretary-treasurer of the Board an examination fee at least fifteen (15) days before the dates of the regular examinations.

(g) Applicants who fail to satisfactorily pass an examination and are refused a license for such failure shall be required to pay the regular examination fee for all subsequent re-examinations.

(h) All examinations or re-examinations shall be in all subjects as provided for in this Article.

(i) The secretary-treasurer of the Board shall report to each applicant the grade made in each subject and the general average on the examination within sixty (60) days from the date of the examination.

(j) The Board may accept all or any part of an examination given by a national testing service in lieu of its written examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the day the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day.

(k) If requested in writing by a person who fails the licensing examination, the Board shall furnish the person with an analysis of the person's performance on the examination.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 368, § 2; Acts 1951, 52nd Leg., p. 219, ch. 132, § 2; Acts 1979, 66th Leg., p. 320, ch. 149, § 1, eff. May 11, 1979; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

#### Art. 4569a. Licensure of Podiatry Faculty Members

(a) The board may issue a license to practice podiatry without administering the examination specified in Article 4569, Revised Civil Statutes of Texas, 1925, as amended, to any podiatrist who at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry, who is licensed to practice podiatry in any other state or territory of the United States having requirements for licensing substantially equivalent to those established by the laws of this state, and who otherwise satisfies the requirements of Article 4570, Revised Civil Statutes of Texas, 1925, as amended.

(b) In this article a course of study, training, or education is considered approved or accredited if it is approved or accredited by the Texas State Board of Podiatry Examiners as constituting a bona fide reputable course of training, study, or education. In making a decision relating to the approval or accreditation of a course of study, training, or education, the board shall consider whether the course is approved or accredited by the Council on Education of the American Podiatry Association or its successor organization.

(c) Except for the requirement of an examination, any person applying for a license under this article must comply with all application, licensure, and relicensure requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license granted under this article permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) If the faculty appointment of a podiatrist licensed under this article is terminated, his license

issued under this article terminates. However, nothing in this article is to be construed to prohibit the podiatrist from applying for and obtaining a license or in any way affect a license obtained by the podiatrist by complying with Article 4569, Revised Civil Statutes of Texas, 1925, as amended, and other applicable laws relating to the practice of podiatry.

[Acts 1979, 66th Leg., p. 321, ch. 149, § 2, eff. May 11, 1979.]

#### Art. 4570. Application for License

(a) A person desiring to practice podiatry in this state shall make written application for a license therefor to the Texas State Board of Podiatry Examiners on a form prescribed by the Board. The information submitted shall be verified by affidavit of the applicant.

(b) The applicant shall submit any information reasonably required by the Board, including evidence satisfactory to the Board that the applicant:

- (1) has attained the age of twenty-one (21) years;
- (2) is of good moral character;

(3) has completed at least ninety (90) semester hours of college courses acceptable at the time they were completed for credit on a Bachelor's Degree at The University of Texas;

(4) is a graduate of a bona fide reputable school of podiatry or chiropody, and shall furnish a diploma from the school; and

(5) has successfully completed any other course of training reasonably required by rule of the Board relating to the safe care and treatment of patients.

(c) A podiatry or chiropody school may be considered reputable, within the meaning of this Act, if the course of instruction embraces four (4) terms of approximately eight (8) months each, or the substantial equivalent thereof, and if the school meets the approval of the State Board of Podiatry Examiners. All educational attainments or credits for evaluation within the meaning of this Act, or applicable under this law, shall have been completed within the geographical boundaries of the United States, and no educational credits attained in any foreign country that are not acceptable to The University of Texas toward a Bachelor's Degree, shall be acceptable to the State Board of Podiatry Examiners.

(d) The State Board of Podiatry Examiners may refuse to admit persons to its examinations, and to issue a license to practice podiatry to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony or any crime which involves moral turpitude, or conviction of a violation of Article 4567c, Revised Civil Statutes of Texas, 1925, as amended.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the health, well-being, or welfare of patients.

(4) Grossly unprofessional or dishonorable conduct, of a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act (Title 71, Chapter 11, Revised Civil Statutes of Texas, 1925, as amended),<sup>1</sup> or any rule adopted under this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any podiatry degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Podiatry Examiners for a license to practice podiatry.

(9) Altering, with fraudulent intent, any podiatry license, certificate, diploma, or transcript of a podiatry license, certificate, or diploma.

(10) The use of any podiatry license, certificate, diploma, or transcript of any such podiatry license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a podiatry license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice podiatry in this State, for the purpose of treating, or offering to treat, conditions and ailments of the feet of human beings by any method.

(13) Employing, directly or indirectly, any person whose license to practice podiatry has been suspended, or association in the practice of podiatry with any person or persons whose license to practice podiatry has been suspended, or any person who has been convicted of the unlawful practice of podiatry in Texas or elsewhere.

(14) The wilful making of any material misrepresentation or material untrue statement in the application for a license to practice podiatry.

(15) The inability to practice podiatry with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause, request a podiatrist to submit to a mental or physical examination by medical doctors designated by it. If the podiatrist refuses to submit to

the examination, the Board shall issue an order requiring the podiatrist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the podiatrist. The podiatrist shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the podiatrist and his attorney are entitled to present any testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

(16) The failure to practice podiatry in an acceptable manner consistent with public health and welfare.

(17) Being removed, suspended, or disciplined in another manner by the podiatrist's peers in any professional podiatry association or society, whether the association or society is local, regional, state, or national in scope or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if any of these actions in the opinion of the Board were based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the Board finds that the action taken was appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff.

(18) Repeated or recurring meritorious health care liability claims against the podiatrist that in the opinion of the Board are evidence of professional incompetence likely to injure the public.

(e) Any applicant who is refused admittance to examination has the right to try the issue in the District Court of the county in which he resides or in which any Board member resides.

(f) All orders of the Board shall be prima facie valid.

(g) The board may waive any license requirement for an applicant holding a valid license from another state having license requirements substantially equivalent to those of this state.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 368, § 3; Acts 1951, 52nd Leg., p. 219, ch. 132, § 3; Acts 1963, 58th Leg., p. 40, ch. 27, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 1033, ch. 203, § 1, eff. Aug. 30, 1971; Acts 1979, 66th Leg., p. 321, ch. 149, § 3, eff. May 11, 1979; Acts 1981, 67th Leg., p. 3013, ch. 789, § 2, eff. Sept. 1, 1981.]

<sup>1</sup> Article 4567 et seq.

Section 2 of Acts 1963, 58th Leg., p. 40, ch. 27, provided: "Nothing in the Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropody Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

The name "State Board of Chiropractic Examiners" and the words "chiropractic" and "chiropractors" were changed to "State Board of Podiatry Examiners", "podiatry" and "podiatrists" by Acts 1967, 60th Leg., p. 181, ch. 96. See art. 4567a.

Section 2 of the 1971 Act amended art. 4573. Sections 3 and 4 thereof provided:

"Sec. 3. Nothing in this Act in any way invalidates or affects or shall be construed to invalidate or affect any valid license duly issued by the State Board of Podiatry Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license which was originally lawfully issued by that Board.

"Sec. 4. Severability Clause. The provisions of this Act are severable. If any word, phrase, sentence, section, provision or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part."

#### Art. 4571. Licenses

##### Annual License Renewal

Sec. 1. (a) The Texas State Board of Podiatry Examiners shall set and may from time to time change the amount of the annual license renewal fee as in the Board's judgment may be needed to provide for the reasonable costs and expenses of the Board in performing its duties and the administration of the law regulating the practice of podiatry. The annual license renewal fee shall be paid to the Board.

(b) The Texas State Board of Podiatry Examiners on or before August first of each year shall notify, by mail, all Texas licensed podiatrists at their last known address that the annual license renewal fee is due on the following September first.

(c) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(e) The Board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(f) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board renewal fees and a fee that is equal to the examination fee for the license.

(g) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

##### Effect of Practicing Without Renewing License

Sec. 2. Practicing podiatry without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and be subject to all penalties of practicing podiatry without a license.

##### Re-Examination If License Revoked

Sec. 3. After the Board has declared a license suspended or revoked for nonpayment of the annual license renewal fee as provided for in this Article, the Board may thereafter in its discretion refuse to reinstate the license or issue a new license until the podiatrist, whose license has been declared suspended or revoked has passed the regular examination for license.

##### Reissuance of Lost or Amended License

Sec. 4. If any license issued by the Board is lost, destroyed or stolen from the legally qualified and authorized person to whom it was issued, the owner of the license shall report the fact to the Secretary-Treasurer of the Board, in an affidavit form. The affidavit shall set forth detailed information as to the loss, destruction or theft, giving dates, place and circumstances. If the owner of a license desires to have an amended license issued to him because of a lawful change in the name or degree designation of the licensee or for any other lawful and sufficient reason, the owner of the license shall make application for such amended license to the Secretary-Treasurer of the Board setting forth the reasons the issuance of an amended license is requested. A duplicate or amended license shall be issued upon regular application of the owner of the original license and payment of a fee set by the Board for the duplicate or amended license; however, the Board shall not issue a duplicate or amended license until sufficient evidence by the owner of the original license has been submitted to prove the license has been lost or to establish the lawful reason an amended license should be issued, and unless the records of the Board show a license had been issued and been in full force and effect at the time of such loss, destruction or theft, or such request for an amended license. If an amended license is issued, the original license shall be returned to the Board.

##### Display of License

Sec. 5. Every person licensed by the State Board of Podiatry Examiners to practice in the state shall conspicuously display both his license and an annual renewal certificate for the current year of practice in the place or office wherein he practices

and shall be required to exhibit such license and renewal certificate to a representative of the Board upon such representative's official request for its examination or inspection.

#### Renewal After Military Service

Sec. 6. (a) Any licensed podiatrist whose license has been suspended or revoked or whose annual renewal certificate has expired while he has been engaged in Federal service or on active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, or the United States Maritime Service or the State Militia, called into service or training of the United States of America or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without paying any lapsed renewal fee or without passing any examination, if, within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Podiatry Examiners an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

(b) This section does not apply to a person whose license is revoked under Article 4573a of this chapter.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 368, § 4; Acts 1951, 52nd Leg., p. 219, ch. 132, § 4; Acts 1977, 65th Leg., p. 1219, ch. 469, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 109, ch. 52, § 8, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3013, ch. 789, § 3, eff. Sept. 1, 1981.]

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name of chiropody to podiatry and are codified as article 4567a; section 5 thereof increased the per diem allowance of the members of the Board of Podiatry Examiners and is set out as a note under article 4574; and section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

Section 2 of the 1977 amendatory act repealed art. 4571a and § 3 thereof provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

**Art. 4571a. Repealed by Acts 1977, 65th Leg., p. 1221, ch. 469, § 2, eff. Aug. 29, 1977**

See, now, § 1(d) of art. 4571.

**Art. 4572. Repealed by Acts 1951, 52nd Leg., p. 219, ch. 132, § 5**

**Art. 4573. Revocation, Probation, Cancellation, and Suspension of License; Complaints**

(a) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until

final disposition unless the notification would jeopardize and undercover investigation.

(b) The Board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for violation of the law regulating the practice of podiatry or a rule adopted by the Board.

(c) If the Board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the Board.

(d) Proceedings for the suspension or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) Any person whose license to practice podiatry has been cancelled, revoked or suspended by order of the Board may take an appeal to a district court of Travis County, but the decision of the Board shall not be enjoined or stayed except on application to the district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule.

(f) The Board may, upon majority vote, rule that the order revoking, cancelling, or suspending the practitioner's license be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time constituting the probationary period.

(g) At any time while the probationer remains on probation, the Board may hold a hearing and, upon majority vote, rescind the probation if the terms of the probation have been violated, and enforce the Board's original action in revoking, cancelling, or suspending the practitioner's license. The hearing to rescind the probation shall be called by the President of the Texas State Board of Podiatry Examiners, who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer. The notice shall be served on the probationer or his counsel, and any person or persons complaining of the probationer or their counsel, at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service set out in Subsection (d) of this Article shall apply. The respondent and any person or persons complaining of the respondent have the right to appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board may also issue subpoenas on its own motion. The subpoenas of the Board may be enforced through any district court having jurisdiction and venue in the county where the hearing is held. The Board shall determine the charges upon their merits. The order revoking or rescinding the probation is not subject to review or appeal.

(h) Upon application, the Board may reissue a license to practice podiatry to a person whose license has been cancelled or suspended, but the application, in the case of cancellation or revocation, may not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

*Text of (g) as added by Acts 1981, 67th Leg., p. 109, ch. 52, § 9*

(g) This article does not apply to a person convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

[Acts 1925, S.B. 84. Amended by Acts 1971, 62nd Leg., p. 1035, ch. 203, § 2, eff. Aug. 30, 1971; Acts 1981, 67th Leg., p. 109, ch. 52, § 9, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

This article was amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, without reference to the addition of subsec. (g) by Acts 1981, 67th Leg., p. 109, ch. 52, § 9.

**Art. 4573a. Revocation and Suspension of License for Drug-Related Felony Conviction**

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Acts 1981, 67th Leg., p. 109, ch. 52, § 10, eff. Sept. 1, 1981.]

**Art. 4574. Compensation and Expenses**

(a) The board shall establish reasonable and necessary fees for the administration of this article in amounts not to exceed:

1. Examination	\$115
2. Reexamination	115
3. Renewal	150
4. Duplicate license	15

(b) Funds received by the board under this article shall be deposited in the State Treasury to the credit of a special fund to be known as the podiatry

examiners fund and may be used only for the administration of this article.

(c) The board may not maintain unnecessary fund balances, and fee amounts shall be established in accordance with this requirement.

(d) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The secretary shall receive his necessary expenses for services actually performed for the board.

(e) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(f) On or before January 1 of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 137, ch. 66, § 1, eff. April 18, 1977; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name of chiropody to podiatry and are codified as article 4567a; section 4 thereof increased the annual license renewal fee and is set out as a note under article 4571; section 6 thereof authorized the Board of Podiatry Examiners to enjoin violations of this chapter and is classified as article 4575a.

**Art. 4575. Exceptions**

This law shall not apply to the physicians licensed by the State Board of Medical Examiners, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. Provided, further, that nothing in this Act shall prohibit the recommendation, advertising or sale of corrective shoes, arch supports or similar mechanical appliances, foot remedies by manufacturers, wholesalers or retail dealers. Nothing in this Act shall apply to bona fide members of an established church for the purpose of ministering or offering to minister to the sick or suffering by prayer as set forth in the principles, tenets, or teachings of the church of which they are bona fide members.

[Acts 1925, S.B. 84. Amended by Acts 1951, 52nd Leg., p. 219, ch. 132, § 6.]

**Art. 4575a. Enjoining Violation of Chapter**

The Texas State Board of Podiatry Examiners may institute actions in its own name to enjoin a violation of any of the provisions of Chapter 11, Title 71 of the Revised Civil Statutes of Texas, 1925, as amended, consisting of Article 4567 through Article 4575, inclusive, Revised Civil Statutes of Texas, 1925, as amended, and to enjoin any person from

performing an act constituting the practice of podiatry unless authorized by law. The Attorney General or any district or county attorney shall represent the Texas State Board of Podiatry Examiners in such court action.

[Acts 1967, 60th Leg., p. 182, ch. 96, § 6, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 181, ch. 96, §§ 1 to 3 changed the name chiropody to podiatry and are codified as article 4567a; section 4 thereof increased the annual license renewal fee and is set out as a note under article 4571; and section 5 thereof increased the per diem allowance of the members of the Board of Podiatry Examiners and is set out as a note under article 4574.

#### Art. 4575b. Advertising

The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

[Acts 1981, 67th Leg., p. 3014, ch. 789, § 4, eff. Sept. 1, 1981.]

#### Art. 4575c. Consumer Information

(a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a licensed podiatrist shall contain the name, mailing address, and telephone number of the board.

(c) There shall at all times be prominently displayed in the place of business of each licensed podiatrist a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees may be directed to the board.

[Acts 1981, 67th Leg., p. 3014, ch. 789, § 4, eff. Sept. 1, 1981.]

### CHAPTER TWELVE. EMBALMING

#### Art.

4576. Omitted.

4576a to 4581. Repealed.

4582. Provisions Do Not Apply.

4582a. Repealed.

4582b. Funeral Directing and Embalming.

WTSC Civil Statutes—12

#### Art. 4576. Omitted

This article, derived from Acts 1903, p. 123, Rev.Civ.St.1911, arts. 4596 to 4598, as amended by Acts 1935, 44th Leg., p. 745, ch. 324, § 1, contained provisions the subject matter of which was covered by Acts 1939, 46th Leg., p. 375, incorporated in article 4576a.

#### Arts. 4576a to 4581. Repealed by Acts 1953, 53rd Leg., p. 661, ch. 251, § 7

See, now, article 4582b.

#### Art. 4582. Provisions Do Not Apply

Nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead.

[Acts 1925, S.B. 84.]

#### Art. 4582a. Repealed by Acts 1953, 53rd Leg., p. 661, ch. 251, § 7

This article, derived from Acts 1935, 44th Leg., p. 676, related to funeral directing and embalming. The subject matter is now covered by article 4582b.

#### Art. 4582b. Funeral Directing and Embalming

##### Definitions

Sec. 1. A. 1. A "funeral director" as that term is used herein, is a person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

2. A person who acts as a funeral director without holding a funeral director license violates this Act. This subdivision does not apply to a registered apprentice who works under the supervision of a licensed funeral director. A person who is engaged in the business of funeral directing or who professes to be engaged in that business or who holds himself or herself out to the public as a funeral director shall be a licensed funeral director.

B. The term "directing a funeral," or "funeral directing" as herein used, shall mean the directing or personal supervision by a licensed funeral director from the time of the first call until interment or entombment services are completed, or until the body is delivered into the hands of the persons in charge of a crematorium, or until the body is delivered to another funeral director or to a public carrier.

C. The term "first call" shall mean the beginning of the relationship and duty of the funeral director to take charge of a dead human body and have same prepared by embalming, cremation, or otherwise, for burial or disposition, provided all



laws pertaining to public health in this state are complied with. "First call" does not include calls made by ambulance, when the person dispatching the ambulance does not know whether a dead human body is to be picked up. A dead human body shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer. A dead human body may be transferred from one funeral home to another funeral home and to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer.

D. The term "embalmer" as herein used is a person who for compensation disinfects or preserves a dead human body, entire or in part by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities, or by any other method intended to disinfect or preserve a dead human body, or restore body tissues and structures. The placing of any such chemicals or substances on or in a dead human body by any person who is not a licensed embalmer shall be deemed a violation of this Act, provided that this shall not apply to a registered apprentice working under the supervision of a licensed embalmer. All persons who are engaged in the business of embalming or who profess to be engaged in such business, or hold themselves out to the public as embalmers, shall be licensed embalmers.

E. The term "apprentice" as herein used is a person engaged in learning the practice of funeral directing and/or embalming under the instruction, direction, and personal supervision of a duly licensed funeral director and/or embalmer of and in the State of Texas in accordance with the provisions of this Act, and having been duly registered as such by the Board prior thereto.

F. The term "apprenticeship" as used herein shall be construed as diligent attention to assigned duties and other subject matter in the course of regular employment in a licensed funeral establishment in this state. This regular employment must involve at least forty (40) working hours per week which may be cumulated in any manner under actual working conditions and under the personal supervision of a licensee, in order for an apprentice to qualify as a licensed funeral director and/or embalmer.

G. The term "funeral establishment" as herein used is a place of business used in the care and preparation for burial or transportation of dead human bodies, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be engaged in the business of embalming and/or funeral directing, or as so engaged. Such funeral directing and embalming shall be performed only under the supervision and direction of a licensed funeral director and/or embalmer.

H. The term "due notice" as herein used shall mean published notice of the time and place of regular meetings of the Board. Notice of time, place, and purpose of any meeting of the Board published in at least three (3) daily newspapers in three (3) separate cities in the state, at least fifteen (15) days prior thereto, shall be adequate notice for any regular meeting, including the giving of examinations; however, a notice of a meeting wherein a change in the rules and regulations of the Board is to be considered, shall be given by written notice to all licensees in the State of Texas, at the address registered with the Board, at least thirty (30) days in advance of any hearing thereon.

I. The term "mortuary science" as herein used, shall mean the scientific, professional and practical aspects, with due consideration given to accepted practices, covering the care, preparation for burial or transportation of dead human bodies, which shall include the preservation and sanitation thereof and restorative art, and as such is related to public health, jurisprudence, and good business administration.

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction that includes but is not limited to the following fundamental subjects: (a) mortuary management and administration; (b) legal medicine and toxicology as it pertains to funeral directing; (c) public health, hygiene and sanitary science; (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics; (e) anatomy and physiology; (f) chemistry, organic and inorganic; (g) pathology; (h) bacteriology; (i) sanitation and hygiene; (j) public health regulations; (k) other courses of instruction in fundamental subjects prescribed by the Board; and (l) local, state, and federal rules and laws relating to the care and disposition of dead human bodies.

K. An "official application blank," as that term is used herein, is a sheet bearing blank spaces for the entering of stipulated information, which sheet shall be filled in by any person who seeks employment as funeral director or embalmer in this state. The form of this application blank shall be prescribed by the Board. Prospective employers shall have job applicants fill in this application blank and shall remit it upon completion to the Board. The Board shall inform employers as soon as possible of the status of the license of any person for whom it receives an official application blank.

L. A "commercial embalmer" or "commercial embalming establishment" is one that embalms for licensed funeral establishments and does not sell any services or merchandise directly or at retail to

the public, and shall otherwise meet the requirements of a licensed embalmer as provided in this Act. A commercial embalmer or a commercial embalming establishment may not employ an embalmer who is not licensed under this Act.

M. "Solicitation" means a direct or indirect contact with the family, next of kin, or one who has custody of a person who is deceased or near death for the purpose of securing the right to provide funeral services or merchandise for the deceased or the person near death. Provided, however, that the term "solicitation" shall not be deemed to include any attempt to secure funeral business pursuant to a permit issued under the provisions of Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes), or to include any method of advertising by publication or broadcasting.

N. "Funeral merchandise" means merchandise sold primarily for use in funeral ceremonies, for embalming, or for the care and preparation of deceased human bodies for burial, cremation, or other disposition.

O. "Funeral services" means services performed incident to funeral ceremonies or for the care and preparation of deceased human bodies for burial, cremation, or other disposition and includes embalming.

P. "Outer enclosure" means an enclosure or container placed in a grave above or around the casket and includes burial vaults, grave boxes, and grave liners.

Q. "Suitable container" means a container other than a casket that can be used to hold and transport a deceased human body.

R. "Personal supervision" means that a licensed funeral director or embalmer must be physically present at the specified place and time of the provision of acts of funeral service.

S. "Retail price list" means a printed or type-written list of the retail price of items or services provided by the funeral establishment, including: (1) transferring the deceased individual to the funeral home; (2) embalming; (3) use of funeral establishment facilities for viewing the deceased; (4) use of funeral establishment facilities for funeral services; (5) use of hearses; (6) use of limousines; (7) caskets; (8) outer enclosures; and (9) other itemized services provided by the funeral establishment staff. The list must contain the name, address, and telephone number of the funeral establishment, the effective date for the stated prices, and the following printed notice: "You may choose only the items you desire. If you are charged for items you did not specifically request, we will explain the reason for the charges on the written memorandum. Please note that there may be charges for items such as cemetery fees, flowers, and newspaper notices."

T. "Written memorandum" means a written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list. The memorandum must also state the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer. The memorandum must include the name, address, and telephone number of the funeral establishment and the following printed notice: "Charges are made only for items that are used. If the type of funeral selected requires extra items, we will explain the reasons for the extra items in writing on this memorandum." The memorandum must include the name, mailing address, and telephone number of the State Board of Morticians and a statement indicating that complaints may be directed to the Board.

U. "Unit pricing" means a method of pricing that provides a discount to the purchaser by offering various funeral services and merchandise as a package.

V. "Prospective customer" means a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise.

#### The Board

Sec. 2. A. (1) There is hereby created the State Board of Morticians, with offices located in Austin, Texas, consisting of nine (9) members who shall be citizens of the United States and residents of the State of Texas. Five (5) members must be licensed embalmers or funeral directors in the State of Texas and each of these members must have a minimum of five (5) years, consecutively, of such experience in this state immediately preceding appointment. At least three (3) such licensed members shall be embalmers. Four (4) members must be representatives of the general public who are not regulated under this Act.

(2) The members of said Board shall be appointed by the Governor, by and with the consent of the Senate for staggered terms of six (6) years. Each member shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the Board any member whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No member of the Board shall be appointed for more than one (1) full term of service.

(3) A member of the Board or an employee of the State Board of Morticians who carries out the functions of the Board may not:

(a) be an officer, employee, or paid consultant of a trade association in the funeral industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the funeral industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the Board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(4) Members of the Board, except those members who are duly licensed embalmers or funeral directors, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in funeral establishments as officers, directors, partners, owners, employees, attorneys, or paid consultants of the funeral establishments or otherwise.

(5) No member shall be appointed to the Board who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another member of the Board is also an officer or employee of the same corporation or other business entity.

(6) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the Board or serve as a member of the Board.

(7) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(8) Each member of the Board shall be present for at least one-half of the regularly scheduled meetings held each year by the Board. The failure of a member to meet this requirement automatically removes the member from the Board and creates a vacancy on the Board.

B. The members of said Board, before entering upon their duties, shall take and subscribe to the oath of office prescribed for other state officials, which oath shall be filed in the office of the Secretary of State, after having been administered under proper authority. Each person appointed to the Board shall be furnished with a certificate of appointment by the Governor which shall bear evidence of the taking of oath of office.

C. The Board shall meet in Austin, Texas, in regular session at least two (2) times each year for the transaction of business. Examination for funeral directors and embalmers shall be held at least once during each year at such times and places as the Board may designate and give due notice thereof. Special meetings or hearings may be held at such time and place as may be determined by and

upon call of the President, Vice-President or three (3) members of the Board.

D. The Board shall elect, after thirty (30) days' written notice is given to members, a President, Vice-President, and Secretary from the members of the said Board who shall serve one (1) year, or until their successor shall be elected and qualified in cases of resignation or death. In the absence of an Executive Secretary, the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the Board and any premium payable for such bond shall be paid from the funds of the Board; likewise, the Board will require a bond of the Executive Secretary, if any, and such bond shall be deposited with the State Auditor of the State of Texas. The President of the Board shall preside at all meetings of the Board unless otherwise ordered, and he shall exercise all duties and performances incident to the office of the President of the Board, and in his absence the Vice-President shall preside. A majority of the membership of the Board shall constitute a quorum for the transaction of business.

E. The Board shall make an annual report covering the work of the Board for the preceding fiscal year, and such report shall be filed with the Governor and shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor;

2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy shall be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts; and

3. A description of the activities of the Board during the preceding fiscal year.

F. The Board shall preserve a record of its proceedings in a book kept for that purpose.

G. The Board shall keep a permanent, alphabetical record of all applications for licenses and the action thereon. Such records shall also show, at all times, the current status of all such applications and licenses issued.

H. The Board may employ such inspectors, and clerical and technical assistants, legal counsel, including an Executive Secretary, as may be determined by it to be necessary to carry out the provisions of this Act, and the terms, conditions and expenses of such employment shall be determined by the Board.

I. Membership of the Board shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the Board, and in addition thereto, each shall receive a per diem allowance of Fifty Dollars (\$50) for each day actually spent by such member upon attendance to the business of the Board, not to exceed sixty (60) days within a

calendar year. The Secretary, in the absence of an Executive Secretary, notwithstanding membership on the Board, shall receive and be paid a salary for the time he devotes to the business of the Board, and the amount and method of payment shall be fixed by the Board and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the Board. All fees and other funds received by the Board shall be deposited in the State Treasury to the credit of the General Revenue Fund. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

J. Except as otherwise provided by law, all records of the Board shall be open to inspection by the public during regular office hours.

K. All meetings of the Board shall be open and public.

L. The Board shall prescribe the form of the official application blank. It shall notify the proprietor of each licensed funeral establishment in this state that any person who seeks employment as a funeral director or embalmer must fill in this application blank, and that the person receiving the application must mail a copy of the official form to the Board. The Board shall inform the prospective employer of the status of the applicant's license to engage in the activity he proposes.

M. The Board may adopt such administrative procedures as may be desirable to effect the intent of the provisions of this Section.

N. The State Board of Morticians is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

O. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

P. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

#### Licenses—Funeral Directors and Embalmers

Sec. 3. A. The Board is hereby authorized and empowered and it shall be its duty to prescribe and maintain a standard of proficiency, character and qualifications of those engaged or who may engage in the practice of a funeral director or embalmer and to determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to collect the fees therefor. The Board shall examine all applicants for funeral directors' and embalmers' licenses and for apprenticeship licenses and shall issue the proper license to all persons qualified and who meet requirements herein prescribed.

B. The minimum requirements for the issuance of licenses by this Board to practice funeral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the Board through written examination as to his proficiency by examination on the subjects of: (a) the art and technique of funeral directing; (b) signs of death; (c) the manner by which death may be determined; (d) sanitation; (e) hygiene; (f) mortuary management and mortuary law; (g) business and professional ethics; (h) laws applicable to vital statistics pertaining to dead human bodies; (i) local, state, and federal rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

2. For a license to practice embalming: the applicant shall have been found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for one (1) year under the personal supervision of a licensed embalmer, and having satisfied the Board as to his proficiency through written

and practical examination on the subjects of: (a) anatomy of the human body; (b) the cavities of the human body; (c) the arterial and venous system of the human body; (d) blood and discoloration; (e) bacteriology and hygiene; (f) pathology; (g) chemistry and embalming; (h) arterial and cavity embalming; (i) restorative art; (j) disinfecting; (k) embalming special cases; (l) contagious and infectious diseases; (m) mortuary management; (n) care, preservation, transportation and disposition of dead human bodies; (o) laws applicable to vital statistics pertaining to dead human bodies; (p) sanitary science; (q) local, state, and federal rules and laws relating to the care and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

C. The Board is hereby authorized and empowered and it shall be its duty to approve a course of instruction to be given by any college of mortuary science or recognized school of higher learning that desires to be approved by the Board. And it shall be the duty of the Board to examine and supervise the activities of an accredited school or college of mortuary science so as to insure that said college or school is meeting the requirements of the Board.

D. It shall be the duty of the Board to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served an apprenticeship period of not less than twelve (12) consecutive months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of apprenticeship. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this Board, and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. Apprenticeship for a license to practice the science of embalming must be served by the person after graduation from a school or college of mortuary science. An applicant shall pay a registra-

tion fee not to exceed Fifteen Dollars (\$15) at the time he requests such apprenticeship registration.

(1) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the Board upon payment of a registration fee not to exceed Fifteen Dollars (\$15) shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the Board to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of sixty (60) dead human bodies, six (6) of which bodies the apprentice shall embalm after the first six months of the apprenticeship without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days after the end of each month each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. Throughout the period of apprenticeship, the apprentice shall report on at least one (1) such case of embalming each calendar month, within the month. In any month in which he did not embalm at least one (1) case under the direction of a licensed embalmer, a report shall be made to the Board notwithstanding.

2. Apprentice for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the Board on a form provided by the Board, and if the Board desires, he shall appear before at least one (1) member of the Board, or a designated representative thereof, for approval of his application, subject to review of it by the entire Board. An applicant must be not less than eighteen (18) years of age and have completed the educational requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve a one-year apprenticeship prior to enrolling in a course of study in funeral directing prescribed by the Board and graduating from a school of embalming or college of mortuary science. Time spent as an apprentice while engaged in a prescribed course of study in funeral directing or as a student in a school of embalming or college of mortuary science may not be counted toward the required period of apprenticeship. The application for registration shall be sworn to and accompanied by a registration fee

not to exceed Fifteen Dollars (\$15). If the application is accepted, an applicant will be issued a certificate of apprenticeship registration upon determination by the Board that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to enrolling in a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written examination given by the Board, and the payment of a registration fee not to exceed Fifteen Dollars (\$15), whereupon he shall be registered as an apprentice. Provided, however, an applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days after the end of each month each separate case with which he has assisted in handling. Each such report shall be certified to by the licensee under whom the apprentice performed the work. Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In any month within which he did not assist a funeral director in handling a funeral, a report shall be made to the Board notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of not less than sixty (60) dead human bodies, six (6) of which bodies the apprentice shall handle after the first six months of the apprenticeship. No more than two (2) apprentices may receive credit for work done on any one body.

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the Board to an apprentice embalmer or apprentice funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the apprentice of a renewal fee not to exceed Fifteen Dollars (\$15), provided the apprentice has observed the rules and regulations of the Board with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If a registered apprentice fails to pay the annual renewal fee by the due date, the Board shall impose a late payment penalty equal in amount to the license renewal fee. If the apprentice is delinquent in payment of the renewal fee and penalty for more than thirty (30) days, the Board shall suspend his certificate for nonpayment and shall notify such apprentice of such suspension by registered mail, addressed to his last known address. If the said renewal fee and penalty are not then paid within ninety (90) days from the date of such notice of suspension, the Board shall then cancel such certifi-

cate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the Board may reinstate said apprentice provided he meets all other requirements of the Board and pays the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. A certificate of apprenticeship may not be renewed for more than a total period of five (5) years from the date of its issuance. It is provided that the registration fee of any apprentice who is actively engaged in the military service of the United States may be remitted for the duration of such service or for such fees and such time as the Board may deem advisable upon presentation of proper evidence required by the Board.

3a. The board by rule shall adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.

4. Notification of the Board upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the Board of the name and place of business of the licensed embalmer or funeral director whose service he has entered and the name of the funeral director or embalmer under whom he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter such apprentice leaves the employ of the licensed embalmer or funeral director whose services he has entered, the said licensed embalmer or funeral director shall give to such apprentice an affidavit showing the length of time he has served as an apprentice with him and the number of cases handled while so employed; the original of said affidavit shall be filed with the Board and made a matter of record, and a copy shall be furnished to the apprentice. The Board shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the Board's examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. A certificate of apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H.

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the Board for a license accompanying same with a license fee not to exceed Fifty Dollars (\$50). The license or licenses when issued shall be signed by a majority of the Board and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be registered in the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be displayed conspicuously in the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall biennially pay to the Secretary of the said Board a registration fee not to exceed Fifty Dollars (\$50) for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable biennially on the 31st day of May, and the Board will give written notice on or before April 1st, of each year that the license fees are due and payable. If a licensee fails to pay the biennial registration fee by the due date, the Board shall charge the delinquent licensee a late payment penalty equal in amount to the registration fee, and shall suspend the license and notify the licensee by certified mail, return receipt requested, of such suspension. If the licensee does not pay the registration fee and penalty before the ninetieth (90th) day after the date on which the Board declared the license suspended, as provided herein, the license shall be automatically cancelled and the Board may thereafter refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act and has paid the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the State Board of Morticians, on a form to be prescribed by the Board, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the State Board of Morticians shall require, and shall, upon payment of a duplicate license fee not to exceed Ten Dollars (\$10), as determined by the Board, be granted a duplicate license. The Board shall adopt rules to carry out the biennial licensing system.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed a written and practical examination by the Board on embalming and/or a written examination on funeral directing.

2. The board by rule shall adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding pay-

ment of fees and dates for license suspension for nonpayment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on May 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

F. (1) On a reciprocal basis with other states, countries, or territories the Board may issue, without examination, a license to an applicant who has a corresponding certificate or license issued by another state, country, or territory having standards for the license that are at least substantially equivalent to those of this state and who pays a reciprocal license fee of Sixty-two Dollars and Fifty Cents (\$62.50). The person's application shall be accompanied by an affidavit made by the President or Secretary of the Board of Mortician Examiners which issued the license, or by a duly constituted registration officer of the state, country, or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state, country, or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the Board. At the end of one (1) year, the holder of said temporary permit shall again be considered by the Board, and if his application for license has been maintained and he meets all other requirements, the Board may grant said applicant a license.

G. Licenses currently outstanding shall be recognized under this Act. Any person, personally holding a current funeral director's and/or embalm-

er's license granted by the proper authorities in this state, shall not be required to make application for or submit to an examination, but shall be entitled to a renewal of his license, upon expiration of such current license, under the terms and conditions as herein provided for the renewal of licenses of those who may be licensed after the passage of this Act. All such persons shall be subject to every other provision of this Act.

H. The State Board of Morticians may seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or funeral director who fails to comply with any provision of this Act. This Act does not affect any remedy or enforcement power under other laws. The State Board of Morticians may revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may refuse to license or admit persons to examination for any of the following reasons all of which are offenses as provided in Section 6A of this Act:

1. The presentation to the Board of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;

2. Conviction of a crime of the grade of a felony or of a misdemeanor that is related to the practice of embalming or funeral directing;

3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;

4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;

5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Board of Morticians for license to practice as a funeral director and/or embalmer;

6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;

7. The use of any funeral director and/or embalmer license, certificate, diploma, or transcript of any such funeral director and/or embalmer license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;

8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;

9. The impersonation of a licensed funeral director or embalmer as authorized hereunder, or permitting, or allowing another to use his license, or certificate to practice as a funeral director or embalmer in this state;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a deceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Taking custody of, embalming, or refusing to promptly surrender a dead human body to a person or his agent authorized to make funeral arrangements for the deceased or embalming a body without the express written or oral permission of a person authorized to make funeral arrangements for the deceased or without making a documented reasonable effort over a period of at least two (2) hours to obtain the permission;

11A. Attempting without proper authority to embalm a dead human body as evidenced by the use of sutures or mechanical devices in the posing of any facial feature and:

(A) the making of any incision on the body; or

(B) the raising of any circulatory vessel of the body;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of present drug addiction;

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall engage in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call," as that term is defined in this Act;

18. Failure by a funeral director or embalmer to inform customers by a written notice on or near the casket of the different colors in which the three least expensive caskets displayed are available; or failure by the funeral director or embalmer to provide a casket in an available color requested by a



customer if the customer has expressed an intent to purchase the casket and if the casket can be obtained from regular commercial suppliers under normal delivery conditions within twelve (12) hours;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee;

20. Engaging in fraudulent or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to:

(A) inform a customer or prospective customer of the availability of a retail price list;

(B) provide a retail price list to the customer or prospective customer for that person to keep; or

(C) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person;

23. Failure by any person arranging for funeral services or merchandise to provide each customer a written memorandum itemizing the cost of funeral services and funeral merchandise selected by the customer; however, if the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a written memorandum that itemizes the discount provided by the package arrangement. The use of unit pricing does not preclude the presentation of the retail price list as required by Subdivision 22 of this subsection;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2) agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the State Board of Morticians, upon request, copies of all price lists, written notices, and memoranda of agreement required by this article for two years after the date of their distribution or signing;

26. Violation of this Act, or of any rule, regulation, or order revoking, suspending, or probating a license issued under this Act; and

27. Dishonest conduct or gross negligence in the practice of embalming or funeral directing that is likely to deceive, defraud, or otherwise injure the public.

I. The Board may issue such rules and regulations as may be necessary or desirable to effect the intent of the provisions of this Section.

J. Repealed by Acts 1979, 66th Leg., p. 1249, ch. 592, § 11, eff. Sept. 1, 1979.

#### Funeral Establishments

Sec. 4. A. All funeral establishments shall be licensed by the Board. All licenses shall expire at midnight on September 30th of each year. The license fee shall not exceed Sixty-two Dollars and Fifty Cents (\$62.50) for issuance of licenses to existing establishments and for renewal licenses. Funeral establishments created after the effective date of this Act shall apply for a license, and upon satisfaction to the Board that this Section has been complied with and upon receipt of the licensing fee, which shall not exceed Two Hundred Fifty Dollars (\$250), an initial license shall be duly issued to such new establishments. Not later than thirty (30) days prior to the expiration date of licenses, the Board shall cause to be issued notification in writing by mail to each licensed funeral establishment that a renewal fee not to exceed Sixty-two Dollars and Fifty Cents (\$62.50) must be paid not later than September 30th before such license shall be renewed, and upon due receipt of such fees all existing licenses shall be considered automatically renewed. Any establishment which fails to pay its license renewal fee by the due date is subject to a late payment penalty equal in amount to the license renewal fee, and if the delinquency is more than thirty (30) days, the establishment shall not be permitted to operate as a funeral home until it has applied for and has been granted a new license as in the case of original applications and licenses for new funeral establishments.

B. No funeral establishment shall conduct funeral business as intended under this Act unless duly licensed.

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Some facilities in which funeral services may be conducted;

2. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;

3. Access to rolling stock consisting of at least one motor hearse;

4. A preparation room containing an operating table, sewer facilities, hot and cold running water, and other facilities necessary to comply with the sanitary code of the state and the municipality in which the room is located;

5. A display containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets, provided that the least expensive casket offered for sale by a funeral establish-

ment must be displayed in the same general manner as other caskets are displayed;

6. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

7. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

8. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a commercial embalmers establishment license, but shall not be required to meet the requirements of sub-sections 1 and 5 of this paragraph C.

D. 1. The Board may initiate action against a funeral establishment or in regard to the license of a funeral establishment only upon the following grounds:

(a) Failure of a funeral establishment to substantially comply with the provisions of Subsection B or C of this Section.

(b) Conducting or operating a funeral establishment in a manner which, in the discretion of the Board, after applying contemporary community standards, is found to be offensive to the common conscience and moral standards of the community where the funeral establishment is licensed or where such offensive conduct occurred.

(c) The use of any advertising statement of a character which misleads or deceives the public, or use, in connection with advertisements, the names of persons who do not hold a license as a funeral director or embalmer and represent them to be so licensed;

(d) Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes).

(e) Failure by the funeral director in charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call" as that term is defined in this Act.

Provided, however, with respect to alleged violations of Subsection D-1(b), (c), (d), and (e), the Board may not initiate action against a funeral establishment or in regard to the license of a funeral establishment when the ground or grounds of complaint are based on the conduct of employees, agents or representatives of such establishment performed

outside the scope and authority of their employment or contrary to the instructions of the funeral establishment and its management.

2. As to asserted violations of provisions of this Section, the Board shall have the following powers, rights and duties:

(a) The Board may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.

(b) The Board shall cause an investigation to be made whenever a complaint is filed with or by the Board.

(c) The Board may revoke or suspend a funeral establishment or a commercial embalming establishment license or may place a licensee on probation for a violation of this Act or of a rule or regulation adopted under this Act.

E. Each funeral establishment shall designate to the Board a funeral director in charge, and such funeral director in charge shall be directly responsible for the funeral directing and embalming business of the licensee. Any change or changes in such designation shall be given to the Board promptly.

F. The Board may issue such rules and regulations as shall comply with and shall effect the intent of the provisions of this Section.

G. Any premises on which funeral directing or embalming is practiced shall be open at all times to inspection by any agent of the Board or by any duly authorized agent of the state or of the municipality in which the premises are located. Each licensed funeral establishment shall be thoroughly inspected at least once each year by an agent of the Board or by an agent of the state or a political subdivision thereof whom the Board has authorized to make inspections on its behalf. A report of this annual inspection shall be filed with the Board.

#### Rules and Regulations

Sec. 5. A. The Board may adopt rules and regulations and prescribe forms necessary to administer this Act.

B. Whenever it is provided in this Act that the Board may or shall issue any rules and regulations, such rules and regulations thereunder proposed shall be effective only after due notice and hearing.

#### Revocation, Cancellation or Suspension of Licenses of Funeral Directors, Embalmers and Apprentices

Sec. 6. The State Board of Morticians shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

Proceedings under this Section shall be initiated by filing charges with the State Board of Morticians in writing and under oath. Said charges may be made by any person or persons. The President of

the State Board of Morticians shall set a time and place for hearing. Upon application, the Board may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the Board may require.

The State Board shall have the power to appoint committees from the membership. The duties of any committees appointed from the State Board of Morticians membership may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the State Board of Morticians with respect thereto. The State Board of Morticians shall have the power, and may delegate the said power to any committee, to issue subpoenas,<sup>1</sup> duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The determination shall be founded on sufficient legal evidence to sustain it. The State Board of Morticians shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The State Board of Morticians shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the Board. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the Board shall hold a hearing in accordance with the procedure as set forth in this Act.

The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.

<sup>1</sup> So in enrolled bill.

#### Offenses

Sec. 6A. A person commits an offense if the person:

(1) acts or holds himself out as a funeral director, embalmer, or apprentice, as those terms are defined in this Act, without being properly licensed under this Act or shall make a "first call" without the authorization or supervision as provided in Section 1C of this Act;

(2) is a licensed funeral director or embalmer and engages in a funeral practice that is grounds for suspension or revocation of the person's license.

#### Certificate for Foreign Students

Sec. 6B. Any citizen of a country other than the United States who has completed a full course of mortuary science at a Board-approved college in Texas, may upon application to the State Board, and

after payment of the same examination fee required of others, be given the Board examinations in either embalming, funeral directing or both, and, upon successfully making the minimum grades required of other applicants, may be awarded a "Certificate of Merit" by the Board. Such certificate shall in no manner authorize a holder thereof to practice embalming and/or funeral directing in this state unless the holder is otherwise licensed as an embalmer and/or funeral director under the provisions of this Act.

#### Administrative Procedure and Texas Register Act

Sec. 6C. (a) A person who is denied a license or certificate by the Board is entitled to a hearing before the Board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), if the person requests the hearing in writing.

(b) A proceeding conducted by the Board relating to the suspension or revocation of a license or certificate is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of the proceeding is subject to the substantial evidence rule and is governed by the Administrative Procedure and Texas Register Act.

#### Complaints

Sec. 6D. (a) The Board shall investigate and keep an information file about each complaint received by the Board relating to a funeral director, embalmer, apprentice, or funeral establishment.

(b) The Board shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the Board after investigating the complaint, a description and date of any formal actions taken by the Board relating to the complaint, a description of the current status of the complaint, and other information that the Board considers appropriate.

(c) The Board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(d) The information file, except for information in the file obtained by the Board after investigating the complaint, is public information. The information obtained after investigating the complaint is not public information.

(e) If a person files a complaint with the Board relating to a licensed funeral director, embalmer, or funeral establishment, the Board shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint.

(f) The Board shall employ at least one person who is a licensed private investigator under the laws of this state and who is not regulated under

this Act. The private investigator may investigate complaints of consumer interest and other complaints received by the Board.

#### Consumer Information

Sec. 6E. (a) The Board shall prepare information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the Board, and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board.

(b) The Board shall disseminate the information to the general public.

#### Ex Parte Communications

Sec. 6F. The members and employees of the Board are subject to the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

#### Penalty

Sec. 7. (a) An offense under Section 6A of this Act is a Class B misdemeanor.

(b) The Board may file a complaint with the appropriate governmental authorities to begin prosecution of a person who commits an offense under Section 6A of this Act. The State Board of Morticians or any adversely affected party may sue a funeral establishment or licensed embalmer or funeral director who fails to comply with any provision of this Act for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

#### Exemption

Sec. 8. Nothing herein shall be construed as requiring that funeral establishments be owned by licensed persons.

[Acts 1953, 53rd Leg., p. 661, ch. 251. Amended by Acts 1963, 58th Leg., p. 1283, ch. 494, § 1, eff. Sept. 1, 1963; Acts 1969, 61st Leg., p. 367, ch. 137, § 1, eff. May 6, 1969; Acts 1969, 61st Leg., p. 368, ch. 138, § 1, eff. May 6, 1969; Acts 1971, 62nd Leg., p. 2957, ch. 980, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 625, ch. 266, § 11, eff. June 11, 1973; Acts 1977, 65th Leg., p. 859, ch. 324, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.013, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1233, ch. 592, §§ 1 to 8, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 1645, ch. 311, §§ 1 to 6, eff. Sept. 1, 1983.]

#### Repeal

*Acts 1971, 62nd Leg., p. 2721, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and*

*classified as article 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this article.*

Sections 2 and 3 of the 1971 amendatory act provided:

"Sec. 2. Severability. Every provision of this Act, every Section and every part of every Section, is hereby declared to be independent and severable insofar as this relation shall be necessary to the validity of this Act. Should any provisions of this Act be held to be invalid by a court of competent jurisdiction, for any reason, such holding shall not affect the validity of any remaining provision of this Act, it being the legislative intent that the Act shall stand, notwithstanding the invalidity of any such provision or Section; the fact that any provision, Section, or part of any Section, is void or invalid shall not be held to invalidate any other provision hereof.

"Sec. 3. Conflicts. All laws and parts of laws in conflict herewith are repealed to the extent of such conflict only."

Sections 9 and 10 of the 1979 amendatory act provided:

"Sec. 9. (a) A person holding office as a member of the State Board of Morticians on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall make initial appointments of three public members, one for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985. The additional public member shall be appointed upon expiration of the term of one incumbent funeral industry member on May 31, 1981.

"(c) The terms of office of the appointees who fill the offices of incumbent members whose terms expire on May 31, 1981, and May 31, 1983, shall expire on January 31, 1987, and January 31, 1989, respectively.

"Sec. 10. This board shall promulgate no rule or regulation requiring embalming. No other state agency shall promulgate or enforce a rule or regulation requiring embalming without a finding that such rule or regulation is necessary to protect the public health."

### CHAPTER THIRTEEN. ANATOMICAL BOARD

Art.	
4583.	Board and Duties.
4583a.	Application of Sunset Act.
4584.	Regulations for Delivering Bodies.
4585.	Distribution of Bodies to Institutions.
4585A.	Delivery of Bodies to State Board of Embalming and to Schools of Embalming.
4586.	Regulations for Moving Bodies.
4587.	May Dissect Bodies.
4588.	Parties Receiving Bodies to Give Bond.
4589.	Expenses.
4590.	Compensation of Board.
4590.1.	Violating Anatomical Board Act.
4590-1.	Repealed.
4590-2.	Anatomical Gift Act.
4590-2a.	Kidney Donation by Mentally Retarded Person.
4590-3.	Human Transplantations and Blood Transfusions; Liability for Negligence; Cash Payment for Blood.
4590-4.	Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue.
4590-5.	Eye Enucleation for Anatomical Donations.

#### Art. 4583. Board and Duties

The professor of anatomy and the professor of surgery of each of the medical schools or colleges,

and two professors from each chiropractic school or college now incorporated, and of the several medical, chiropractic, and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 1, eff. April 25, 1977.]

#### Art. 4583a. Application of Sunset Act

The Anatomical Board of the State of Texas is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.112, eff. Aug. 29, 1977.]

<sup>1</sup> Article 5429k.

#### Art. 4584. Regulations for Delivering Bodies

All public officers, agents and servants of the state and all officers, agents and servants of any county, city, town, district, or other municipality, and of any other institution, having charge or control of dead bodies required to be buried at public expense, or bodies not claimed for burial, are hereby required (after notification in writing to do so by the Anatomical Board or its duly authorized officers, or persons designated by the authorities of said Board, then and thereafter) to announce to said Board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge or control, and must deliver such body at the discretion of the Anatomical Board, and permit the said Board and its agents, and the physicians and surgeons from time to time designated by it, who may comply with the provisions of this law, to take and remove any such body to be used within this state for the advancement of medical science.

No such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, may claim the said body for burial. The body shall be surrendered to the claimant, without payment to the authority in charge. To claim a body as a bona fide friend, an individual must

present in writing a statement of the relationship considered to be proof of being a true bona fide friend. A similar written statement is also required of an individual representing an organization of which the deceased was a member.

A bona fide friend is herein defined as one who is "like one of the family" and is not an ordinary acquaintance. It does not include the people that follow: any officer, agent or servant of the state, or of any county, town, city, district, or other municipality and any almshouse, prison, morgue, hospital, mortuary, or any other institution having charge of dead human bodies required to be buried at public expense, or bodies not claimed for burial; any employee of these with which the deceased was associated; and any patient, inmate, or ward of the institution or institutions with which the deceased was associated. These exceptions do not apply in case the friendship existed prior to the time the deceased entered the institution.

If no claimant appears immediately after death, the body shall be embalmed within twenty-four hours. It is further required that due effort be made for a period of seventy-two hours by those in charge of such almshouse, prison, morgue, hospital, mortuary, or other institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and to notify them of the death. Failure by kindred or relation to claim such body within forty-eight hours after receipt of such notification shall be recognized as bringing such body under the provision of this law, and delivery shall be made as soon thereafter as may be possible to the Anatomical Board, its officers or agents. The person in charge of such institution shall file with the County Clerk an affidavit that he has made diligent inquiry to find the kindred or relatives of the deceased, stating what inquiry he has made. A body may be claimed by relatives within sixty (60) days after it has been delivered to an institution or other agency entitled to receive the same under the provisions of the law, and it shall be released to them without cost. Permission for autopsy of unclaimed bodies may be granted only by the Anatomical Board following a specific request to the Board showing sufficient evidence of medical urgency. If the body was that of a traveler who died suddenly, the Anatomical Board shall direct the institution receiving the body that it be kept for six months for purposes of identification.

Any inhabitant of the State of Texas of legal age and of sound mind may, by his will or by other written instrument, arrange for or prescribe that his body be used for the purpose of advancing medical science and that it be delivered to a medical school or dental school, or other donee authorized by the Anatomical Board. Any such bequest shall be by written instrument signed by the person making or giving the same and shall be witnessed by two (2) persons of legal age. No particular form or words shall be necessary or required for the bequest or authorization, provided that the instru-

ment conveys the clear intention of the person making the same. No appointment of administrator, executor, or court order shall be necessary before delivery of said body. The donor may revoke this disposition of his body at any time by execution of a written instrument in the same or similar manner as the original donation and bequest.

In the event any political subdivision or agency thereof, having charge or control of dead bodies required to be buried at public expense, or bodies not claimed for burial, is not required by the Anatomical Board to deliver said body to said Anatomical Board or parties of its designation, then in such event all costs of preparation for burial, including but not limited to embalming, shall be paid by the political subdivision. In the event, however, that said political subdivision is required by the Anatomical Board to deliver said body to said Anatomical Board or parties of its designation, then in such event all costs of transportation and/or preparation for burial or transportation, including but not limited to embalming, shall be paid by the Anatomical Board.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 328, ch. 152, § 1; Acts 1953, 53rd Leg., p. 361, ch. 87, § 1; Acts 1961, 57th Leg., 1st C.S., p. 147, ch. 36, § 1.]

#### Art. 4585. Distribution of Bodies to Institutions

The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid, including chiropractic colleges, in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive.

[Acts 1925, S.B. 84. Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 2, eff. April 25, 1977.]

#### Art. 4585A. Delivery of Bodies to State Board of Embalming and to Schools of Embalming

The Board, or their duly authorized agents, may, upon receiving such bodies, deliver to the State Board of Embalming such number of the same as may be necessary for the use of said State Board of Embalming in conducting its semiannual examinations; and may further deliver to any School of Embalming in this State that is recognized and

certified by the State Board of Embalming such number of said bodies as the Board may in its judgment think necessary for use in instruction given in such School.

[Acts 1931, 42nd Leg., p. 310, ch. 184, § 1.]

#### Art. 4586. Regulations for Moving Bodies

The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. The sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, safely transmit to the sender a receipt for the same in the full terms of the description furnished by the sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this State.

[Acts 1925, S.B. 84.]

#### Art. 4587. May Dissect Bodies

Any and all schools, colleges, and persons who may be designated by said Anatomical Board shall be authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated.

[Acts 1925, S.B. 84.]

#### Art. 4588. Parties Receiving Bodies to Give Bond

No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the State by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, condi-

tioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and that all experiments on the lower animals shall be conducted only for the promotion of medical science.

[Acts 1925, S.B. 84.]

#### Art. 4589. Expenses

Neither the State, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said Anatomical Board, or otherwise agreed upon.

[Acts 1925, S.B. 84.]

#### Art. 4590. Compensation of Board

No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board.

[Acts 1925, S.B. 84.]

#### Art. 4590.1. 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.

[1925 P.C.]

Art. 4590-1. Repealed by Acts 1969, 61st Leg., p. 1176, ch. 375, § 9, eff. May 29, 1969

#### Art. 4590-2. Anatomical Gift Act

##### Short Title

Sec. 1. This Act may be cited as the Texas Anatomical Gift Act.

##### Definitions

Sec. 2. (a) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts."

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(i) "Eye Bank" means a nonprofit corporation, chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, for research, or for other medical purposes.

##### Persons Who May Execute an Anatomical Gift

Sec. 3. (a) Any individual who has testamentary capacity under the Texas Probate Code may give all or any part of his body for any purpose specified in Section 4, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in Section 4:

- (1) the spouse,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of his death,
- (6) any other person authorized or under obligation to dispose of the body.

(c) If the donee, or the physician of a donee, has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after death or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 8(d).

##### Persons who May Become Donees, and Purposes for Which Anatomical Gifts May be Made

Sec. 4. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(2) any accredited medical, chiropractic, or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) any individual specified by a licensed physician for therapy or transplantation needed by him; or

(5) any eye bank whose medical activities are directed by a licensed physician or surgeon.

#### Manner of Executing Anatomical Gifts

Sec. 5. (a) A gift of all or part of the body under Section 3(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under Section 3(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of 2 witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of 2 witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 8(b), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in Section 3(b) shall be made by a document signed by him, or

made by his telegraphic, recorded telephonic or other recorded message.

#### Delivery of Document of Gift

Sec. 6. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

#### Amendment or Revocation of the Gift

Sec. 7. (a) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of 2 persons and communicated to the donee, or

(3) a statement addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

#### Rights and Duties at Death

Sec. 8. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the surviving spouse or any other person authorized to give all or any part of the decedent's body may authorize embalming and have the use of the body for funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.



(c) A person who acts in good faith in accordance with the terms of this Act, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act, so long as the prerequisites for an anatomical gift have been met under the laws applicable at the time and place of the making of the anatomical gift.

(d) The provisions of this Act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

[Acts 1969, 61st Leg., p. 1176, ch. 375, §§ 1 to 8, eff. May, 29, 1969. Amended by Acts 1977, 65th Leg., p. 28, ch. 12, §§ 5, 6, eff. March 10, 1977; Acts 1977, 65th Leg., p. 148, ch. 72, § 3, eff. April 25, 1977.]

#### Art. 4590-2a. Kidney Donation by Mentally Retarded Person

Sec. 1. (a) "Mentally retarded" as used in this Act means a person who is mentally retarded pursuant to the terms and provisions of the Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes).

(b) The guardian of the person of a mentally retarded ward, 12 chronological years of age or more, may petition a district court which has jurisdiction of the guardian for an order authorizing said ward to donate one of his or her two kidneys to a father, mother, son, daughter, sister, or brother as hereinafter set out.

Sec. 2. (a) The court shall hold a hearing on the petition. An attorney ad litem and a guardian ad litem, neither of which shall be related to the ward within the second degree by consanguinity, shall be appointed by the court to represent the interest of the prospective donor.

(b) Petitioners shall have the burden of establishing good cause for the kidney donation by establishing the statutory prerequisites set out herein. The court may enter an order authorizing the kidney donation if it is established that: (1) the guardian of the prospective donor consents to the donation; (2) the prospective donor assents to the kidney transplant; (3) absent the transplant the donee will soon die or suffer severe and progressive deterioration; and with the transplant the donee will probably benefit substantially; (4) there are no medically preferable alternatives to a kidney transplant for the donee; (5) the risks of the operation and the long-term risks are minimal to the donor, and the donor will not likely suffer psychological harm; and (6) the transplant will promote the proposed donor's best interests.

(c) Within seven days of the hearing, the court shall conduct an "in chambers" interview with the mentally retarded ward, out of the presence of the guardian, to determine whether the prospective donor assents to the donation. If the court deems it necessary, it may order a comprehensive diagnosis and evaluation, described in Section 3(24), Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes), to be performed to

aid the court in evaluating the prospective donor's capacity to agree to the donation.

(d) In order to secure a complete record, the hearing shall be adversary in nature. The attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) Upon request, any party to a proceeding instituted pursuant to this Act shall be entitled to a preferential setting.

[Acts 1979, 66th Leg., p. 886, ch. 406, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 Act provided:

"Sec. 3. This Act takes effect on September 1, 1979.

"Sec. 4. If any sentence, paragraph, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph, or section hereof, and the legislature hereby expressly dictates that it would have passed such remaining sentences, paragraphs, and sections despite such invalidity."

#### Art. 4590-3. Human Transplantations and Blood Transfusions; Liability for Negligence; Cash Payment for Blood

##### Declaration of Policy

Sec. 1. The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this State. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills and materials. It is therefore the public policy of this State to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to instances of negligence.

##### Limitation of Liability

Sec. 2. No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing or transferring any tissue, organ, blood or component thereof from one or more human beings, living or dead, to another human being, shall be liable as the result of any such activity, save and except that each such person or entity shall remain liable for his or its own negligence.

##### Exception

Sec. 3. (a) No blood bank may pay cash for blood. No blood bank may pay a seller for blood by check unless the check is sent to the seller by United States mail not before the expiration of 15 days following the day the blood is taken from the seller.

(b) If a blood bank purchases blood in violation of Subsection (a) of this section and the blood contains harmful substances, the blood bank is not entitled to the immunity provided in this Act.

(c) In any suit brought under the exception in Subsection (b) of this section, the burden shall be on the blood bank to show that the blood was not purchased in violation of Subsection (a) of this section.

(d) "Blood bank" means a blood bank licensed by the Division of Biological Standards of the National Institute of Health, or the American Association of Blood Banks.

[Acts 1971, 62nd Leg., p. 1985, ch. 613, eff. June 4, 1971.]

#### Legislative Intent

*The Governor filed the following letter with the Secretary of State along with House Concurrent Resolution No. 195, Acts 1971, 62nd Leg., p. 4122, which corrects Senate Bill No. 534 [Chapter 613 enacting this article]:*

*"Dear Mr. Secretary:*

*"On June 4, 1971, I signed Senate Bill No. 534. At that time, I was unaware that House Concurrent Resolution No. 195 had been passed by the Legislature directing the Senate Enrolling Room to make certain changes in the bill. House Concurrent Resolution No. 195 evidently was misplaced, inasmuch as it was not received by my office until June 10, 1971.*

*"Although I have already signed Senate Bill No. 534 into law, I am filing with my signature H.C.R. No. 195 as evidence of the legislative intent embodied in Senate Bill No. 534.*

*"Sincerely, Preston Smith,  
Governor of Texas."*

*House Concurrent Resolution No. 195, which was filed with the Secretary of State on June 14, 1971, reads:*

*"WHEREAS, Senate Bill No. 534 has been passed by both houses and is now in the Senate Enrolling Room, and certain corrections need to be made in the bill; now, therefore, be it*

*"RESOLVED by the House of Representatives of the State of Texas, the Senate concurring, That the Enrolling Clerk of the Senate be directed to correct the bill so that all below the enacting clause reads as follows:*

*"Sec. 1. Declaration Policy. The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this state.*

*The imposition of legal liability without fault, or the determination that the furnishing of human tissue, organs, blood and components thereof is a product as opposed to a service, upon persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and imposes too rigid a standard of produce liability. It is therefore the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to instances of negligence.*

*"Sec. 2. Limitation of Liability. No physician, surgeon, hospital, blood bank, tissue bank, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing or transferring any tissue, organ, blood or component thereof from one or more human beings, living or dead, to another human being, shall not be considered for any purposes as having furnished a product thereby, but performing any of the foregoing shall be considered as having provided a service and the concept of product liability shall never be applied thereto.*

*"Sec. 3. Declaring an Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."*

#### Art. 4590-4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue

##### Permission to Take Tissue

Sec. 1. On a request from an authorized official of a nonprofit corporation chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by those licensed to practice medicine for corneal transplants, for research, or for other medical purposes and whose medical activities are directed by one licensed to practice medicine in Texas, for corneal tissue, the justice of the peace or the medical examiner may permit the taking of corneal tissue if:

(1) the decedent from whom the tissue is to be taken died under circumstances requiring an inquest by the justice of the peace or the medical examiner;

(2) no objection by a person listed in Section 2 of this Act is known by the justice of the peace or the medical examiner; and

(3) the removal of corneal tissue will not interfere with the subsequent course of an investigation or autopsy, or alter the postmortem facial appearance.

#### Objection to Taking

Sec. 2. Objection may be made known to the justice of the peace or the medical examiner by the following persons:

- (1) the decedent's spouse;
- (2) if no spouse, the decedent's adult children;
- (3) if no adult children or spouse, the decedent's parents; or
- (4) if no parents, adult children, or spouse, the decedent's brothers or sisters.

#### Liability for Damages

Sec. 3. The justice of the peace, the medical examiner, and the eye bank official are not liable for damages in a civil action brought by a person listed in Section 2 of this Act who has not objected prior to the removal of the corneal tissue on any theory of civil recovery based on a contention that the consent of plaintiff was required prior to the removal of corneal tissue as authorized by this Act. Chapter 309, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), applies to a justice of the peace, medical examiner, and their personnel who remove, permit removal, or deny removal of corneal tissue under this Act as if the justice of the peace, medical examiner, and their personnel were state officers or employees.

[Acts 1977, 65th Leg., p. 26, ch. 11, §§ 1 to 3, eff. March 10, 1977. Amended by Acts 1983, 68th Leg., p. 4280, ch. 681, § 1, eff. June 19, 1983.]

#### Art. 4590-5. Eye Enucleation for Anatomical Donations

##### Persons Who May Enucleate Eye as Anatomical Gift

Sec. 1. Only the following persons may enucleate an eye when an eye is an anatomical gift:

- (1) a licensed physician or surgeon;
- (2) a licensed doctor of dental surgery or medical dentistry;
- (3) a licensed embalmer; or
- (4) a technician supervised by a physician or surgeon.

#### Eye Enucleation Course

Sec. 2. All persons, except licensed physicians, who perform eye enucleations must complete a course in eye enucleation that is taught by an ophthalmologist as defined in this Act and must possess a certificate showing the fulfillment of this requirement.

#### Requisites of Course

Sec. 3. The course must include anatomy and physiology of the eye, instruction in maintaining a sterile field during the procedure, use of the appropriate instruments, and sterile procedures for removing the corneal button and preserving it in a preservative fluid.

#### "Ophthalmologist" Defined

Sec. 4. "Ophthalmologist" means for the limited purpose of this Act one licensed to practice medicine who specializes in the treatment of diseases of the eye.

[Acts 1977, 65th Leg., p. 27, ch. 12, §§ 1 to 4, eff. March 10, 1977.]

#### CHAPTER FOURTEEN. GROUP HOSPITAL SERVICE [REPEALED]

##### Art. 4590a. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4

This article, derived from Acts 1939, 46th Leg., p. 123, and Acts 1943, 48th Leg., p. 371, ch. 249, related to non-profit corporations for group hospital service. The subject matter is now covered by Insurance Code, Arts. 20.01 to 20.21.

#### CHAPTER FIFTEEN. AMBULANCES

##### Art. 4590b. Repealed by Acts 1983, 68th Leg., p. 3006, ch. 516, § 5, eff. Jan. 1, 1984

#### CHAPTER SIXTEEN. BASIC SCIENCES

##### Art.

4590c. Repealed.

4590c-1. Board of Examiners in Basic Sciences Abolished.

##### Art. 4590c. Repealed by Acts 1979, 66th Leg., p. 1153, ch. 556, § 4, eff. Sept. 1, 1979

##### Art. 4590c-1. Board of Examiners in Basic Sciences Abolished

Sec. 1. [Amends art. 4500]

Sec. 2. The State Board of Examiners in the Basic Sciences is abolished. The records and other property in the custody of the board are transferred to the State Board of Control.<sup>1</sup>

Sec. 3. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(b), eff. Aug. 5, 1981.

[Acts 1979, 66th Leg., p. 1153, ch. 556, §§ 2, 3, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(b), eff. Aug. 5, 1981.]

<sup>1</sup> State Board of Control abolished and State Purchasing and General Services Commission created by Acts 1979, 66th Leg., p. 1908, ch. 773. See, now, art. 601b.

#### CHAPTER SEVENTEEN. NATUROPATHY

##### Art. 4590d. Repealed by Acts 1961, 57th Leg., p. 263, ch. 138, § 1, eff. Aug. 28, 1961

Acts 1961, 57th Leg., p. 263, ch. 138, § 2 provided:

"Sec. 2. The Naturopathic Reregistration Fund (No. 210) is hereby abolished and the balance in that Fund on the effective date of this Act shall be transferred to the General Revenue Fund within thirty (30) days of the effective date of this Act."

## CHAPTER EIGHTEEN. IDENTIFICATION OF SYSTEM OF HEALING

### Art. 4590e. Healing Art Identification Act

#### Title

Sec. 1. This Act shall be known as the Healing Art Identification Act. The provisions of this Act shall not affect or limit in any way the application or use of the principles, tenets, or teachings of any established church in the ministrations to the sick or suffering by prayer, without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with; and provided, further, that all those so ministering or offering to minister to the sick or suffering by prayer shall refrain from maintaining offices, except for the purpose of exercising the principles, tenets, or teachings of the church of which they are bona fide members.

#### The Healing Art Defined

Sec. 2. For the purpose of this Act, the healing art includes any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition.

#### Healing Art Identifications

Sec. 3. Every person licensed to practice the healing art heretofore or hereafter by either the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the Texas Board of Chiropractic Examiners, the Texas State Board of Examiners in Optometry, the State Board of Chiropractic Examiners and the State Board of Naturopathic Examiners shall in the professional use of his name on any sign, pamphlet, stationery, letterhead, signature, or on any other such means of professional identification, written or printed, designate in the manner set forth in this Act the system of the healing art which he is by his license permitted to practice. The following are the legally required identifications, one of which must be used by practitioners of the healing art:

(1) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Medicine: physician and/or surgeon, M.D.; doctor, M.D.; doctor of medicine, M.D.

(2) If licensed by the Texas State Board of Medical Examiners on the basis of the degree Doctor of Osteopathy: physician and/or surgeon, D.O.; Osteopathic physician and/or surgeon; doctor, D.O.; doctor of osteopathy; osteopath; D.O.

(3) If licensed by the State Board of Dental Examiners: dentist; doctor, D.D.S.; doctor of dental surgery; D.D.S.; doctor of dental medicine, D.M.D.

(4) If licensed by the Texas Board of Chiropractic Examiners: chiropractor; doctor, D.C.; doctor of Chiropractic; D.C.

(5) If licensed by the Texas State Board of Examiners in Optometry: optometrist; doctor, optometrist; doctor of optometry; O.D.

(6) If a practitioner of the healing art is licensed by the State Board of Podiatry Examiners, he shall use one of the following identifications: chiropodist; doctor, D.S.C.; Doctor of Surgical Chiropody; D.S.C.; podiatrist; doctor, D.P.M.; Doctor of Podiatric Medicine; D.P.M.

(7) If licensed by the State Board of Naturopathic Examiners: naturopathic physician; physician, N.D.; doctor of naturopathy; N.D.; doctor, N.D.

#### Other Persons Using Title "Doctor"

Sec. 4. Any person not otherwise covered by the provisions of this Act, and not given herein a means of identification shall, in using the title "doctor" as a trade or professional asset, or on any sign, pamphlet, stationery, letterhead, signature, or any other manner of professional identification, designate under what authority such title is used, or what college or honorary degree gave rise to its use, in the same manner as practitioners of the healing arts are required under this Act to identify themselves.

#### Enforcement

Sec. 5. It shall be the duty and obligation of the several district and county attorneys, upon the request of any of the healing art licensing boards named in Section Three to file and prosecute appropriate judicial proceedings in the name of the State of Texas in the district Court of the county in which a violation occurs against any licensed practitioner of the healing art who fails to comply with the identification requirements of Section Three.

#### Penalties

Sec. 6. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

(1) for the first violation, a fine of One Hundred Dollars (\$100).

(2) for the second violation, a fine of Five Hundred Dollars (\$500).

(3) upon conviction for the third violation of this Act, a fine of One Thousand Dollars (\$1,000), or the license of the violator to practice the healing art shall be revoked. The district Court in which the conviction occurs shall so notify the licensing board which issued the license.

**Repealer**

Sec. 7. All laws or parts of laws in conflict herewith are hereby repealed.

**Partial Unconstitutionality**

Sec. 8. 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 sections, subsections, sentences, clauses or phrases thereof are declared unconstitutional.

[Acts 1951, 52nd Leg., p. 265, ch. 154. Amended by Acts 1963, 58th Leg., p. 39, ch. 26, § 1; Acts 1965, 59th Leg., p. 963, ch. 476, § 1, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 68, ch. 26, § 1, eff. Sept. 1, 1969.]

Section 2 of Acts 1963, 58th Leg., p. 39, ch. 26, provided: "Nothing in this Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropractic Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

Acts 1965, 59th Leg., p. 983, ch. 476, § 1 amended paragraph (6) of section 3 of this article; section 2 of the amendatory act of 1965 provided:

"Nothing in this Act in any way shall invalidate or affect or be construed to invalidate or affect any valid license duly issued by the State Board of Chiropractic Examiners and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by said Board."

Section 2 of the amendatory act of 1969 provided:

"Nothing in this Act in any way invalidates or affects or shall be construed to invalidate or affect any valid license duly issued by the State Board of Podiatry Examiners (formerly known as the State Board of Chiropractic Examiners) and in effect on the effective date of this Act, or the lawful renewal or reinstatement of any license issued by that Board."

**CHAPTER NINETEEN. NUCLEAR AND RADIOACTIVE MATERIALS**

**Art.**

- 4590f. Nuclear and Radioactive Materials; Sources of Radiation; Licensing and Registration.
- 4590f-1. Low-Level Radioactive Waste Disposal Authority Act.
- 4590g. Repealed.

**Art. 4590f. Nuclear and Radioactive Materials; Sources of Radiation; Licensing and Registration**

**Declaration of Policy**

Sec. 1. It is the policy of the State of Texas in furtherance of its responsibility to protect occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for (a) compatibility with the standards and regulatory programs of the Federal Government, (b) a single, effective system of regulation within the state, and

(c) a system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public and protection of the environment.

**Purpose**

Sec. 2. It is the purpose of this Act to effectuate the policies set forth in Section 1 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety and the environment;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the Federal Government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public and protection of the environment.

**Definitions**

Sec. 3. (a) "By-product material" means:

(1) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics.

(b) "Radiation" means one or more of the following:

(1) Gamma and x-rays; alpha and beta particles and other atomic or nuclear particles or rays;

(2) Stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(3) Sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(c) "License"—General and Specific.

(1) "General license" means a license effective pursuant to rules promulgated by the Agency without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(2) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(d) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the Commission and other than Federal Government Agencies licensed or exempted by the Commission.

(e) "Source materials" means:

(1) uranium, thorium, or any other material which the Governor declares by order to be source material after the Commission has determined the material to be such; or

(2) ores containing one or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the Commission has determined the material in such concentration to be source material.

(f) "Special nuclear material" means:

(1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the Commission has determined the material to be such, but does not include source material; or

(2) any material artificially enriched by any of the foregoing, but does not include source material.

(g) "Registration" means notification of the Agency of an activity involving the operation of radiation producing equipment or the manufacture, use, handling, or storage of radioactive material. Said notice shall state the location, nature, and scope of such operation, manufacture, use, handling, or storage.

(h) "Excessive exposure" means the exposure to radiation in excess of the maximum permissible levels as provided under rules adopted by the Texas Board of Health.

(i) "Radioactive material" means any material, solid, liquid or gas, which emits radiation spontaneously, whether occurring naturally or produced artificially.

(j) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable of producing radiation, whether intentional or incidental.

(k) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.

(l) "Security" means:

(1) cash deposits;

(2) surety bonds;

(3) certificates of deposit;

(4) deposits of government securities;

(5) irrevocable letters of credit; or

(6) other security acceptable to the Agency.

(m) "Fund" means the Radiation and Perpetual Care Fund.

(n) "Agency" means the Texas Radiation Control Agency.

(o) "Director" means the Director of the Radiation Control Program.

(p) "Commission" means the United States Nuclear Regulatory Commission or any successor to that agency.

(q) "Radioactive waste" means any discarded or unwanted radioactive material unless exempted by Agency rule adopted under Subsection (c) of Section 6 of this Act or any radioactive material that would require processing before it could be put to a beneficial reuse. The term does not include by-product material defined in Subdivision (2) of Subsection (a) of Section 3 of this Act or uranium ore.

(r) "Person affected" means a person:

(1) who is a resident of a county, or a county adjacent to the county, in which nuclear or radioactive materials subject to this Act are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and

(2) who shall demonstrate that he has suffered or will suffer actual injury or economic damage.

(s) "Local government" means a county, an incorporated city or town, a special district, or other political subdivision of the state.

(t) "Processing" means the storage, extraction of materials, transfer, volume reduction, compaction, or other separation and preparation of radioactive waste for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(u) "Disposal" means isolation or removal of radioactive wastes from mankind and his environment

with no intention of subsequent retrieval. The term does not include emissions and discharges under rules of the Agency.

**Texas Radiation Control Agency**

Sec. 4. (a) The Texas Department of Health is designated as the Texas Radiation Control Agency.

(b) The Commissioner of the Texas Department of Health shall designate an individual to be Director of the Radiation Control Program, who shall perform the functions vested in the Agency pursuant to the provisions of this Act with the exception of the issuance of licenses under Section 6B of this Act. The Texas Board of Health or the Commissioner, if designated by the Board, shall issue licenses under Section 6B of this Act. Nothing in this Act shall require the licensing or registration under this Act of a nuclear reactor facility licensed by the Commission.

(c) In accordance with the laws of the State of Texas, the Agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this Act.

(d) The Agency shall, for the protection of the occupational and public health and safety and the environment:

(1) Develop programs for evaluation of hazards associated with use of sources of radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of sources of radiation;

(3) Formulate, adopt, promulgate and repeal rules and guidelines, which shall provide for licensing and registration, relating to control and transport of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this Act;

(5) Advise, consult, and cooperate with other agencies of the state, the Federal Government, other states and interstate agencies, local governments, and with groups concerned with control and transport of sources of radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation;

(8) Collect and disseminate information relating to control and transport of sources of radiation, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(B) Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this Act and any administrative or judicial action pertaining thereto;

(C) Maintenance of a file of all rules and guidelines relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon; and

(D) Maintenance of a file of all known locations in Texas where radioactive material has been disposed of and where soils or facilities have been contaminated, together with any information on inspection reports concerning the material disposed of and on radiation levels at the locations;

(9) Have the authority to acquire by purchase, gift, or under any other authority of law any by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and fee simple title in any land, affected mineral rights, and in buildings at which by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act has been disposed of and abandoned, so that it can be managed in a manner consistent with public health, safety, and the environment;

(9A) Have the authority to acquire, by purchase or gift, fee simple title in any land, affected mineral rights, and in buildings at which radioactive waste is being or can be disposed of in a manner consistent with public health and safety and the environment. Property acquired under this subsection shall be dedicated to use only for disposing of radioactive waste until the Agency determines that another use would not endanger the health, safety, or general welfare of the public or the environment. All right, title, and interest in, of, and to radioactive waste accepted for disposal at these facilities shall become the property of the state and shall be administered and controlled in the name of the state;

(9B) Have the authority to lease property acquired under Subsection (9A) of this section to persons to operate sites for disposing of radioactive waste. A person's actions in disposing of radioactive waste shall be under the direct regulation of the Agency and shall be in accordance with rules adopted by the Agency;

(9C) Formulate, adopt, promulgate, and repeal rules and guidelines providing for the transport and routing of radioactive material within the State of Texas;

(9D) Conduct studies of the need for radioactive waste processing and disposal facilities and technologies as considered necessary by the Agency to minimize the risks to the public and the environment from the management of radioactive waste;

(9E) Establish, as considered necessary by the Agency, a classification system for radioactive

waste based on radiological, chemical, and biological characteristics and on physical state so that radioactive wastes can be managed safely and compatibly; and

(9F) Cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, for the development of regional sites that divide the burden of disposal of radioactive waste generated in the region among the states;

(10) Administer the fund in accordance with Section 16 of this Act; and

(11) Prepare and update emergency and environmental surveillance plans for fixed nuclear facilities within the State of Texas.

#### Radiation Advisory Board

Sec. 5. (a) There is hereby established a Radiation Advisory Board consisting of eighteen (18) members. The Governor shall appoint to the Board individuals as follows: one (1) from industry, who shall be trained in the field of nuclear physics, science and/or nuclear engineering; one (1) from labor; one (1) from agriculture; one (1) from insurance; one (1) engaged in the use and application of nuclear physics in medicine; one (1) from public safety; one (1) hospital administrator; two (2) representatives of the general public; three (3) persons licensed by the Texas State Board of Medical Examiners specializing in: one (1) from nuclear medicine, one (1) from pathology, and one (1) from radiology; two (2) representatives from the nuclear utility industry; one (1) representative of the radioactive waste processing industry; one (1) representative of the petroleum well-servicing industry; one (1) health physicist; and one (1) representative from the uranium mining industry. A person is not eligible for appointment as a representative of the general public if the person or the person's spouse is engaged in an occupation in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in part of the nuclear utility industry or in a business entity or other organization that is licensed under Section 6A or 6B of this Act. Members of the Board hold office for staggered terms of six (6) years. Provided, members of the Board shall receive no salary for services but may be reimbursed for actual expenses incurred in connection with attendance at Board meetings or for authorized business of the Board.

(b) The Advisory Board shall:

(1) Review and evaluate policies and programs of the state relating to radiation;

(2) Make recommendations to the Agency and furnish such technical advice as may be required on matters relating to development, utilization, and regulation of sources of radiation;

(3) Review proposed rules and guidelines of the Agency relating to regulation of sources of radia-

tion and recommend changes in proposed or existing rules and guidelines relating to those matters; and

(4) A majority of the Board shall constitute a quorum for the transaction of business. The Board shall elect from its membership a Chairman, Vice-Chairman, and Secretary. A record of all meetings shall be kept and the Board shall meet quarterly, on a date to be fixed by the Board, and shall hold such special meetings as may be called by the Commissioner of Health or any three (3) members of the Board. Such meetings may be held at any designated place within the State of Texas as determined by the Commissioner of Health to best serve the purpose for which the meeting is called. Timely notice of such meetings shall be given to each member.

#### Licensing and Registration of Sources of Radiation

Sec. 6. (a) The Agency shall provide by rule for general or specific licensing of radioactive materials, or devices or equipment utilizing such materials. Such rules shall provide for issuance, amendment, suspension or revocation of licenses. Such rules shall provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the Agency by rule may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the Agency may deem reasonable and necessary to protect the occupational and public health and safety and the environment. The Agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the Agency may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The Agency may require any applications or statements to be made under oath or affirmation;

(2) Each license shall be in such form and contain such terms and conditions as the Agency may prescribe;

(3) No license issued under the authority of this Act shall be assigned except to persons qualified pursuant to rules of the Agency;

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, or orders issued in accordance with the provisions of this Act;

(5) For each application for a specific license that involves the disposal or processing of any radioactive waste from other persons, the applicant shall provide any additional information that is necessary for Agency consideration of the following factors in making its licensing decision:

(A) site suitability, including geological, hydrological, and meteorological factors, and natural hazards;



(B) compatibility with present uses of the land in the vicinity of the site;

(C) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of radioactive material;

(D) need for and alternatives to the proposed activity including an alternative siting analysis prepared by the applicant;

(E) qualifications of the applicant including financial, technical, and past operating practices;

(F) background monitoring plans for the proposed site;

(G) suitability of facilities associated with the proposed activities;

(H) chemical, radiological, and biological characteristics of the radioactive waste and waste classification under Section 4(d)(9E) of this Act;

(I) adequate insurance of the applicant to cover potential injury to any property or any person, including potential injury from transportation-associated risks;

(J) training and retraining programs for the applicant's employees;

(K) monitoring and record-keeping and reporting program;

(L) spill detection and cleanup plans for the licensed site and related to associated transportation of radioactive material;

(M) decommissioning and postclosure care plans;

(N) security plans;

(O) worker monitoring and protection plans;

(P) emergency plans; and

(Q) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation;

(6) The Agency by rule shall provide specific criteria for the different types of licensed radioactive waste activities for the factors listed in Subdivision (5) of this subsection and may include additional factors and criteria that the Agency determines necessary for full consideration of a license.

(7) In adopting rules for the issuance of licenses for new sites for processing or disposal of radioactive waste from other persons, the Agency shall adopt criteria for the designation of unsuitable sites, including but not limited to:

(A) flood hazard areas;

(B) areas with characteristics of discharge from or recharge of any groundwater aquifer systems; or

(C) areas where soil conditions are such that spill cleanup would be impracticable.

Under this Subdivision, the Agency shall consult with the State Soil and Water Conservation Board,

the Bureau of Economic Geology, and other appropriate State agencies in the development of proposed rules and shall issue rules that:

(A) require selection of sites in areas where natural conditions minimize potential contamination of surface water and groundwater; and

(B) prohibit issuance of licenses for unsuitable sites as defined by the rules of the Agency.

(8) No licensee may operate a facility to dispose of or process radioactive waste until the licensee has obtained licenses or permits from other agencies as required by law; and

(9) No license to dispose of radioactive waste shall be issued to any person other than a public entity specifically authorized by law for radioactive waste disposal.

(b) The Agency is authorized to require registration or licensing of other sources of radiation.

(c) The Agency is authorized to issue rules that exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Section when the Agency makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public and the environment.

(d) Rules promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the Agency shall deem desirable subject to such registration requirements as the Agency may prescribe.

(e) Each applicant for a license or for the renewal of a license shall demonstrate to the Agency, before the issuance or renewal of a license, that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal. The licensee shall submit proof to the Agency of its financial qualifications at such intervals as the Agency may require by rule or in the license. The qualifications of and security provided by a licensee under Section 6A or 6B of this Act shall be reevaluated every five (5) years and such reevaluation may coincide with license renewal procedures if both are to occur in the same year.

(f) A licensee may be required to provide security acceptable to the Agency to assure performance of its obligations under this Act.

(g) The amount and type of security required shall be determined under rules of the Agency in accordance with criteria that include the following:

(1) consideration of the need for and scope of any decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the costs of decontamination, decommissioning, reclamation, and disposal as provided by Section 16 of this Act; and

(3) the costs of perpetual maintenance and surveillance, if any.

(h) In making the determination of whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, the Agency may consider those aspects of an applicant's or licensee's background that, in its judgment, bear materially on ability to fulfill the obligations of licensure, including but not limited to technical competency and its record in areas involving radiation.

#### Additional Requirements for Certain By-Product Materials

Sec. 6A. (a) A radioactive materials license issued or renewed after the effective date of this Act, for any activity that results in the production of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act, shall minimize and to the maximum extent practicable eliminate the need for long-term maintenance and monitoring and shall contain terms and conditions the Agency determines to be necessary to assure that before termination of the license:

(1) the licensee will comply with decontamination, decommissioning, reclamation, and disposal standards prescribed by the Agency, which shall be equivalent to or more stringent than those of the Commission for sites at which such ores were processed and at which such by-product material is deposited; and

(2) the ownership of any disposal site other than a disposal well covered by a permit issued under Chapter 27, Water Code, as amended, and the by-product material resulting from the licensed activity shall, subject to the provisions of Subsections (b) through (f) of this Section and Subdivision (9) of Subsection (d) of Section 4 of this Act, be transferred to the State of Texas or the United States, if the State of Texas declines to acquire either the site or the by-product material, or both.

(b) The Agency may require by rule or order that before the termination of a license that is issued after the effective date of this Act, title to the land, including any affected interests in the land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States, or land already owned by the United States, or by the State of Texas, that is used for the disposal of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act, pursuant to the license, shall be transferred to the United States or the State of Texas, unless the Commission determines, before the termination, that transfer of title to the land and the by-product material is not necessary to protect the public health, safety, or welfare or to minimize danger to life or property.

(c) If transfer to the State of Texas of title to by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and land is

required, the Agency shall maintain the by-product material and land in a manner that will protect the public health, safety, and the environment.

(d) The Agency is authorized to undertake in connection with the by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and property for which it has assumed custody under this Act any monitoring, maintenance, and emergency measures necessary to protect the public health and safety and the environment.

(e) The transfer of title to land and buildings and by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act to the State of Texas does not relieve any licensee of liability for any fraudulent or negligent acts done before the transfer.

(f) Except for administrative and legal costs incurred in carrying out the transfer, by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and land transferred to the State of Texas under this Act shall be transferred without cost to the State of Texas.

#### Additional Requirements for Radioactive Waste Licenses

Sec. 6B. (a) A person who applies for a license to dispose of radioactive waste from other persons must:

(1) arrange for and pay all of the costs of management, control, stabilization, and disposal of radioactive waste and for the decommissioning of the licensed activity;

(2) before applying for a license, acquire any interest in and title to any land and buildings as required by Agency rule;

(3) convey to the State of Texas at the time of issuance of the license to dispose of radioactive waste all right, title, and interest in, of, and to any land and buildings acquired, together with requisite rights of access to the property; and

(4) before termination of the license to dispose of radioactive waste, formally acknowledge the conveyance to the State of Texas of all right, title, and interest in, of, and to all radioactive waste located on the property that has been conveyed.

(b) A licensee may not accept radioactive waste generated in another state for processing or disposal under a license issued by the Agency except:

(1) under a compact entered into by the State of Texas;

(2) from another state that has in operation a radioactive waste disposal site and that is willing to accept at that site radioactive waste generated in Texas; or

(3) radioactive waste generated from manufactured sources or devices originating in Texas.

(c) A licensee may not accept for disposal under a license issued by the Agency, any high-level radioac-

tive waste as defined in Title 10, Code of Federal Regulations, any irradiated reactor fuel, or any radioactive waste containing ten (10) or more nanocuries per gram of transuranics. The Agency shall by rule establish special criteria for disposal of radioactive waste with a half-life greater than thirty-five (35) years and radioactive waste containing less than ten (10) nanocuries per gram of transuranics.

(d) The Agency is authorized to undertake in connection with the wastes and property for which it has assumed custody under this Act any monitoring, maintenance, and emergency measures necessary to protect the public health and safety and the environment.

(e) The transfer of title to land and buildings and radioactive waste to the State of Texas does not relieve any licensee of liability for any fraudulent or negligent acts done before the transfer or for any fraudulent or negligent acts done while the land and buildings or radioactive waste is in the possession or control of the licensee.

(f) Except for administrative and legal costs incurred in carrying out the transfer, radioactive waste and land and buildings transferred to the State of Texas under this Act shall be transferred without cost to the State of Texas.

(g) The Agency may require at any disposal site that the licensee provide facilities for a resident inspector who is employed by the Agency. The licensee shall reimburse the Agency for the salary and other expenses of the inspector.

#### Inspection

Sec. 7. (a) The Agency or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violations of the provisions of this Act and rules, licenses, registrations, and orders issued thereunder, except that entry into areas under the jurisdiction of the Federal Government shall be effected only with the concurrence of the Federal Government or its duly designated representative.

(b) The authorized agents or employees of local governments may have access to examine and copy at their expense during regular business hours any records pertaining to activities licensed under Section 6B of this Act, subject to the limitations of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Records copied pursuant to this section shall be public records, except that if a showing satisfactory to the Director is made by the owner of the records that the records divulge trade secrets if made public, then the Agency shall consider those copied records as confidential. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge

at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

#### Records

Sec. 8. (a) The Agency shall require each person who possesses or uses a source of radiation to maintain records relating to its utilization, receipt, storage, transfer, or disposal and such other records as the Agency may require subject to such exemptions as may be provided by rules.

(b) The Agency shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules, licenses, registrations, and orders of the Agency. Copies of these records and those required to be kept by Subsection (a) of this Section shall be submitted to the Agency on request. Any person possessing or using a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record at any time such employee has received excessive exposure and upon termination of employment. A copy of his annual exposure record shall be furnished to the employee upon his request.

#### Federal-State Agreements

Sec. 9. (a) The Governor, on behalf of this state, is authorized to enter into agreements with the Federal Government providing for discontinuance of certain of the Federal Government's responsibilities with respect to sources of radiation and the assumption thereby by this state.

(b) Any person who, on the effective date of an agreement under Subsection (a) above, possesses a license issued by the Federal Government, shall be deemed to possess the same pursuant to a license issued under this Act, which shall expire either ninety (90) days after receipt from the Agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

#### Inspection Agreements and Training Programs

Sec. 10. (a) The Agency is authorized to enter into, subject to the approval of the Governor, an agreement or agreements with the Federal Government, other states or interstate agencies, whereby this state will perform on a cooperative basis with the Federal Government, other states or interstate agencies, inspections or other functions relating to control of sources of radiation.

(b) The Agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Act, and may make said personnel available for participation in any program or programs of the Federal Government, other

states, or interstate agencies in furtherance of the purposes of this Act.

#### Administrative Procedure and Judicial Review

Sec. 11. (a) The Agency may promulgate, amend, and revoke rules and guidelines relating to control of sources of radiation in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The Agency shall afford an opportunity for a hearing in accordance with the Agency's formal hearing procedures and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), on written request of any person affected by the following procedures:

- (1) the grant, denial, suspension, revocation, or amendment of any license or registration; or
- (2) the determination of compliance with or the grant of exemptions from a rule or order of the Agency.

(c) Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health and safety and the environment, the Agency may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it shall direct to meet the emergency. Notwithstanding any other provision of this Act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately. On written application to the Agency within thirty (30) days of the date of the emergency order, the person to whom the order was directed shall be afforded an opportunity for a hearing. The hearing shall be held within not less than ten (10) days nor more than twenty (20) days after the Agency receives the written application. On the basis of such hearing, the emergency order shall be continued, modified, or revoked by the Agency.

(d) Judicial review of Agency decisions, rules, guidelines, and orders made, promulgated, issued, amended, or revoked under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), shall be under the substantial evidence rule. A person who has exhausted all administrative remedies available within the Agency and who is affected by a final decision of the Agency is entitled to judicial review under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Special Procedures for Licensing Certain By-Product Material

Sec. 11A. (a) On issuance or renewal, if the Agency determines that a license to process materials resulting in by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act will have a significant impact on the human

environment, the Agency shall prepare or secure the preparation of a written analysis that shall be available to the public for written comment at least thirty (30) days before the beginning of the hearing, shall be made a part of the record, and shall include:

- (1) an assessment of the radiological and nonradiological impacts on the public health of the activity;
- (2) an assessment of any impact on any waterway and groundwater resulting from the activity;
- (3) consideration of alternatives, including but not limited to alternative sites and engineering methods, to the activities to be conducted under the license; and
- (4) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted under the license, including the management of by-product material as defined by Subdivision (2) of Subsection (a) of Section 3 of this Act.

(b) The Agency shall give notice of the environmental impact analysis as provided by Agency rule and afford an opportunity for a public hearing in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), with right of appearance with or without counsel, examination, and cross-examination of witnesses under oath or affirmation, and a record made of the proceedings.

(c) After notice is given, the Agency shall afford an opportunity for written comments by persons affected, who may be made parties to the proceedings on a determination of their possessing a justiciable interest in the outcome.

(d) The Agency shall afford an opportunity to obtain a transcript of any public hearing on request and payment for the transcript or the posting of a sufficient deposit to assure the payment by the person requesting the transcript.

(e) The Agency shall afford an opportunity to obtain a written determination of the action to be taken that is based on the evidence presented and the findings included in the determination, and that is subject to judicial review as provided by Subsection (d) of Section 11 of this Act.

(f) The Agency shall prohibit any major construction with respect to the activities to be licensed until the requirement in Subsection (a) of this Section is completed.

(g) The Agency shall assure that the management of by-product material as defined by Subdivision (2) of Subsection (a) of Section 3 of this Act is carried out in conformity with applicable standards promulgated by the Commission.

(h) Notwithstanding any other provision of this Section, if the Agency finds that an emergency relating to the management of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act exists that requires immediate action to protect the public health and safety and

the environment, the Agency may take action under Subsection (c) of Section 11 of this Act.

#### Special Procedures for Licensing Radioactive Waste

Sec. 11B. (a) Before a license to either process or dispose of radioactive waste from other persons is granted or renewed, the Agency shall give at least thirty (30) days' notice as provided by this subsection and provide an opportunity for a public hearing in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and in the formal hearing procedures of the Agency. In addition to other notice requirements, notice of a hearing under this subsection shall be given by publishing a notice stating the subject of the hearing and the time, place, and date of the hearing in the manner provided by Articles 2 through 9, Revised Civil Statutes of Texas, 1925, as amended, for publication of notice for a special law in the county where the proposed facility is to be located. Written notice of the hearing stating the same information that appears in the newspaper notice shall be sent by certified mail to persons who own property adjacent to the proposed site pursuant to rules promulgated by the Agency. Notice specifically required by this section shall be sent at least thirty (30) days before the date of the hearing. The Agency or the applicant shall certify to this mailing, and the certificate shall be accepted at the hearing as conclusive evidence of the fact of such mailing.

(b) If the Agency amends a license, the amendment may take effect immediately. Notice of the amendment shall be published one time in the Texas Register and one time in a newspaper of general circulation in the county in which the licensed activity is located and notice shall be given to anyone who notified the Agency, in advance, of his desire to be notified of any proposed amendment to the license. The notice shall contain a short and plain statement of the substance of the amendment identifying the license amended and the licensee. If a person affected files a written complaint with the Agency within thirty (30) days after notice is published, notice shall be given and a public hearing held to consider the amendment as provided by Subsection (a) of this section.

(c) Before beginning a hearing required under this section, for each proposed activity that the Agency determines has a significant impact on the human environment, the Agency shall prepare or secure the preparation of a written analysis, that shall be available to the public at least thirty (30) days before the hearing begins, of the impact of the licensed activity on the environment. The analysis shall include:

- (1) an assessment of the radiological and nonradiological impacts on the public health of the activity;
- (2) an assessment of any impact on any waterway and groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted under the license, including the management of radioactive waste.

(d) The Agency shall prohibit any major construction with respect to the activities to be licensed until requirements in Subsections (a) and (c) of this section are completed.

(e) The Agency shall assure that the management of radioactive waste is carried out in compatibility with applicable standards promulgated by the Commission.

(f) Notwithstanding any other provision of this section, if the Agency finds that an emergency relating to the management of radioactive waste exists that requires immediate action to protect the public health and safety and the environment, the Agency may take action under Subsection (c) of Section 11 of this Act.

#### Injunction Proceedings

Sec. 12. Whenever, in the judgment of the Agency, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any rule, license, registration, or order issued thereunder, and at the request of the Agency, the Attorney General shall make application to any District Court either in Travis County or in any county in which the violation occurred or is about to occur, at his option, for an order enjoining such acts or practices, or for an order directing compliance and for reimbursement to the Radiation and Perpetual Care Fund if applicable, and for civil penalties as provided in Section 15 of this Act, and upon a showing by the Agency that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other appropriate order may be granted.

#### Threat of Damage by Certain By-Product Material

Sec. 12A. (a) If the Agency determines that by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act or the operation by which that by-product material is derived threatens the public health and safety and the environment and that the licensee is unable to correct or neutralize the threat, the Agency shall issue an order directing any action and corrective measures it finds necessary to correct or neutralize the threat and shall use the security provided by the licensee under this Act to pay the costs of actions and corrective measures taken or to be taken.

(b) The Agency shall send a copy of its order to the Comptroller of Public Accounts together with necessary written requests authorizing the Comptroller to enforce security supplied by the licensee,

to convert the necessary amount of security into cash, if necessary, and to disburse from this security in the fund the amount necessary to pay costs of the actions and corrective measures taken or to be taken by the Agency.

#### Threat of Damage by Radioactive Waste

Sec. 12B. (a) Under procedures in Subsection (c) of Section 11 of this Act, if the Agency finds that radioactive waste threatens the public health and safety and the environment and that the licensee managing the radioactive waste is unable to neutralize the threat, the Agency shall issue an order directing any action and corrective measures it finds necessary to neutralize the threat and shall use the security provided by the licensee under this Act to pay the costs of actions and corrective measures taken or to be taken.

(b) The Agency shall send a copy of its order to the Comptroller of Public Accounts together with necessary written requests authorizing the Comptroller to enforce security supplied by the licensee, to convert the necessary amount of security into cash, if necessary, and to disburse from this security in the fund the amount necessary to pay costs of the actions and corrective measures taken or to be taken by the Agency.

#### Actions of Local Government and Persons Affected

Sec. 12C. (a) If a local government is denied access to records, as provided in this Act, the local government may bring suit in a District Court in the county in which the violation occurs for an appropriate order to obtain the records or to recover civil penalties or for both an order and the penalties provided by Subsection (b) of this section. Civil penalties recovered in a suit under this subsection shall be paid to the local government.

(b) A person who denies access to records to a local government as provided by this Act is liable to a civil penalty of not less than One Hundred Dollars (\$100) and not more than One Thousand Dollars (\$1,000) for each violation.

(c) A local government or person affected may file a written complaint with the Agency and request an investigation of an alleged violation by a person licensed under Section 6A or 6B of this Act. The Agency shall reply to the complaint in writing within sixty (60) days after receipt of the complaint and shall provide a copy of any investigation reports relevant to the complaint together with a determination of whether or not the alleged violation was committed.

(d) If the Agency does not have a suit brought in court under Section 12A or 12B of this Act within one hundred twenty (120) days after the written complaint is filed under Subsection (c) of this section, the local government or person affected may bring suit in the appropriate court in the county in which the alleged violation occurred or is about to occur in the manner provided for suits by the Agen-

cy under Section 12A or 12B of this Act. Penalties collected in a suit under this subsection shall be paid to the state. In a suit brought by a local government or person affected under this subsection, the court shall include in any final judgment in favor of the local government or person affected an award to cover reasonable court costs and attorney's fees.

#### Prohibited Uses

Sec. 13. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of any source of radiation unless licensed, registered, or exempted by the Agency in accordance with the provisions of this Act.

#### Impounding of Sources of Radiation

Sec. 14. The Agency shall have the authority in the event of any emergency to impound or order the impounding of sources of radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this Act or any rules issued thereunder.

#### Civil Penalties

Sec. 15. (a) A person who violates this Act or a rule, order, license, or registration of the Agency is subject to a civil penalty of not less than One Hundred Dollars (\$100) nor more than Twenty-five Thousand Dollars (\$25,000) for each act of violation and for each day of violation.

(b) A suit to recover a civil penalty under this section may be brought, at the option of the Attorney General, in a District Court in Travis County or in the county in which the violation occurred. If the Attorney General is seeking to recover civil penalties for violations that have occurred in more than one county, the Attorney General may join all of the violations in one suit and may bring suit either in a District Court in Travis County or in a District Court in any one of the counties in which one of the violations occurred.

(c) The civil penalties provided by this section are cumulative of any other remedies provided by law.

#### Criminal Penalties

Sec. 15A. (a) A person commits an offense if he intentionally or knowingly commits a violation of this Act for which a specific penalty is not provided in Subsection (b) of this section. An offense under this subsection is a Class B misdemeanor, unless the person has been previously convicted of an offense under this subsection, in which event it is a Class A misdemeanor.

(b) A person commits an offense if he intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of radioactive waste without a valid license issued under this Act. An offense under this subsection is a Class A misdemeanor, unless the person has been previously convicted of an offense under this subsection, in which

event the offense is punishable by a fine of not less than Two Thousand Dollars (\$2,000) nor more than One Hundred Thousand Dollars (\$100,000) or confinement in the county jail for up to one (1) year or both the fine and imprisonment.

#### Recovery of Security

Sec. 15B. (a) If the Agency uses security from the fund to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of this Act or a rule, license, registration, or order of the Agency, the Agency shall seek reimbursement either through an Agency order or suit filed by the Attorney General at the Agency's request.

(b) On request of the Agency, the Attorney General shall file suit to recover security under Subsection (a) of this section.

#### Radiation and Perpetual Care Fund

Sec. 16. (a) The Radiation and Perpetual Care Fund is established in the State Treasury and may be used for the purposes described in Subsection (c) of this section.

(b) Except for fees collected under Sections 17 and 18 of this Act, the Agency shall deposit in the fund all money and security received by the Agency under this Act.

(c) Money and security deposited in the fund may be used by the Agency only for decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive material for the protection of the public health and safety and the environment under this Act.

(d) Money and security deposited in the fund may not be used for normal operating expenses of the Agency.

(e) If a licensed activity may require maintenance, surveillance, or other care on a continuing or perpetual basis after termination of the licensed activity, the Agency may require the licensee to pay annually to the Agency for deposit in the fund an amount determined by the Agency.

(f) Each year the Agency shall review a licensee's payments to the fund made under Subsection (e) of this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(g) Any estimates of costs required to be made under this Act are subject to review and change by the Agency according to the need, nature, and cost of any decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment. Any charges imposed for maintenance and perpetual care shall be established at a level consistent with existing technology. The charges imposed by the Agency may

not exceed the estimated amount that is projected by the Agency to be required for the maintenance and surveillance and other necessary care required after termination of the licensed activity. Any increase in costs may not be applied retroactively but may result in increases in subsequent annual payments.

(h) If a licensee has satisfied all obligations under this Act, the Agency shall have the Comptroller of Public Accounts promptly refund to the licensee from the fund any excess of the amount of Subdivision (1) of this subsection over the amount of Subdivision (2) of this subsection:

(1) all payments made by the licensee to the Agency for deposit into the fund under this Act and all investment earnings on such payments; and

(2) the amount determined to be required for the continuing maintenance and surveillance of the land, buildings, and radioactive material conveyed to the state under this Act.

#### Fees

Sec. 17. (a) The Agency may prescribe and collect a fee for each license and registration.

(b) The amount of these fees shall be established by Agency rule and may not exceed the actual expenses incurred annually:

(1) in processing applications for a license or registration;

(2) for amendments to or renewals of licenses or registrations;

(3) for making inspections of licensees and registrants; and

(4) for enforcement of this Act and rules, orders, licenses, and registrations of the Agency.

(c) Fees collected by the Agency under this section shall be deposited in the General Revenue Fund.

#### Nuclear Reactor and Fixed Nuclear Facility Fee

Sec. 18. The Agency may prescribe and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that utilizes special nuclear material. The amount of fees collected may not exceed the actual expenses arising from emergency planning and implementation and environmental surveillance activities. The annual fees collected shall be deposited in the General Revenue Fund.

[Acts 1961, 57th Leg., p. 138, ch. 72, eff. April 17, 1961. Amended by Acts 1971, 62nd Leg., p. 2612, ch. 858, § 1, eff. June 9, 1971; Acts 1981, 67th Leg., p. 31, ch. 21, § 1, eff. April 1, 1981; Acts 1981, 67th Leg., p. 381, ch. 155, §§ 1 to 3, eff. May 20, 1981.]

Sections 2 and 3 of the 1971 amendatory act provided:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 3. 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."

Section 2 of Acts 1981, 67th Leg., p. 46, ch. 21, as amended by Acts 1981, 67th Leg., p. 386, ch. 155, § 4, provides:

"(a) A person holding office as a member of the Radiation Advisory Board on the effective date of this Act shall continue to hold that office for the term for which he was originally appointed.

"(b) The governor shall appoint to the board a *public member*, a representative of the petroleum well-servicing industry, and one representative of the nuclear utility industry for terms expiring in 1983; a representative engaged in the use and application of nuclear physics in medicine, a representative of the radioactive waste processing industry, and one representative of the nuclear utility industry for terms expiring in 1985; and a public member, a health physicist, and a representative from the uranium mining industry for terms expiring in 1987. These terms shall expire on the same date in those years as terms of other members of the advisory board."

#### Art. 4590f-1. Low-Level Radioactive Waste Disposal Authority Act

##### ARTICLE 1. GENERAL PROVISIONS

###### Findings, Purpose, and Intent

Sec. 1.01. (a) Low-level radioactive wastes are generated as by-products of medical, research, and industrial activities and through the operation of nuclear power plants. Loss of capability to dispose of low-level radioactive waste would pose a threat to the health and welfare of the citizens of the state and would ultimately lead to the loss of the benefits of these activities that are dependent on reliable facilities for low-level radioactive waste disposal.

(b) This state is currently dependent on low-level radioactive waste disposal sites in other states. Recent events have demonstrated that the availability of these sites for low-level radioactive waste disposal is increasingly uncertain and as a consequence, medical institutions, research facilities, and industries within the state could be adversely affected.

(c) It is the purpose and intent of this Act to establish the Texas Low-Level Radioactive Waste Disposal Authority with responsibility for assuring much-needed disposal capability for specific categories of low-level radioactive wastes generated within this state.

###### Short Title

Sec. 1.02. This Act may be cited as the Texas Low-Level Radioactive Waste Disposal Authority Act.

###### Definitions

Sec. 1.03. In this Act:

(1) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government or governmental subdivision or agency, or other legal entity or any legal successor to or representative, agent, or agency of any of these.

(2) "Authority" means the Texas Low-Level Radioactive Waste Disposal Authority.

(3) "Agency" means the Texas Radiation Control Agency.

(4) "Radioactive material" means any solid, liquid, or gaseous material, whether occurring naturally or produced artificially, that emits radiation spontaneously.

(5) "Low-level waste" means any radioactive material that has a half-life of 35 years or less or that has less than 10 nanocuries per gram of transuranics and may include radioactive material not excluded by this subdivision with a half-life of more than 35 years if special criteria are established by the agency for disposal of that waste. The term does not include irradiated reactor fuel and high-level radioactive waste as defined by Title 10, Code of Federal Regulations.

(6) "Disposal site" means the property and facilities acquired, constructed, and owned by the authority at which low-level waste may be processed and may be disposed of permanently.

(7) "On-site operator" means a person who is employed by or who contracts with the authority and who is responsible for supervising the overall operations of the disposal site.

(8) "Management" means establishing, adopting, and entering into and assuring compliance with the general policies, rules, and contracts that govern the operation of a disposal site.

(9) "Operation" means the control, supervision, and implementation of the actual physical activities involved in the receipt, processing, packaging, storage, disposal, and monitoring of low-level waste at a disposal site and the maintenance of the disposal site and any other responsibilities designated by the board as part of the operation.

##### ARTICLE 2. CREATION AND ADMINISTRATIVE PROVISIONS

###### Creation of Authority

Sec. 2.01. The Texas Low-Level Radioactive Waste Disposal Authority is created as an agency of the state under Article XVI, Section 59(a), of the Texas Constitution.

###### Boundaries

Sec. 2.02. The jurisdiction of the authority is coextensive with the state.

###### Board of Directors

Sec. 2.03. (a) The authority is governed by a board of directors composed of six members that shall manage and control the authority and shall administer and implement this Act.

(b) Members of the board shall be appointed by the governor with the advice and consent of the senate. One member of the board must be a medical doctor licensed to practice medicine in Texas, one member of the board must be a certified health



physicist, one member of the board must be an attorney licensed to practice law in Texas, one member of the board must be a geologist, and two members of the board must represent the general public.

(c) A representative of the general public on the board or a person related within the second degree by affinity or within the third degree by consanguinity to that member may not be an employee of or otherwise have a financial interest in any person that has a contract with or that uses the services of any low-level waste storage, processing, or disposal site in the United States.

(d) After a disposal site is selected under Subsection (c) of Section 3.07 of this Act, the governor shall appoint to the board, at the earliest opportunity, at least one representative of the general public as a representative of the local interests. The representative of the general public representing local interests must be a resident of the county in which the disposal site is proposed to be located.

#### Term of Office; Vacancy

Sec. 2.04. (a) Members of the board serve for staggered terms of six years with the terms of two directors expiring February 1 of each odd-numbered year.

(b) A vacancy on the board shall be filled for the unexpired term in the manner provided by Subsection (b) of Section 2.03 of this Act for selection of other directors.

#### Oath

Sec. 2.05. Each member of the board shall take the constitutional oath of office required of other appointed state officers.

#### Compensation

Sec. 2.06. Each member of the board is entitled to receive compensation as provided by the authority's budget.

#### Officers

Sec. 2.07. (a) The members of the board shall select from their number at the first directors' meeting after appointment of members to the board one person to serve as chairman, one person to serve as vice-chairman, and one person to serve as secretary.

(b) Persons selected to serve as chairman, vice-chairman, and secretary shall serve for terms of two years.

(c) The chairman shall preside over meetings of the board, and in his absence, the vice-chairman shall preside.

(d) The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given them in this Act or in orders of the board.

#### Organization of Board

Sec. 2.08. Every two years after the appropriate number of directors are appointed and have qualified for office by taking the oath, the board shall meet at the authority's central office in Austin and shall organize by selecting officers and shall begin to discharge its duties.

#### Quorum

Sec. 2.09. A majority of the members of the board constitute a quorum for the transaction of business of the authority, but no official act of the board is valid without the affirmative vote of a majority of the members of the board.

#### General Manager

Sec. 2.10. (a) The board shall employ a general manager who shall be the chief administrative officer of the authority and may delegate to him full authority to manage and operate the affairs of the authority subject only to orders of the board.

(b) The general manager shall execute a bond in the amount determined by the board, payable to the authority, conditioned on the faithful performance of the general manager's duties. The authority shall pay for the bond.

(c) The general manager is entitled to receive compensation as provided in the authority's budget.

#### Employees

Sec. 2.11. (a) The general manager may employ persons necessary for the proper handling of the business and operation of the authority.

(b) The board shall determine the terms of employment.

#### Authority Office

Sec. 2.12. (a) The board shall maintain a central office in the City of Austin for conducting the business of the authority.

(b) The board also shall maintain an authority office at each disposal site under construction or operated under this Act.

#### Meetings of the Board

Sec. 2.13. The board shall hold regular quarterly meetings on dates established by rule of the board and shall hold special meetings at the call of the chair or on written request to the chairman by one member of the board.

#### Minutes and Records

Sec. 2.14. (a) The board shall keep a complete written account of all its meetings and other proceedings and shall preserve its minutes, contracts, records, plans, notices, accounts, receipts, and records of all kinds in a secure manner.

(b) Minutes, contracts, records, plans, notices, accounts, receipts, and other records are the property of the authority and are subject to public inspection.

#### Contracts

Sec. 2.15. The board may enter into contracts as provided by this Act, and those contracts shall be executed by the chairman of the board and attested by the secretary of the board in the name of the authority.

#### Suits

Sec. 2.16. The authority may, through its board, sue and be sued in any and all courts of this state in the name of the authority. Service of process in a suit may be had by serving the general manager.

#### Payment of Judgment

Sec. 2.17. A court of this state that renders a money judgment against the authority may require the board to pay the judgment from fees collected under this Act.

#### Seal

Sec. 2.18. The board shall adopt a seal for the authority.

### ARTICLE 3. POWERS AND DUTIES

#### Jurisdiction of Authority

Sec. 3.01. The authority has jurisdiction over site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites.

#### General Powers

Sec. 3.02. For the purpose of carrying out this Act, the authority may:

(1) apply for, accept, receive, and administer gifts, grants, and other funds available from any source;

(2) enter into contracts with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities, and private entities for the purpose of carrying out this Act and rules, orders, and standards adopted under this Act;

(3) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of sites and disposal of low-level waste; and

(4) advise, consult, and cooperate with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities within the state, and private entities.

#### Rules, Standards, and Orders

Sec. 3.03. (a) The board may adopt and amend rules, standards, and orders necessary to properly carry out this Act and to protect the public health

and safety and the environment from activities of the authority.

(b) The board may set reasonable civil penalties for the breach of any rule, standard, or order that shall not exceed amounts of \$1,000.

(c) These penalties shall be in addition to any other penalties provided by the laws of this state and may be enforced by complaints filed by the attorney general in an appropriate court of jurisdiction in Travis County.

#### Development and Operation of Disposal Site

Sec. 3.04. The authority shall develop and operate or contract for operation of one disposal site for the disposal of low-level waste in Texas.

#### Studies for Site Selection

Sec. 3.05. (a) The authority shall make studies or contract for studies to be made of the future requirements for disposal of low-level waste in this state and to determine the areas of the state that are relatively more suitable than others for low-level waste disposal activities.

(b) In studying future requirements and relative suitability, the authority and any persons with which it contracts under this section shall consider the following:

(1) the volume of low-level waste generated by type and source categories for the expected life of the site;

(2) geology;

(3) surface characteristics (topography);

(4) other aspects of transportation and access;

(5) meteorology;

(6) population density;

(7) surface and subsurface hydrology;

(8) flora and fauna;

(9) current land use;

(10) criteria established by the agency for site selection;

(11) the proximity to sources of low-level waste, including related transportation costs, to the extent that the proximity and transportation costs do not interfere with selection of the best site for protecting public health and the environment; and

(12) other site characteristics as may need study on a preliminary basis that would require detailed study to prepare any application or license required for site operation.

(c) The studies may be performed either by the authority's staff or under contract with others.

#### Additional Analysis

Sec. 3.06. (a) On completion of the studies required by Section 3.05 of this Act, the board shall

select two or more potential disposal sites for further analysis.

(b) The authority shall evaluate or contract to have evaluated the preoperating costs, operating costs, maintenance costs, and costs of decommissioning and extended care and the socioeconomic, environmental, and public health impacts associated with each of these potential sites.

(c) Socioeconomic impacts to be evaluated shall include fire, police, educational, utility, public works, public access, planning, and other governmental services and assumed and perceived risks of the disposal sites and disposal activities.

(d) Public officials and members of local boards or governing bodies of local political subdivisions of the state within which a potential site is located shall be invited to participate in appropriate evaluation activities.

#### Site Selection

Sec. 3.07. (a) On receiving the results of the studies and evaluations required under Sections 3.05 and 3.06 of this Act, the board shall select the site that appears from the studies to be the most suitable for a disposal site and shall hold a public hearing to consider whether or not that site should be selected as the disposal site and give 30 days notice thereof, published in the English language once a week for four consecutive weeks preceding the hearing, in some newspaper published in the county of the disposal site. If there is no newspaper published in the county or none which will publish the notice, the board shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of the county courthouse, for at least 30 days successively before the day of the hearing. The hearing shall be commenced in the county seat at the county courthouse in which the proposed disposal site is located.

(b) Before giving notice of the hearing, the authority shall prepare a report that includes detailed information regarding all aspects of the disposal site selection process, criteria for site selection as established by the appropriate licensing authority, and summaries of the studies required under Section 3.05 of this Act and the evaluations under Section 3.06 of this Act and shall make this report available to the public. The authority may contract for the distribution of the report and may hold or contract with others to hold informational seminars for the public.

(c) On a thorough consideration of the studies and evaluations relating to site selection required under Sections 3.05 and 3.06 of this Act, the criteria required to be used in those studies, and testimony and evidence presented at the hearing, the board shall determine if the proposed disposal site should be selected, and if the board selects that site as the disposal site, the board shall issue an order designating that site as the proposed disposal site, shall issue a final report, and shall direct the general

manager to prepare necessary applications, disposal plans, and other material for obtaining licenses and other authorizations for the disposal site. If the board determines that the proposed site should not be selected, it shall issue an order rejecting selection of the site and shall call another hearing to consider another site that appears from the studies and evaluations under Sections 3.05 and 3.06 of this Act to be suitable. The board shall continue to follow the procedures under Subsection (a) of this section and this subsection until a suitable disposal site is selected.

(d) A copy of the final report and order selecting a disposal site shall be submitted to the governor and to the legislature for informational purposes.

(e) The authority may appoint a mediator to consider the views of parties interested in the selection of a disposal site. The mediator may conduct a series of meetings with delegates from groups of interested parties. The selection of delegates shall be determined by criteria established by the board. Mediation meetings may be held in the counties in which the potential sites are located and shall be held prior to the public hearing required by Subsection (a) of this section. The mediator shall prepare a report and submit it to the board before the notice is given of the public hearing.

(f) None of the proceedings under this section are a contested case as defined by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Acquisition of Necessary Licenses

Sec. 3.08. (a) The authority shall submit to all federal and state agencies from which it must obtain licenses and other types of authorization to construct and operate disposal sites necessary applications and information to obtain those licenses and authorizations.

(b) The authority shall cooperate with appropriate federal and state agencies in the licensing and authorization process and shall supply any additional information and material requested by those agencies.

(c) If the application of the authority for a license for the proposed disposal site is denied, the board shall give notice and hold a hearing on an alternative site, as provided by Section 3.07 of this Act and shall consider and select an alternative site for the disposal site in the manner provided by this Act for the selection of the original proposed disposal site.

(d) The authority shall provide financial security in the form and manner required by federal and state agencies under federal and state laws and rules adopted under those laws. Supplemental financial security shall be provided as required by any federal or state agency.

**Acquisition of Property for Site**

Sec. 3.09. (a) The authority may acquire by gift, grant, or purchase any land, easements, rights-of-way, and other property interests necessary to construct and operate a disposal site.

(b) The authority must acquire the fee simple title to all land and property that is a part of the licensed disposal site.

(c) The authority also may lease property on terms and conditions the board determines advantageous to the authority, provided no lease may be made on land that is part of a licensed disposal site.

**Site Construction**

Sec. 3.10. (a) The authority shall construct on the disposal site all works and facilities and from time to time make improvements necessary to prepare for disposal and permanently dispose of low-level waste.

(b) Preparation and construction of works and facilities at the disposal site shall be done in a manner that will comply with the rules and standards for disposal sites adopted by federal and state agencies and with the disposal plans of the authority.

**Authority to Enter into Construction Contracts**

Sec. 3.11. The authority may contract with any person to construct any part of the works and facilities or from time to time make improvements at the disposal site, provided the contract specifically provides for termination by the authority for failure of the contractor to comply with federal and state standards and rules or with the authority's disposal plans.

**Bids on Contracts for Construction**

Sec. 3.12. Construction contracts requiring an expenditure of more than \$5,000 may be made only after competitive bidding as provided by Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes).

**Additional Work**

Sec. 3.13. After a construction contract is awarded, if the authority determines that additional work is needed or if the character or type of work, facilities, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves. A change made under this section shall not increase nor decrease the total cost of the contract by more than 25 percent.

**Attachments to Construction Contracts**

Sec. 3.14. A construction contract shall contain or have attached to it the specifications, plans, and details for work included in the contract, and work shall be done according to these plans and specifications under the supervision of the authority.

**Execution and Availability of Construction Contract**

Sec. 3.15. (a) A construction contract shall be in writing and signed by an authorized representative of the authority and the contractor.

(b) The contract shall be kept in the authority's records and shall be available for public inspection.

**Contractor's Bond**

Sec. 3.16. (a) A contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the authority and approved by the board, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond shall provide that if the contractor defaults on the contract, he will pay to the authority all damages sustained as a result of the default. The bond shall be deposited in the authority's depository, and a copy of the bond shall be kept in the authority's central office.

**Monitoring Construction Work**

Sec. 3.17. (a) The board has control of construction being done for the authority under contract and shall determine whether or not the contract is being fulfilled.

(b) The board shall have the construction work inspected by engineers, inspectors, and other personnel of the authority.

(c) During the progress of the construction work, the engineers, inspectors, and other personnel doing the inspections shall submit to the board written reports that show whether or not the contractor is complying with the contract.

(d) On completion of construction work, the engineers, inspectors, and other personnel shall submit to the board a final detailed written report including information necessary to show whether or not the contractor has fully complied with the contract.

**Payment for Construction Work**

Sec. 3.18. (a) The authority shall pay the contract price of construction contracts as provided in this section.

(b) The authority will make progress payments under construction contracts monthly as the work proceeds or at more frequent intervals as determined by the board.

(c) If requested by the board, the contractor shall furnish an analysis of the total contract price showing the amount included for each principal category of the work in such detail as requested to provide a basis for determining progress payments.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any

of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the authority, may release to the contractor all or a portion of the excess amount.

(e) On completion and acceptance of each separate project, work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

(f) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the depository to pay any balance due on the contract.

**Contracts for Purchase of Equipment, Materials, Supplies, etc., Over \$5,000**

Sec. 3.19. (a) If the estimated amount of a proposed contract for the purchase of materials, machinery, equipment, or supplies is more than \$5,000, the board shall ask for competitive bids as provided by Section 3.12 of this Act.

(b) This section does not apply to purchases of property from public agencies or to contracts for personal or professional services.

**Management and Operation of Sites**

Sec. 3.20. (a) The board has general authority to manage and, if necessary, operate the disposal sites under this Act and take any actions necessary under this Act to manage and operate the disposal sites in a manner that will protect the public health and safety and the environment.

(b) The board may enter into contracts with persons to perform overall operation in the operation of a disposal site, but no contract may include provisions that relieve the authority of its management responsibility under this Act. The board shall adopt rules establishing criteria for determining the competence of a person to perform the overall operation of a disposal site in the operation of a disposal site.

(c) The board shall manage and, if necessary, operate the authority's disposal sites in a manner that complies with laws and with rules and standards of appropriate federal and state agencies having jurisdiction over disposal sites.

(d) Each disposal site shall be supervised by an on-site operator with responsibility for all operations at the site. If the authority contracts under Subsection (b) of this section for the overall operation of a disposal site, the on-site operator shall be a representative of the contractor. If the authority operates the disposal site, the on-site operator shall be employed by the general manager.

(e) The board shall adopt rules governing the operation of disposal sites, acceptance of low-level waste, maintenance and monitoring of disposal sites, and activities relating to the management and operation of disposal sites. Rules adopted by the

board may not be less stringent than those adopted by the agency.

(f) A contract with a person under Subsection (b) of this section shall specify that:

(1) the board retains management authority over the low-level disposal site and may monitor and inspect any part of the disposal site and operations taking place on the disposal site at any time;

(2) the contract operator must operate the site in a manner that complies with laws and licenses regulating operations at the site issued by the agency and the federal government;

(3) the contract operator must comply with the rules governing operation of the site promulgated by the board; and

(4) should the contract operator fail to comply with any license issued for the site by the agency or by the federal government, fail to comply with the rules of the authority, or fail to comply with the contract the contract is subject to termination after notice and hearing.

(g) In contracting with a person under Subsection (b) of this section, the board may:

(1) select the person with whom it will contract before it obtains the license for the disposal site so that it may allow the person with whom it contracts to advise and consult with the board, general manager, and staff of the authority on the design and disposal plans for the site;

(2) require the person with whom it contracts to make all tests, keep all records, and prepare all reports required by licenses issued for disposal site operations;

(3) require standards of performance;

(4) require posting of a bond or giving of other financial security by the person with whom it contracts to ensure safe operation and decommissioning of the disposal site; and

(5) establish other requirements that are necessary to assure that the disposal site is properly operated and that the public health and safety and the environment are protected.

**Acceptance of Low-Level Waste at Disposal Sites**

Sec. 3.21. (a)(1) Subject to the limitations in this section and Section 3.22 of this Act, each disposal site shall accept for disposal all low-level waste that is presented to it and that is properly processed and packaged.

(2) The Texas Department of Health shall adopt rules relating to the packaging of radioactive waste, and an inspector employed by the department shall inspect all packaged radioactive waste before it is transported to a Texas permanent disposal site. The rules of the department shall provide that the department charge a reasonable fee for the inspection. The fee shall be limited to the cost of the inspection of the radioactive waste.

(b) For shipments of low-level waste that are in excess of 75 cubic feet, the person making the shipment shall give the on-site operator of the disposal site written notice of the shipment containing information required by the board at least 72 hours before shipment of the low-level waste to the disposal site begins.

(c) On arrival of a shipment of low-level waste at a disposal site, the on-site operator or his agent shall determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level waste before the waste is accepted for disposal at the disposal site.

(d) If low-level waste that is not properly processed or packaged arrives at a disposal site, the on-site operator or his agent shall properly process and package the waste for disposal and charge the person making the shipment the fee required by Section 4.03 of this Act.

(e) The on-site operator or his agent shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transportation of low-level waste any person who delivers to a disposal site low-level waste that is not properly processed or packaged.

#### Limitations on Waste Disposal

Sec. 3.22. (a) Only low-level waste that is generated within the State of Texas may be accepted by a disposal site.

(b) The board by rule shall exclude certain types of low-level waste from a disposal site if the low-level waste is incompatible with disposal operations.

#### Disposal Site Activities

Sec. 3.23. Disposal sites shall be used for permanent storage of low-level wastes, and the authority may adopt any methods and techniques for permanent disposal that comply with federal and state standards for low-level waste disposal and that protect the public health and safety and the environment. Also, the authority may provide facilities at disposal sites for processing and packaging low-level waste for disposal.

#### Emergency Response

Sec. 3.24. (a) To protect the public health and safety and the environment, the board, after notice and hearing, shall adopt an emergency response plan for each disposal site to be implemented in the event a disposal site becomes a threat to the public health or safety or the environment.

(b) The authority shall cooperate with and seek the cooperation of federal and state agencies responsible for regulating disposal sites and of federal, state, and local agencies engaged in disaster relief activities.

#### Decommissioning and Closing Disposal Sites

Sec. 3.25. (a) On a finding by the board, after notice and hearing, that a disposal site should be closed, the authority and any operator with which it has contracted shall proceed with decommissioning of the disposal site in compliance with federal and state laws and rules and standards adopted under those laws and with rules and plans of the authority.

(b) On completion of decommissioning activities and receipt of necessary approval from any federal and state agencies, the board shall, if required by law, transfer fee simple title to the disposal site to the agency.

#### Reports

Sec. 3.26. At least 60 days before each regular session, the authority shall submit to the appropriate committees of the legislature a biennial report that shall serve as a basis for periodic oversight hearings on the authority's operations and on the status of interstate compacts and agreements.

#### Health Surveillance Survey

Sec. 3.27. The board, in cooperation with the Texas Department of Health and local public health officials, shall study the feasibility of developing a health surveillance survey for the population in the disposal site vicinity.

### ARTICLE 4. FINANCIAL PROVISIONS

#### Financing Authority Activities

Sec. 4.01. Expenses of the authority shall be paid from fees authorized and collected under this article and appropriations made by the legislature.

#### Waste Disposal Fee

Sec. 4.02. (a) The board shall adopt and have collected a waste disposal fee to be paid by each person who delivers to the authority low-level waste for disposal.

(b) The board shall adopt and periodically revise by rule a schedule of waste disposal fees based on the volume of low-level waste delivered for disposal and the relative hazard presented by each type of low-level waste that is delivered to the disposal site. In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste.

(c) Waste disposal fees adopted by the board shall be sufficient to allow the authority to recover operating and maintenance costs, expenses incurred before beginning operation of the site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site, an amount necessary to meet future costs of decommissioning and closing the disposal site, an amount sufficient to meet needs for impact assistance under Section 4.04 of this Act, an amount necessary to pay

licensing fees and to provide security required by the agency under laws and rules of the agency.

#### Processing and Packaging Fee

Sec. 4.03. The board shall adopt and periodically revise by rule a schedule of processing and packaging fees based on the volume of improperly processed or packaged low-level waste delivered for disposal and on the cost to the authority for processing and packaging the waste properly in compliance with federal and state standards.

#### Low-Level Radioactive Waste Disposal Impact Assistance

Sec. 4.04. (a) The board may make grants to a city, county, hospital district, school district, water district, or other political subdivision of this state to reimburse that entity for actual costs or to pay expenses anticipated in connection with additional fire, police, educational, utility, public access, and other governmental services, public works projects, and planning that are required by the city, county, hospital district, school district, water district, or other political subdivision of this state as a result of the construction and operation of a disposal site within or adjacent to the affected city, county, hospital district, school district, water district, or other political subdivision of this state.

(b) The board shall adopt rules establishing:

(1) procedures for the application for grants under this section;

(2) criteria for determining the adverse effect that the construction and operation of a disposal site will have on cities, counties, hospital districts, school districts, water districts, and other political subdivisions of this state;

(3) priorities of needs for affected cities, counties, hospital districts, school districts, water districts, and other political subdivisions of this state; and

(4) methods for monitoring the uses and effectiveness of grants made under this section.

(c) On approval of a grant under this section, the board shall issue an order stating the name of the city, county, hospital district, school district, water district, or other political subdivision of the state receiving the grant and the amount of the grant and shall direct payment of the grant.

[Acts 1981, 67th Leg., p. 713, ch. 273, §§ 1.01 to 4.04, eff. June 1, 1981.]

Section 5.01 of the 1981 Act provides:

"Immediately after this Act takes effect, the governor shall appoint, with the advice and consent of the senate, two board members whose terms expire on February 1, 1983, two board members whose terms expire on February 1, 1985, and two board members whose terms expire on February 1, 1987. Successors to these initial appointees serve for full six-year terms."

Art. 4590g. Repealed by Acts 1971, 62nd Leg., p. 3323, ch. 1024, art. 1, § 3, eff. Sept. 1, 1971

Acts 1971, 62nd Leg., p. 3072, ch. 1024, repealing this article, enacts Title 3 of the Texas Education Code.

### CHAPTER TWENTY. NATURAL DEATH

#### Art. 4590h. Natural Death Act

##### Short Title

Sec. 1. This Act shall be known and may be cited as the Natural Death Act.

##### Definitions

Sec. 2. In this Act:

(1) "Attending physician" means the physician selected by, or assigned by the physician selected by, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 3 of this Act. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(3) "Life-sustaining procedure" means a medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, noted in the qualified patient's medical records, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Physician" means a physician and surgeon licensed by the Texas State Board of Medical Examiners.

(5) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, and the other shall be chosen by the patient or the attending physician, who have each personally examined the patient.

(6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient.

##### Directive for Withholding or Withdrawal of Life-Sustaining Procedures in Event of Terminal Condition

Sec. 3. Any adult person may execute a directive for the withholding or withdrawal of life-sustaining procedures in the event of a terminal condi-

tion. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant on his decease under any will of the declarant or codicil thereto or by operation of law. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, a patient in a health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The two witnesses to the declarant's signature shall sign the directive. The directive shall be in the following form:

#### "DIRECTIVE TO PHYSICIANS

"Directive made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

"I \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

"1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

"4. I have been diagnosed and notified as having a terminal condition by \_\_\_\_\_, M.D. or D.O., whose address is \_\_\_\_\_, and whose telephone number is \_\_\_\_\_. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

"5. This directive shall be in effect until it is revoked.

"6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"7. I understand that I may revoke this directive at any time.

"Signed \_\_\_\_\_

City, County, and State of Residence \_\_\_\_\_

The declarant has been personally known to me and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his decease, nor am I the attending physician of declarant or an employee of the attending physician or a health facility in which declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease.

"Witness \_\_\_\_\_

"Witness \_\_\_\_\_"

#### Revocation of Directive

Sec. 4. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) by being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction;

(2) by a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant or by mailing said revocation to an attending physician. An attending physician or his designee shall record in the patient's medical record the time and date when he received notification of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records; or

(3) by a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant. An attending physician or his designee shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records.

(b) Except as otherwise provided in this Act, there shall be no criminal or civil liability on the part of any person for failure to act on a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

#### Duration of Directive

Sec. 5. A directive shall be effective until it is revoked in a manner prescribed in Section 4 of this Act. Nothing in this Act shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Sec-



tion 3 of this Act, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.

#### Civil or Criminal Liability

Sec. 6. No physician or health facility which, acting in accordance with the requirements of this Act, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom unless negligent. No health professional, acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be subject to any civil liability unless negligent. No physician, or health professional acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be guilty of any criminal act or of unprofessional conduct unless negligent. No physician, health care facility, or health care professional shall be liable either civilly or criminally for failure to act pursuant to the declarant's directive where such physician, health care facility, or health care professional had no knowledge of such directive.

#### Failure to Execute Directive

Sec. 7. (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall determine that the directive complies with the form of the directive set out in Section 3 of this Act, and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are in accord with the existing desires of the qualified patient and are communicated to the patient.

(b) If the declarant was a qualified patient prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. A failure by a physician to effectuate the directive of a qualified patient pursuant to this subsection may constitute unprofessional conduct if the physician refuses to make the necessary arrangements or fails to take the necessary steps to effect the transfer of the qualified patient to another

physician who will effectuate the directive of the qualified patient.

(c) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently re-executed the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

#### Effect on Offense of Aiding Suicide and Insurance Policies

Sec. 8. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute an offense under Section 22.08, Penal Code.

(b) The making of a directive pursuant to Section 3 of this Act shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health provider, and no health care service plan, or insurer issuing insurance, may require any person to execute a directive as a condition for being insured for, or receiving, health care services nor may the execution or failure to execute a directive be considered in any way in establishing the premiums for insurance.

#### Tampering with Directive

Sec. 9. A person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarant's consent shall be guilty of a Class A misdemeanor. A person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 4 of this Act, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for criminal homicide under the provisions of the Penal Code.

**Mercy Killing not Condoned**

Sec. 10. Nothing in this Act shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

**Act as Cumulative**

Sec. 11. Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

[Acts 1977, 65th Leg., p. 1085, ch. 398, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1783, ch. 724, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 741, ch. 175, § 1, eff. Aug. 29, 1983.]

**CHAPTER TWENTY-ONE. MEDICAL LIABILITY AND INSURANCE IMPROVEMENT****Art. 4590i. Medical Liability and Insurance Improvement Act**

*Text of article effective until August 31, 1993*

**SUBCHAPTER A. GENERAL PROVISIONS****Short Title**

Sec. 1.01. This part may be cited as the Medical Liability and Insurance Improvement Act of Texas.

**Findings and Purposes**

Sec. 1.02. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1972 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period of time;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in the State of Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen in price, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims; and defensive medicine has resulted in increasing cost to patients, private insurers, and the state and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals;

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, may or may not have an effect on the rates charged by insurers for medical professional liability insurance;

(13) these facts have been verified by the Medical Professional Liability Study Commission, which was created by the 64th Legislature.<sup>1</sup> For further amplification of these facts the legislature adopts the findings of the report of the commission.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this Act to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and assure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

<sup>1</sup> See note under Insurance Code, art. 21.49-3.

#### Definitions

Sec. 1.03. (a) In this part:

(1) "Court" means any federal or state court.

(2) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, pharmacist, or nursing home, or an officer, employee, or agent thereof acting in the course and scope of his employment.

(4) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(5) "Hospital" means a duly licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(6) "Medical care" means any act defined as practicing medicine in Article 4510, Revised Civil Statutes of Texas, 1925, as amended, performed or furnished, or which should have been performed, by one licensed to practice medicine in Texas for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(7) "Pharmacist" means one licensed under Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), who, for the purposes of this Act, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this part, not otherwise defined in this part, shall have such meaning as is consistent with the common law.

#### SUBCHAPTER B. ADDITIONAL DISCIPLINARY POWERS [REPEALED]

Secs. 2.01 to 2.15. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

#### SUBCHAPTER C. DISTRICT REVIEW COMMITTEES [REPEALED]

Secs. 3.01 to 3.09. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

#### SUBCHAPTER D. NOTICE

##### Notice

Sec. 4.01. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section.

#### SUBCHAPTER E. AD DAMNUM CLAUSE

##### Pleadings not to State Damage Amount; Special Exception; Exclusion from Section

Sec. 5.01. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event, the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in exam-

ining prospective jurors on voir dire or in argument to the court or jury.

#### SUBCHAPTER F. INFORMED CONSENT

##### Definition

Sec. 6.01. In this subchapter, "panel" means the Texas Medical Disclosure Panel.

##### Theory of Recovery

Sec. 6.02. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

##### Texas Medical Disclosure Panel

Sec. 6.03. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in the Medical Liability and Insurance Improvement Act of Texas, as amended (Article 4590i, Vernon's Texas Civil Statutes), shall be exercised solely by the panel and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the panel shall be selected by the Commissioner of Health.

(d) The commissioner shall select members of the panel according to the following schedule:

(1) one attorney and two physicians to serve a term of two years, which term shall begin on September 1, 1979, and expire on August 31, 1981, or until a successor is qualified;

(2) one attorney and two physicians to serve a term of four years, which terms shall begin September 1, 1979, and expire August 31, 1983, or until a successor is qualified;

(3) one attorney and two physicians to serve a term of six years, which term shall begin September 1, 1979, and expire on August 31, 1985, or until a successor is qualified.

Thereafter, at the expiration of the term of each member of the panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the panel present at each such meeting may be removed by the commissioner at the request of the panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice-chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice-chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

##### Duties of Panel

Sec. 6.04. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and for those treatments and procedures that do require disclosure shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) of this section together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

#### Duty of Physician or Health Care Provider

Sec. 6.05. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the panel's list requiring disclosure, the physician or health care provider shall disclose to the patient, or person authorized to consent for the patient, the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 6.06 of this subchapter.

#### Manner of Disclosure

Sec. 6.06. Consent to medical care that appears on the panel's list requiring disclosure shall be considered effective under this subchapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel under Section 6.04 of this subchapter.

#### Effect of Disclosure

Sec. 6.07. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 6.05 of this subchapter and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Sections 6.05 and 6.06 of this subchapter have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 6.05 and 6.06 of this subchapter shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 6.05 and 6.06 of this subchapter, and this presumption shall be included

in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

### SUBCHAPTER G. RES IPSA LOQUITUR

#### Application of Res Ipsa Loquitur

Sec. 7.01. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of the effective date of this subchapter.

### SUBCHAPTER H. BAD FAITH CAUSE OF ACTION

#### Separate Cause of Action for Bad Faith

Sec. 8.01. With respect to a health care liability claim actually filed, a cause of action based on bad faith may be filed and litigated in a separate lawsuit.

#### Definition

Sec. 8.02. As used in this subchapter, "bad faith" means to file and maintain a claim with reckless disregard as to whether or not reasonable grounds exist for asserting the claim.

#### Notice of Bad Faith Claim

Sec. 8.03. At least 60 days before the filing of a suit based on bad faith in any court of this state, a person or his authorized agent asserting a bad faith cause of action shall give written notice by certified mail, return receipt requested, of the claim, to the defendant or his attorney against whom the claim is being made.

#### Persons Against Whom Claims May be Made; Damage Limits

Sec. 8.04. The right of action created in this subchapter shall lie against any claimant or defendant or claimant's or defendant's attorney, or both, who file a health care liability claim in bad faith, or file a claim under this article in bad faith, and the measure of damages with respect thereto shall be limited to \$100,000 for compensatory and exemplary damages, as applicable.

#### Effective Date

Sec. 8.05. This subchapter will take effect if and only if the State Bar of Texas fails to certify to the Supreme Court of Texas by January 31, 1979, that it has adopted rules for appropriate disciplinary measures against an attorney who has been determined to have filed a claim in bad faith. If the provisions

of this section are held unconstitutional or invalid for any reason, the legislature specifically declares this section to be severable and that such holding shall in no way affect the validity of the other sections of this subchapter.

#### SUBCHAPTER I. ADVANCE PAYMENTS

##### Advance Payments not Admission of Liability

Sec. 9.01. In an action brought to recover damages based on a health care liability claim, no advance payment made on that claim by the defendant health care provider or physician, or the professional liability insurer, to or for the claimant, or any other person, shall be construed as an admission of liability by the health care provider or physician or any person for any injuries or damages suffered by the claimant or anyone else.

##### Admissibility of Advance Payments

Sec. 9.02. Except as provided in this subchapter, evidence of an advance payment shall not be admissible during the trial of an action based on a health care liability claim at any stage of the proceedings, unless and until there is a final award in favor of the claimant, in which event the trial judge shall reduce the award to the claimant to the extent of the advance payment.

##### Repeal

*By order of the Texas Supreme Court dated November 23, 1982, effective September 1, 1983, adopting the Texas Rules of Evidence, §§ 9.01 and 9.02 of this article are deemed to be repealed insofar as they relate to civil actions by the Rules of Practice Act, Acts 1939, 46th Leg., p. 201, § 1, classified as art. 1731a, § 1.*

##### Adjustments for Advance Payments

Sec. 9.03. The advance payment shall inure to the exclusive benefit of the defendant or his or its carrier making the advance payment, and in the event the advance payment exceeds the pro rata liability of the defendant or the carrier making the payment, the trial judge shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay under this subchapter, exclusive of costs.

##### Certain Advance Payments Exempt from Repayment

Sec. 9.04. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

#### SUBCHAPTER J. STATUTE OF LIMITATIONS

##### Limitations on Health Care Liability Claims

Sec. 10.01. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject

of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

##### Causes of Action Covered by Other Law

Sec. 10.02. Causes of action accruing between the effective date of this Act and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

#### SUBCHAPTER K. LIABILITY LIMITS

##### Definition

Sec. 11.01. In this subchapter, "consumer price index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

##### Limit on Civil Liability

Sec. 11.02. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed \$500,000.

(b) Subsection (a) of this section does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(c) This section shall not limit the liability of any insurer where facts exist that would enable a party to invoke the common law theory of recovery commonly known in Texas as the "Stowers Doctrine."

(d) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law.

##### Alternative Partial Limit on Civil Liability

Sec. 11.03. In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of the physician or health care provider for all past and future noneconomic losses recoverable by or on

behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000.

#### Adjustment of Liability Limits

Sec. 11.04. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter each of the liability limits prescribed in Section 11.02(a) or in Section 11.03 of this subchapter, as applicable, shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limits are awarded by final judgment or settlement.

#### Subchapter's Application Prevails over Certain Other Laws

Sec. 11.05. The provisions of this subchapter shall apply notwithstanding the provisions contained in Article 4671, Revised Civil Statutes of Texas, 1925, as amended, and the provisions of Article 5525, Revised Civil Statutes of Texas, 1925, as amended.

### SUBCHAPTER L. MISCELLANEOUS PROVISIONS

#### Exception From Certain Laws

Sec. 12.01. (a) Notwithstanding any other law, no provisions of Sections 17.41-17.63, Business & Commerce Code, shall apply to physicians or health care providers as defined in Section 1.03(3) of this Act, with respect to claims for damages for personal injury or death resulting, or alleged to have

resulted, from negligence on the part of any physician or health care provider.

(b) This section shall not apply to pharmacists. [Acts 1977, 65th Leg., p. 2039, ch. 817, Part 1; eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 1259, ch. 596, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.]

Sections 41.01 to 41.04 of the 1977 Act provide as follows:

"Sec. 41.01. The provisions of this Act shall apply only to causes of action based on health care liability claims accruing after the effective date of this Act.

"Sec. 41.02. This Act expires at midnight on August 31, 1993.

"Sec. 41.03. Art. 5.82, Ins.Code, and Section 3, Chapter 331, Acts of the 64th Legislature, Regular Session, 1975, are repealed.

"Sec. 41.04. If any provision of this statute or its application to any person or circumstance is held invalid or unconstitutional, such invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid clause, sentence, subsection, section, article, or provision or application, and shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, article, or provision of the Act so adjudged to be invalid or unconstitutional and to this end the above are declared to be severable."

Subsections (a), (f), and (h) of § 3 of the 1981 amendatory act provide:

"(a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government."

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act."

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years."

## TITLE 72

# HOLIDAYS—LEGAL

- Art.  
4591. Enumeration.  
4591.3. Holidays for Institutions of Higher Education.  
4591a. Omitted.  
4591b. Stephen F. Austin Day; Designation and Commemoration.  
4591b-1. Sam Rayburn Day.  
4591c. Omitted.  
4591d. Transferred to Art. 342-910a.  
4591e. Veterans Day; Designation Changed from Armistice Day.

### Art. 4591. Enumeration

The first day of January, the 19th day of January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the 19th day of June, the fourth day of July, the 27th day of August, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes. The 19th day of June is designated "Emancipation Day in Texas" in honor of the emancipation of the slaves in Texas on June 19, 1865.

[Acts 1925, S.B. 84. Amended by Acts 1931, 42nd Leg., p. 9, ch. 8, § 1; Acts 1951, 52nd Leg., p. 280, ch. 163, § 1; Acts 1957, 55th Leg., p. 428, ch. 205, § 1; Acts 1967, 60th Leg., p. 948, ch. 416, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 600, ch. 205, § 1, eff. Jan. 1, 1971; Acts 1973, 63rd Leg., p. 517, ch. 221, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 14, ch. 11, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1051, ch. 481, § 1, eff. Jan. 1, 1980.]

### Art. 4591.3. Holidays for Institutions of Higher Education

The governing body of an institution of higher education as defined by Section 61.003, Texas Education Code, as amended (other than a public junior college as defined by that section), may establish the holiday schedule for the institution. However, the number of holidays to be observed by the institution may not exceed the number of holidays on which an employee of a state agency is entitled by law to a day off.

[Acts 1981, 67th Leg., p. 2091, ch. 480, § 1, eff. Sept. 1, 1981.]

### Art. 4591a. Omitted

Acts 1925, 39th Leg., p. 689, H.C.R. No. 12, designating the 12th of August of each year as Texas Pioneers' Day, has been omitted.

### Art. 4591b. Stephen F. Austin Day; Designation and Commemoration

That the Third day of November of each year is hereby designated and fixed, and is to be hereafter known as, "Father of Texas Day" in memory of Stephen F. Austin, the real and true Father of Texas, and that said day and date be regularly observed by appropriate and patriotic programs, being given in the Public Schools and other places that will properly commemorate the birthday of that great pioneer patriot, Stephen F. Austin, and thereby inspire a greater love for our beloved Lone Star State; provided, however, that said day shall not be a legal holiday.

[Acts 1933, 43rd Leg., p. 68, ch. 37.]

### Art. 4591b-1. Sam Rayburn Day

January 6 of each year is designated as "Sam Rayburn Day," in memory of that great Texas and American statesman, Sam Rayburn. This day shall be regularly observed by appropriate programs in the public schools and other places to commemorate the birthday of Sam Rayburn. This day shall not be a legal holiday.

[Acts 1977, 65th Leg., p. 1411, ch. 571, § 1, eff. Aug. 29, 1977.]

### Art. 4591c. Omitted

Acts 1931, 42nd Leg., p. 899, S.C.R. No. 12, designating October 11th of each year as General Pulaski Memorial Day, has been omitted.

### Art. 4591d. Transferred to Art. 342-910a

Acts 1967, 60th Leg., p. 1853, ch. 722, § 7 provided:  
"Acts 1955, 54th Legislature, Chapter 16, page 16, as amended, codified as Article 4591d, Vernon's Texas Civil Statutes, is in its entirety and as amended by this Act, hereby transferred to and made a part of Chapter IX of the Texas Banking Code of 1943 and designated as Article 10a of said Chapter IX."

### Art. 4591e. Veterans Day; Designation Changed from Armistice Day

The holiday of November 11th, heretofore known as Armistice Day, is hereby designated and is to be hereafter known as Veterans Day, dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and other Americans have fought.

[Acts 1955, 54th Leg., p. 37, ch. 27, § 1.]



## TITLE 73

# HOTELS AND BOARDING HOUSES

- Art.**  
4592. Liability for Valuables.  
4593. Gratuitous Bailee.  
4594. Lien.  
4595. Sale to Satisfy Lien.  
4596. Definition.  
4596a. Repealed.  
4596b. Posting Price in Hotel Rooms.  
4596c. Furnishing Rate Ticket.  
4596d. Smoke Detectors.

### **Art. 4592. Liability for Valuables**

Any hotel, apartment hotel or boarding house keeper, who constantly has in his hotel, apartment hotel or boarding house a metal safe or vault in good order and fit for the custody of money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, or documents of any kind, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts and proper fastening on the transom and window of said room, shall not be liable for the loss or injury suffered by any guest on account of the loss of said valuables in excess of the sum of fifty dollars, which could reasonably be kept in the safe or vault of the hotel, unless said guest has offered to deliver such valuables to said hotel, apartment hotel or boarding house keeper for the custody in such metal safe or vault, and said hotel, apartment hotel or boarding hotel or boarding house keeper has omitted or refused to deposit said valuables in such safe or vault and issue a receipt therefor; provided, such loss or injury does not occur through the negligence or wrong doing of said hotel, apartment hotel or boarding house keeper, his servants, or employés, and that a printed copy of this law is posted on the door of the sleeping room of such guest.

[Acts 1925, S.B. 84.]

### **Art. 4593. Gratuitous Bailee**

Whenever any person shall allow his baggage or other property to remain in any hotel, apartment hotel or boarding house after the relation of inn-keeper and guest has ceased without checking same, or shall leave his baggage or other property in the lobby of any hotel, apartment hotel or boarding house prior to checking it or becoming a guest, or shall forward any baggage to such hotel, apartment hotel or boarding house before becoming a guest, said hotel, apartment hotel or boarding house keeper may, at his option, hold such baggage or other property at the risk of said owner. If any person should check his baggage or other property at any hotel, apartment hotel or boarding house and leave it there free of charge for a period of one week without being a guest, said hotel, apartment hotel or boarding house keeper may, after the expiration of such time and in the absence of any special

agreement, hold such baggage or other property at the risk of the owner.

[Acts 1925, S.B. 84.]

### **Art. 4594. Lien**

Proprietors of hotels, boarding houses, rooming houses, inns, tourist courts, and motels shall have a lien on the baggage and other property of guests in such hotels, boarding houses, rooming houses, inns, tourist courts, and motels for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the possession of such proprietor.

[Acts 1925, S.B. 84. Amended by Acts 1955, 54th Leg., p. 879, ch. 333, § 1.]

### **Art. 4595. Sale to Satisfy Lien**

The keeper of the inn, boarding house, or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty (30) days, at the expiration of which time if such lien is not satisfied, he may sell such baggage or other property at public auction, first giving ten days' notice of the time and place of sale by posting at least three (3) notices thereof in public places in the county where the inn, hotel, or boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty (60) days be paid such guest or boarder. If not demanded within sixty (60) days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn, or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the County Treasurer and if not claimed within one year by the owner thereof, such Treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund.

[Acts 1925, S.B. 84. Amended by Acts 1939, 46th Leg., p. 383, § 1.]

### **Art. 4596. Definition**

As used herein, a hotel or inn includes rooming houses, and is a place where the business is to furnish food and lodging or either, to all who apply and pay therefor.

[Acts 1925, S.B. 84.]

**Art. 4596a. Repealed by Acts 1969, 61st Leg., p. 1374, ch. 416, § 9, eff. Sept. 1, 1969**

See, now, article 4419e.

**Art. 4596b. Posting 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.

[1925 P.C.]

**Art. 4596c. Furnishing Rate Ticket**

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.

[1925 P.C.]

**Art. 4596d. Smoke Detectors**

Sec. 1. In this article:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, or inn. The term does not include:

(A) a hospital, sanitarium, or nursing home; or

(B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

(2) "Person" has the meaning that is given to that term by Section 1.07, Penal Code.

(3) "Smoke detector" means a device that is:

(A) designed to detect the presence of visible or invisible products of combustion in the air;

(B) designed with an alarm audible throughout the room in which it is installed to alert the occupants of the room of the presence of visible or invisible products of combustion in the air of the room; and

(C) listed for use as a smoke detector by the state fire marshal after having been tested and shown to be effective as a smoke detector by the state fire marshal or by a testing laboratory under conditions and procedures approved by the state fire marshal. In lieu of or in addition to the requirement of this subsection, the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted by the State Board of Insurance pursuant to Article 5.43-2 of the Insurance Code.

Sec. 2. (a) A person who operates a hotel commits an offense if the person does not maintain a smoke detector in good working order in every room of the hotel that is regularly used for sleeping.

(b) A person commits a separate offense under this section on each calendar day the person commits the offense.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1983, 68th Leg., 1st C.S., p. 30, ch. 5, § 1, eff. Jan. 1, 1984.]

## TITLE 74 HUMANE SOCIETY REPEALED

**Arts. 4597 to 4601. Repealed by Acts 1953, 53rd Leg., p. 748, ch. 294, § 1**

These articles, derived from Vernon's Civ.St.1914, Acts 1913, 33rd Leg. ch. 56, p. 108, § 6, art. 761f, related to a State Bureau of

Child and Animal Protection. For cruelty to animals, see arts. 180 to 189 and Penal Code, § 42.11.

# TITLE 75

## HUSBAND AND WIFE

Chapter	Article	Civil Statute Article	Family Code Section
1. Celebration of Marriage [Repealed]	4602	subsec. (b)	1.03
2. Matrimonial Property Agreements [Repealed]	4610		1.04
3. Rights of Spouses [Repealed]	4613	subsec. (c)	1.05
4. Divorce	4628	subsec. (d)	1.03
		4606	1.08
			1.84(a)
		4607	—
		4608	—
		4609	—

### CHAPTER ONE. CELEBRATION OF MARRIAGE [REPEALED]

*Acts 1969, 61st Leg., p. 2707, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

#### DISPOSTION TABLE

Showing where subject matter of repealed articles included within Chapter One is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4602	1.83
4603	1.51(a)
4604	1.01
4604c	1.21
4604d, § 1	1.31
	1.32
	1.33
§ 2	1.26
	1.27
§ 3	1.23
§ 4	1.24
	1.25
	1.29
	1.30
§ 5	1.34
§ 6	1.26
	1.28
§ 7	1.07(a)
§ 8	1.22
§ 9	1.35
§ 10	1.32
§ 13	1.36
	1.37
4605	1.02
subsec. (a)	1.51(b)
	1.52

**Arts. 4602 to 4604. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

**Arts. 4604a, 4604b. Repealed by Acts 1933, 43rd Leg., p. 284, ch. 113, § 2**

**Arts. 4604c, 4604d. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

**Arts. 4605 to 4609. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**

### CHAPTER TWO. MATRIMONIAL PROPERTY AGREEMENTS [REPEALED]

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

**Art. 4610. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970**  
See, now, Family Code, § 5.41.

**Arts. 4611, 4612. Repealed by Acts 1967, 60th Leg., p. 741, ch. 309, § 6, eff. Jan. 1, 1968**

### CHAPTER THREE. RIGHTS OF SPOUSES [REPEALED]

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

DISPOSITION TABLES

TABLE 1

Showing where subject matter of repealed articles included within Chapter Three is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4613 .....	5.01(a)(1)
	5.01(a)(2)
	5.01(b)
	5.21
	5.61(a)
4614 .....	4.02
4615 .....	5.01(a)(3)
4617 .....	5.25
4618, § 1 .....	5.81
§ 2 .....	5.82
	5.83
§ 3 .....	5.84
	5.85
4619 .....	5.02
4620 .....	5.61(b)
	5.61(c)
	5.61(d)
4621 .....	5.22
	5.23
4622 .....	5.24(a)
	5.24(b)
4624 .....	5.62
4624a .....	5.42
4625 .....	4.03
4626 .....	4.04
4627 .....	4.01

TABLE 2

Showing where subject matter of prior law included within former Chapter Three, Rights of Married Women, was covered in Chapter Three, Rights of Spouses, as enacted by Acts 1967, 60th Leg., p. 735, ch. 309.

Former Articles	1967 Articles
4613 .....	4613
4614 .....	4613
4615 .....	4615
4616 (Rep.) .....	4613
4617 .....	4618
4618 .....	4618, 4621
4619 .....	4617, 4619, 4621
4620 .....	4620
4621 .....	4620
4622 .....	4622
4623 (Rep. in 1963) .....	4613, 4614, 4620
4624 .....	4624
4624a .....	4624a
4625 .....	4625
4626 .....	4625, 4626
4627 .....	4627

Arts. 4613 to 4615. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Art. 4616. Repealed by Acts 1967, 60th Leg., p. 741, ch. 309, § 6, eff. Jan. 1, 1968

Arts. 4617 to 4622. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Art. 4623. Repealed by Acts 1963, 58th Leg., p. 1188, ch. 472, § 4; Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

Arts. 4624 to 4627. Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

CHAPTER FOUR. DIVORCE

Art. 4628 to 4639b. Repealed.  
 4639c. Suits for Custody and Support of Children After Entry of Foreign Divorce Decree.  
 4640, 4641. Repealed.

*Acts 1969, 61st Leg., p. 2706, ch. 888, enacts Title 1 of a new Family Code, and repeals enumerated existing Articles of the Texas Civil Statutes, effective January 1, 1970.*

DISPOSITION TABLE

Showing where subject matter of repealed articles included within Chapter Four is now covered in the Family Code, as enacted by Acts 1969, 61st Leg., p. 2707, ch. 888.

Civil Statute Article	Family Code Section
4628 .....	2.43
4629, subsec. (1) .....	3.02
subsec. (2) .....	3.05
subsec. (3) .....	3.03
subsec. (4) .....	3.06
subsec. (5) .....	3.04
subsec. (6) .....	3.07
4630 .....	3.08
4631 .....	3.21
	3.22
	3.23
4632 .....	3.53
	3.60
	3.61
	3.64
4633 .....	3.62
4634 .....	3.57
4635 .....	3.56
4636 .....	3.58
4637 .....	3.59
4638 .....	3.63
4640 .....	3.66
4641 .....	3.65

**Arts. 4628 to 4638.** Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

**Arts. 4639 to 4639a-1.** Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing these articles, enacts Title 2 of the Texas Family Code.

For provisions of former art. 4639a-1 relating to children requiring custodial care, see, now, Family Code § 14.01 et seq.

**Art. 4639b.** Repealed by Acts 1975, 64th Leg., p. 1273, ch. 476, § 57 eff. Sept. 1, 1975

**Art. 4639c. Suits for Custody and Support of Children After Entry of Foreign Divorce Decree**

Sec. 1. When the marriage relation no longer exists as a result of divorce action in a foreign jurisdiction, in which the court granting the decree was silent as to custody and support of a child or children under eighteen (18) years of age, a suit for the custody and support of such child or children may be brought in the district court against any

parent who fails to provide for the support and maintenance of his or her child or children under eighteen (18) years of age. Such suit may be brought by either parent and shall be brought in the county where the said children actually reside.

Sec. 2. Upon the filing of such suit for custody and support under the provision of this Act, citation shall issue as in other cases. Upon a hearing the court shall enter such order for support and maintenance and custody of such child or children as may seem necessary and proper. Upon change of conditions such order may be changed after application and hearing. A violation of or refusal to obey any order of the court may be punished as for contempt. Money paid under the provisions of this Act shall be paid into the district clerk's office, and disbursed under the order of the court.

Sec. 3. The provisions of this Act shall be cumulative of any provisions of law for support and custody of children now in effect.

[Acts 1959, 56th Leg., p. 959, ch. 447.]

**Arts. 4640, 4641.** Repealed by Acts 1969, 61st Leg., p. 2707, ch. 888, § 6, eff. Jan. 1, 1970

# TITLE 76

## INJUNCTIONS

### 1. IN GENERAL

- Art.**  
4642. Grounds For.  
4643. Issuance by Non-resident Judge.  
4644. Against Well or Mine Operator.  
4645. Against a Judgment.  
4646. To Stay Execution.  
4646a. Prohibiting Injunction Against Closing Streets.  
4646b. Repealed.  
4647 to 4655. Repealed.  
4656. Jurisdiction for Trial.  
4657 to 4659. Repealed.  
4660. Damages for Delay.  
4661. Repealed.  
4662. Appeals.  
4663. Principles of Equity Applicable.

### 2. IN PARTICULAR CASES

4664. Nuisance.  
4665. Nuisance; Evidence.  
4666. Nuisance; Prosecution.  
4667. Injunctions to Abate Public Nuisances.  
4668. Repealed.  
4669. Revenue Laws.  
4670. Repealed.

### 1. IN GENERAL

#### **Art. 4642. Grounds For**

Judges of the district and county courts shall, in term time or vacation, hear and determine applications for and may grant writs of injunction returnable to said courts in the following cases:

1. Where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.

2. Where a party does some act respecting the subject of pending litigation or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant when said act would tend to render judgment ineffectual.

3. Where the applicant shows himself entitled thereto under the principles of equity, and the provisions of the statutes of this State relating to the granting of injunctions.

4. Where a cloud would be put on the title of real estate being sold under an execution against a party having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law.

[Acts 1925, S.B. 84.]

#### **Art. 4643. Issuance by Non-resident Judge**

No district judge shall grant a writ of injunction returnable to any other court than his own except in the following cases:

1. Where the resident judge cannot hear and act upon the application by reason of his absence, sickness, inability, inaccessibility, disqualification or refusal to act, when such facts are fully set out in the application or in an affidavit accompanying same, and if such judge refuses to act, such refusal shall be indorsed by said judge on such writ with his reasons therefor. In such case no district judge shall grant the writ when the application therefor has once been acted upon by another district judge of this State.

2. To stay execution, or to restrain foreclosure, sales under deeds of trust, trespasses, the removal of property, or acts injurious to or impairing riparian or easement rights, when satisfactory proof is made to such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application.

3. When the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to effectuate the purpose of the writ sought. In such case the applicant or his attorney seeking a writ on the ground of such inaccessibility shall attach to his application an affidavit fully stating the facts of such inaccessibility and his efforts made to reach and communicate with said judge, and the result thereof, and unless such efforts appear to have been fair and reasonable the application shall not be heard. Such injunction may be subsequently dissolved upon it being shown that the petitioner did not first make reasonable efforts to procure a hearing upon said application before the resident judge.

[Acts 1925, S.B. 84.]

#### **Art. 4644. Against Well or Mine Operator**

No injunction or temporary restraining order shall ever be issued prohibiting sub-surface drilling or mining operations on the application of an adjacent land owner claiming injury to his surface or improvements or loss of or injury to the minerals thereunder, unless the party against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for such injury as may result from such drilling or mining operations; provided, however, that the party against whom such injunction is sought shall enter into a good and sufficient bond in such sum as the judge hearing the application shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of

such drilling or mining operations. The court may, when he deems it necessary to protect the interests involved in such litigation, in lieu of such bond, appoint a trustee or receiver with such powers as the court may prescribe, to take charge of and hold the minerals produced from the lands of those complained against or the proceeds thereof subject to the final disposition of such litigation.

[Acts 1925, S.B. 84.]

#### Art. 4645. Against a Judgment

No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against and so much as will cover the costs.

[Acts 1925, S.B. 84.]

#### Art. 4646. To Stay Execution

No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time, or after rendition, of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the State at the time such judgment was rendered and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment.

[Acts 1925, S.B. 84.]

#### Art. 4646a. Prohibiting Injunction Against Closing Streets

No injunction shall be granted to stay or prevent the vacating, abandonment or closing, by the City Council or governing body of any incorporated city of this State, of any street or alley in any such incorporated city of this State, except at the suit of the owner or lessee of real property actually abutting on that part of such street or alley actually vacated, abandoned or closed, and then only in the event that the damages of said owner or lessee shall not have been released or shall not have been ascertained and paid in a condemnation suit by such city.

Sec. 2. Provided that any person, who under existing laws has the right to enjoin a city from vacating, abandoning or closing any street or alley of such city and whose right to such injunction is denied by this Act, shall have the right to an action for damages for any injury that he may sustain by reason of the vacating, abandoning or closing of any street or alley by such city.

[Acts 1930, 41st Leg., 5th C.S., p. 257, ch. 84.]

#### Art. 4646b. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967

See, now, article 5069-1.01 et seq.

Arts. 4647 to 4655. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4656. Jurisdiction for Trial

Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the State, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom a writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile.

[Acts 1925, S.B. 84.]

Arts. 4657 to 4659. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4660. Damages for Delay

Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction exclusive of costs.

[Acts 1925, S.B. 84.]

Art. 4661. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

#### Art. 4662. Appeals

Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or overruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Appeals.

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 790, ch. 291, § 64, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

#### Art. 4663. Principles of Equity Applicable

The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

[Acts 1925, S.B. 84.]

## 2. IN PARTICULAR CASES

**Art. 4664. Nuisance**

Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or where intoxicating liquors are furnished to minors or to students of any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, is hereby declared to be a common nuisance. Any person who knowingly maintains such a place is guilty of maintaining a nuisance.

[Acts 1925, S.B. 84. Amended by Acts 1973, 63rd Leg., p. 988, ch. 399, § 2(I), eff. Jan. 1, 1974.]

**Art. 4665. Nuisance; Evidence**

Proof that any of said prohibited acts are frequently committed in any of said places shall be prima facie evidence that the proprietor knowingly permitted the same, and evidence that persons have been convicted of committing any said act in a hotel, boarding house or rooming house, is admissible to show knowledge on the part of the defendants that this law is being violated in the house. The original papers and judgments or certified copies thereof in such cases of convictions may be used in evidence in the suit for injunction and oral evidence is admissible to show that the offense for which said parties were convicted was committed in said house. Evidence of general reputation of said houses shall also be admissible to prove the existence of said nuisance.

[Acts 1925, S.B. 84.]

**Art. 4666. Nuisance; Prosecution**

Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, either of them shall file suit in the name of this 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 that said house 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.

[Acts 1925, S.B. 84.]

**Art. 4667. Injunctions to Abate Public Nuisances**

(a) The habitual use, actual threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall constitute a public nuisance and shall be enjoined at the suit of either the State or any citizen thereof:

(1) For gambling, gambling promotion, or communicating gambling information prohibited by law;

(2) For the promotion or aggravated promotion of prostitution, or compelling prostitution;

(3) For the commercial manufacturing, commercial distribution, or commercial exhibition of obscene material;

(4) For the commercial exhibition of live dances or exhibition which depicts real or simulated sexual intercourse or deviate sexual intercourse;

(5) For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by law.

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney or City Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

[Acts 1925, S.B. 84. Amended by Acts 1937, 45th Leg., p. 664, ch. 331, § 1; Acts 1973, 63rd Leg., p. 989, ch. 399, § 2(J), eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 1962, ch. 647, § 1, eff. June 19, 1975.]

**Art. 4668. Repealed by Acts 1963, 58th Leg., p. 114, ch. 65, § 3, eff. Aug. 23, 1963**

**Art. 4669. Revenue Laws**

The full right, power and remedy of injunction may be invoked by the State at the instance of the county or district attorney or Attorney General, to prevent, prohibit or restrain the violation of any revenue law of the State.

[Acts 1925, S.B. 84.]

**Art. 4670. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**



## TITLE 77

# INJURIES RESULTING IN DEATH

### Art.

- 4671. Cause of Action.
- 4672. Character of Wrongful Act.
- 4673. Exemplary Damages.
- 4674. Crime No Bar.
- 4675. Institution of Suit.
- 4675a. Proof of Remarriage, etc.
- 4676. Executor, etc., Made Party, When.
- 4677. Damages Apportioned.
- 4678. Death in Foreign State.

### Art. 4671. Cause of Action

No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskillfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness or default of the receiver, trustee or other person in charge of or in control of any

railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskillfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof.

[Acts 1925, S.B. 84. Amended by Acts 1975, 64th Leg., p. 1381, ch. 530, § 1, eff. Sept. 1, 1975.]

### Art. 4672. Character of Wrongful Act

The wrongful act, negligence, carelessness, unskillfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury.

[Acts 1925, S.B. 84.]

### Art. 4673. Exemplary Damages

When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered.

[Acts 1925, S.B. 84.]

### Art. 4674. Crime No Bar

The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide.

[Acts 1925, S.B. 84.]

### Art. 4675. Institution of Suit

Actions for damage arising from death shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children, and parents of the person whose death has been caused or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the executor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prose-

cute the same. The amount recovered shall not be liable for the debts of the deceased.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 356, ch. 239, § 2.]

**Art. 4675a. Proof of Remarriage, etc.**

In an action under this title, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if such is true, but the defense is prohibited from directly or indirectly mentioning or alluding to any common-law marriage, extramarital relationship, or marital prospects of the surviving spouse.

[Acts 1973, 63rd Leg., p. 43, ch. 29, § 1, eff. April 9, 1973.]

**Art. 4676. Executor, etc., Made Party, When**

If the defendant die pending the suit, or if the person or persons against whom such suit might have been instituted, if alive, die before the suit is instituted, his or their executors or administrators may be made a party or parties defendant, and the suit instituted and prosecuted to judgment as though such defendant or person or persons had continued to live. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration.

[Acts 1925, S.B. 84.]

**Art. 4677. Damages Apportioned**

The jury may give such damages as they think proportionate to the injury resulting from such death. The amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict.

[Acts 1925, S.B. 84.]

**Art. 4678. Death in Foreign State**

Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country or of this State, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such action in the courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case.

[Acts 1925, S.B. 84. Amended by Acts 1975, 64th Leg., p. 1382, ch. 530, § 2, eff. Sept. 1, 1975.]

## TITLE 78 INSURANCE

*For text of Title 78, Insurance, see immediately following the Insurance Code in the pamphlet containing the Insurance Code.*

# TITLE 79

## INTEREST—CONSUMER CREDIT—CONSUMER PROTECTION

Subtitle	Article
1. Interest .....	5069-1.01
2. Consumer Credit .....	5069-2.01
3. Consumer Protection .....	5069-9.01

*Title 79, Interest, Revised Civil Statutes, 1925, consisting of articles 5069 to 5074a as amended by Acts 1963, 58th Leg., p. 550, ch. 205, §§ 26 to 28, was repealed by Acts 1967, 60th Leg., p. 609, ch. 274, § 5. See art. 5069-50.03.*

*Title 79, Interest—Consumer Credit—Consumer Protection, as herein set out, consisting of articles 5069-1.01 to 5069-50.06, was enacted by Acts 1967, 60th Leg., p. 609, ch. 274, §§ 1 to 4, 6 to 8.*

*For effective date, see art. 5069-50.06.*

### DISPOSITION TABLE

Showing where provisions of former articles 5069 to 5074a of Title 79 are now covered in article 5069-1.01 et seq., as enacted by Acts 1967, 60th Leg., p. 608, ch. 274.

Former Article	New Article
5069 .....	5069-1.01, 5069-1.02
5070 .....	5069-1.03
5071 .....	5069-1.04
5072 .....	5069-1.05
5073 .....	5069-1.06
5074a .....	5069-7.01 to 5069-7.10

Acts 1967, 60th Leg., p. 608, ch. 274, § 1, read as follows:

#### “DECLARATION OF LEGISLATIVE INTENT”

“The Legislature finds as facts and determines:

“(1) Many citizens of our State are being victimized and abused in various types of credit and cash transactions. These practices imposed a great hardship upon the people of our State.

“(2) Credit in its various forms is one of the most essential and vital elements of our economy. It can be truly said that credit affects every citizen every day. Credit transactions in our State amount to many billions of dollars per year.

“(3) Credit abuses now existing in our State stem from the fact that many types of credit transactions are not now subject to effective public regulation and control and the penalties imposed for usury do not provide effective or workable safeguards in this vital area of economic activity.

“(4) Such abuses are especially prevalent in the area of consumer transactions both cash and credit. Unscrupulous operators, lenders and vendors, many of whom are transient to our State, are presently engaged in many abusive and deceptive practices in the conduct of their businesses. These unregulated practices bring great social and economic hardship to many citizens of our State. They impose intolerable burdens on those segments of our society which can least afford to bear them—the uneducated, the unsophisticated, the poor and the elderly.

“(5) These facts conclusively indicate a need for a comprehensive code of legislation to clearly define interest and usury, to classify and regulate loans and lenders, to regulate credit sales and services, and place limitations on charges imposed in connection with such sales and services, to provide for consumer education and debt counseling, to prohibit deceptive trade practices in all types of consumer transactions, and to provide firm and effective penalties for usury and other prohibited practices.

“(6) It is the intent of the Legislature in enacting this revision of Title 79 of the Revised Civil Statutes of Texas, 1925, to protect the citizens of Texas from abusive and deceptive practices now being perpetrated by unscrupulous operators, lenders and vendors in both cash and credit consumer transactions and to implement the mandate of Section II of Article XVI of the Constitution of Texas which authorizes the Legislature to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest, and thus serve the public interest of the people of this State.”

### SUBTITLE ONE—INTEREST

Chapter	Article
1. Interest .....	5069-1.01
1A. Alternative Credit Provisions .....	5069-1A.01

### CHAPTER ONE. INTEREST

Art.	Description
5069-1.01.	Definitions.
5069-1.02.	Maximum Rates of Interest.
5069-1.03.	Legal Rate Applicable.
5069-1.04.	Limit on Rate.
5069-1.05.	Rate of Judgments.
5069-1.06.	Penalties.
5069-1.07.	Determination of the Rate of Interest on Loans Secured by a Lien on Any Interest in Real Property.
5069-1.08.	Interest Charges by Registered Securities Brokers or Dealers.
5069-1.09.	Loans Guaranteed or Insured by an Agency of the United States of America.
5069-1.10.	Application and Exemption.
5069-1.11.	Limitations on Certain Open-End Account Credit Agreements.

#### Art. 5069-1.01. Definitions

(a) “Interest” is the compensation allowed by law for the use or forbearance or detention of money; provided however, this term shall not include any time price differential however denominated arising out of a credit sale.

(b) “Legal Interest” is that interest which is allowed by law when the parties to a contract have not agreed on any particular rate of interest.

(c) “Conventional Interest” is that interest which is agreed upon and fixed by the parties to a written contract.

(d) "Usury" is interest in excess of the amount allowed by law.

(e) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

(f) "Open-end Account" means any account, under a written contract under which the creditor may permit the obligor to make purchases or borrow money from time to time, and under which interest or time price differential may from time to time be computed on an outstanding unpaid balance. The term includes, but is not limited to, accounts under agreements described by Section (4), Article 3.15; Section (4), Article 4.01; and Chapters 6 and 15 of this Title.<sup>1</sup>

(g) "Credit Card Transaction" means a transaction in which a card is or may be used to debit an open-end account in connection with the purchase or lease of goods or services or the lending of money, which card is or may be used for personal, family, or household use.

(h) "Merchant Discount" means any charge, fee, discount, compensating balance, or other consideration imposed by a creditor on or received directly or indirectly by the creditor from any seller or lessor of goods or services in connection with a credit card transaction under a lender credit card agreement between the customer and the creditor. The term includes any consideration whatsoever received by a creditor from any person other than the obligor in connection with a credit card transaction under a lender credit card agreement between the obligor and the creditor. Any such consideration received by a subsidiary of the creditor or parent company of the creditor or any subsidiary of the creditor's parent company shall be deemed to have been received by the creditor in determining if any such consideration has been received by creditor.

(i) "Lender Credit Card Agreement" means an agreement between a creditor (other than the seller or lessor) and an obligor under which credit is or may be extended for personal, family, or household use and under which: (1) by means of a credit card, the obligor may obtain loans from the creditor, which may be advanced by other participating persons, and may lease or purchase goods or services from more than one participating lessor or seller who honor the creditor's card, and the creditor or some other person acting in cooperation with the creditor will reimburse the other participating persons, lessors, or sellers for the goods or services purchased or leased, and the obligor is obligated

under his or her agreement with the creditor to pay the creditor the amount of such loans or the costs of such leases or purchases; (2) the unpaid balance of such loans, leases, and purchases and any interest thereon are debited to the obligor's account with the creditor under the obligor's agreement with the creditor; (3) interest is not precomputed but may be computed on the balances of the obligor's account outstanding with the creditor from time to time; and (4) the obligor may defer payment of any part of the balance. The term includes all agreements for open-end accounts authorized or defined under Articles 3.15(4), 4.01(4), 15.01(4), 15.01(k), and 15.01(l) of this Title<sup>2</sup> pursuant to which credit card transactions as defined in Article 1.01(g) of this Title may be made or in connection with which a merchant discount as defined in Article 1.01(h) of this Title is imposed or received by the creditor. The term does not include an open-end account credit agreement between a seller or lessor and its own buyer or lessee. The term does not include agreements under which the entire balance is due and payable in full each month and no interest is charged when the obligor pays in accordance with such terms.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 273, ch. 111, § 4, eff. May 8, 1981; Acts 1983, 68th Leg., p. 838, ch. 194, § 29, eff. July 1, 1983.]

<sup>1</sup> Articles 5069-3.15(4), 5069-4.01(4), 5069-6.01 et seq., and 5069-15.01 et seq.

<sup>2</sup> Articles 5069-3.15(4), 5069-4.01(4), 5069-15.01(k), and 5069-15.01(l).

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year.

Section 37(c) of the 1983 amendatory act provides:

"Sections 29 through 36 of this Act take effect July 1, 1983, contingent on this Act receiving the vote required by Article III, Section 39, of the Constitution of the State of Texas. If this Act does not receive the vote required by Article III, Section 39, of the

Constitution of the State of Texas, Sections 29 through 36 of this Act will take effect September 1, 1983. Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections. The annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29 through 36 of this Act take effect as to an account under which a credit card transaction may be made, be deemed to equal 18 percent a year on such account, until such expiration dates, and the Consumer Credit Commissioner shall publish such revision in The Credit Code Letter within two weeks from the date this Act takes effect and in the Texas Register as soon as possible. For purposes of Section (d) of Article 15.02 of Title 79 as hereby amended, the quarterly ceiling applicable under that article shall be recomputed in accordance with Section 34 of this Act and, as so recomputed, takes effect on the effective date of that section as to an account, and the Consumer Credit Commissioner shall publish the recomputed quarterly ceiling applicable under Section (d), Article 15.02, of Title 79 in The Credit Code Letter within two weeks from the date such section takes effect and in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

#### Art. 5069-1.02. Maximum Rates of Interest

Except as otherwise fixed by law, the maximum rate of interest shall be ten percent per annum. A greater rate of interest than ten percent per annum unless otherwise authorized by law shall be deemed usurious. All contracts for usury are contrary to public policy and shall be subject to the appropriate penalties prescribed in Article 1.06 of this Subtitle.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-1.03. Legal Rate Applicable

When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all accounts and contracts ascertaining the sum payable, commencing on the thirtieth (30th) day from and after the time when the sum is due and payable.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1718, ch. 707, § 1, eff. Aug. 27, 1979.]

#### Art. 5069-1.04. Limit on Rate

(a) The parties to any written contract may agree to and stipulate for any rate of interest, or in an agreement described in Chapter 6, 6A, or 7 of this Title, any rate or amount of time price differential producing a rate, that does not exceed:

(1) an indicated rate ceiling that is the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the rate is contracted for, multiplied by two, and rounded to the nearest one-quarter of one percent; or, as an alternative,

(2) an annualized or quarterly ceiling that is the average of the computations under Subsection (1) of this section and is computed pursuant to Section (d) of this Article.

(b)(1) If a computation under Section (a)(1), (a)(2), or (c) of this Article is less than 18 percent a year, the ceiling under that provision is 18 percent a year. If a computation under Section (a)(1), (a)(2), or (c) of this Article is more than 24 percent a year, the ceiling under that provision is 24 percent a year.

(2) Notwithstanding the provisions of Subsection (1) of this Section (b), on any contract under which credit in an amount in excess of \$250,000 is or is to be extended, or any extension or renewal of such a contract, and under which the credit is extended for business, commercial, investment, or other similar purpose, but excluding any contract that is not for any of those purposes and is primarily for personal, family, household, or agricultural use, the 24 percent limitation on the ceilings in Section (b)(1) above that is applicable to the computations under Section (a)(1), (a)(2), or (c) of this Article shall not apply, and the limitation on the ceilings determined by those computations shall be 28 percent a year.

(3) References in this Article to the indicated rate ceiling, annualized ceiling, quarterly ceiling, or monthly ceiling mean such a ceiling as modified by this Section (b).

(4) Any credit agreement described in Section (a), Article 1.11, of this Title is<sup>1</sup> subject to the terms, ceilings, and other provisions of that Article and, except as limited by Article 1.11, to the terms, ceilings, and other provisions of this Article.

(5) Notwithstanding any other provision of law, on any lender credit card agreement in connection with which a merchant discount as defined in Article 1.01(h) of this Title<sup>2</sup> is imposed or received by the creditor, the creditor may not contract for, charge, or receive, on any amount owed for any credit card transaction, a rate in excess of the ceiling allowed under Article 15.02(d) of this Title<sup>3</sup> (which ceiling shall be adjusted in accordance with Article 15.02(d)) or any other fees or charges which are not authorized under Chapter 15 of this Title or which are in excess of the amounts authorized under Chapter 15.

(6) Notwithstanding Article 15.10 of this Title,<sup>4</sup> any lender credit card agreement in which the creditor is a bank, savings and loan association, or authorized lender under Chapter 3 of this Title is subject to Chapter 15 of this Title and Article 15.02(d) thereof.

(c) A monthly ceiling is available only in variable rate contracts, including contracts for open-end accounts, that are not made for personal, family, or household use. Subject to Section (b) of this Article, the monthly ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the preceding calendar month and shall be computed by the consumer credit commissioner on the first business day of the calendar month in which the rate applies. In contracts for which the monthly ceiling is available under this section, if the parties agree that the rate is subject to being adjusted on a monthly basis in accordance with Section (f) of this Article they may further contract that the rate from time to time in effect may not exceed the monthly ceiling from time to time in effect under this section and the monthly ceiling from time to time in effect is the ceiling on those contracts, instead of any ceiling under Article 1.04(a) of this Title.<sup>5</sup>

(d) The consumer credit commissioner shall compute, on the computation dates of December 1, March 1, June 1, and September 1 of each year, the quarterly and annualized ceilings for the next succeeding calendar quarter beginning January 1, April 1, July 1, and October 1, respectively. For each computation date, the computation under Section (a)(2) of this Article for the quarterly ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the three calendar months preceding the computation date. For each computation date, the computation under Section (a)(2) of this Article for the annualized ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the three calendar months preceding the computation date.

(e) In a contract that does not involve an open-end account, as an alternative to the indicated rate ceiling, the parties may contract for a rate not exceeding the quarterly ceiling in effect at the time the rate is contracted for, but the creditor may not rely on the annualized ceiling in such a contract, and in a contract subject to Section (f) of this Article may not rely on both the indicated rate ceiling and the quarterly ceiling in any given contract.

(f) The parties to any contract, including a contract for an open-end account, may agree to and stipulate for a rate or amount by contracting for any index, formula, or provision of law, by or under which the numerical rate or amount can from time to time be determined. However, the rate or amount so produced may not exceed the ceiling that may from time to time be in effect and applicable to the contract, for so long as debt is outstanding under the contract. Provided, further, that variable contract rates as described in this Section (f) are not allowed in a contract in which the interest or time price differential is precomputed and added into the amount of the contract at the time of the contract.

(f)-(1) Any agreement or amendment to an agreement for credit extended primarily for personal, family, or household use, entered under the authority of Article 1.04 and providing for a variable rate or amount on the balance under the agreement or amendment shall disclose the following in not less than 10-point type or computer equivalent on or with the agreement or amendment:

“NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR.”

This section shall not apply to or affect any agreement or amendment for which a disclosure relating to variable rates or amounts is required or provided by federal law, regulation, or interpretation. In the event that the contract provides for a maximum rate of less than 24 percent per year, then the above disclosure may be amended to reflect the actual maximum rate of the contract.

(g) Unless otherwise agreed, when the parties have agreed to a rate, they are considered also to have agreed to any lesser rate that the creditor may elect, or is required under Section (h) of this Article to implement.

(h)(1) If the agreement of the parties so provides, or is amended pursuant to Section (i) of this Article or Article 1A.01 of this Title<sup>6</sup> to so provide, a creditor of an open-end account may, as an alternative to the indicated rate ceiling, from time to time implement any rate permitted under the quarterly or annualized ceiling, as to any current and future balances in any of its open-end accounts by giving notice of the rate at any time or times after the computation date for the quarterly or annualized ceiling and before the last day of the next succeeding calendar quarter. The creditor may implement a rate, not exceeding the annualized ceiling, for a 12-month period from the date it becomes effective as to an account, or the creditor may implement a rate not exceeding the quarterly ceiling for a three-month period from the date it becomes effective as to an account. The rate may not exceed the ceiling for the period elected. If the period elected is 12 months, and the rate in effect is less than or equal to the annualized ceiling in effect at the end of 12 months, the creditor may leave the election in effect for the succeeding 12-month period, which is then the new elected period. If the period elected is three months, and the rate in effect is less than or equal to the quarterly ceiling in effect at the end of the three months, the creditor may leave the election in effect for the succeeding three-month period, which is then the new elected period. No further notice of the renewal of an election, or of any successive renewals of elections, is required if the creditor has previously disclosed to the obligor that the election may be renewed in accordance with this section and the rate does not exceed the rate previously agreed to by the obligor. If a rate in excess of that previously agreed to is to be implemented by

the creditor under Section (a) of this Article, or other applicable law, the creditor shall comply with Section (i) of this Article before the end of the calendar quarter in which the prior period elected ends, and the ceiling previously in effect remains the ceiling until a new rate is agreed to.

(2) If an open-end account agreement provides, or is amended pursuant to Article 1A.01 of this Title or Section (i) of this Article to provide, for a variable rate or amount, according to any index, formula, or provision of law disclosed to the obligor, the applicable rate ceiling is the annualized ceiling, quarterly ceiling, or indicated rate ceiling as disclosed to the obligor, except for variable rate commercial contracts subject to Section (c) of this Article. The annualized ceiling shall be adjusted every 12 months, the quarterly ceiling shall be adjusted every three months, and the indicated rate ceiling shall be adjusted weekly.

Except to the extent inconsistent with any federal law, regulation, or interpretation from time to time in effect, on any open-end account entered under authority of this Article 1.04 which is primarily for personal, family, or household use, the creditor shall disclose any changes in the rate resulting from operation of the index, formula, or provision of law by giving notice of the change in the rate on or with the billing statement for a billing cycle preceding the first cycle as to which the change in the rate is effective or by a separate document mailed on or before the beginning of the first cycle as to which the change in the rate is effective. Variations in the rate on the account due to operation of the previously disclosed index, formula, or provision of law need not be further disclosed under this Section (h) or under Section (i) of this Article.

(i)(1) In any open-end account, the creditor may provide in the agreement covering the open-end account or, pursuant to Article 1A.01 of this Title, amend the agreement to provide that the terms, including the rate, or index, formula, or provision of law used to compute the rate on the open-end account will be subject to revision as to current and future balances, from time to time, by notice from the creditor to the obligor. Any creditor revising a rate, or index, formula, or provision used to compute the rate, shall disclose in the notice:

(A) the new rate, or the new index, formula, or provision to be used in computing the rate;

(B) the date on which it will become effective;

(C) the period for which it is elected, or at which the ceiling will be adjusted and whether or not it will affect current as well as future balances;

(D) the obligor's rights under this section and the procedures for the obligor to exercise those rights; and

(E) the address to which the obligor may send notification of the obligor's election not to continue the open-end account.

(F) If the amendment increases the rate, the notice shall contain the following printed in not less than 10-point type or computer equivalent:

**"YOU MAY TERMINATE THIS AGREEMENT IF YOU DO NOT WISH TO PAY THE NEW RATE."**

(2) With a notice required by Subsection (1) of this section, the creditor shall include a form which may be returned at the expense of the creditor and on which the obligor may indicate his or her decision not to continue the account by checking or marking an appropriate box, or similar arrangement. The form may be included on a portion of the account statement to be returned to the creditor or on a separate sheet. Any obligor who is mailed a notice required by Subsection (1) of this section addressed to the obligor's last known address as shown by the creditor's records, is considered to have agreed to the revision if the obligor, or a person authorized by the obligor, after the expiration of five days after the notice is mailed, accepts or uses any extensions of credit, or if the obligor elects to retain the privilege of using the open-end account. Such an election is considered to have occurred unless the obligor notifies the creditor in writing before the 21st day after the date on which the notice is sent that the obligor does not wish to continue the open-end account. The parties may also amend the contract by any other means of amending those agreements permitted by any applicable law. Any obligor who rejects a rate change in accordance with this section has the right to pay off the then existing balance on the open-end account at the rate, and over the time period, in effect prior to the change, and at the same minimum payment terms previously agreed to, unless the obligor agrees to the new rate in accordance with this section. Rejection of a new rate may not accelerate the balance due.

(j) If a creditor implements an annualized or quarterly ceiling as to a majority of its open-end accounts that are under a particular plan or arrangement and are for obligors in this state, that ceiling is also the ceiling for all open-end accounts that are opened or activated under that plan for obligors in this state during the period that the election is in effect.

(k)(1) The consumer credit commissioner shall cause the annualized, quarterly, and monthly ceilings to be published in the Texas Register before the 11th day after the day on which they are computed, and shall cause the indicated rate ceiling in effect under Section (a) of this Article to be published from time to time. If the furnishing of any of the information required to compute the ceilings is discontinued so that it is no longer available to the consumer credit commissioner from the Federal Reserve Board on a timely basis, the consumer credit commissioner shall obtain that information from reliable sources satisfactory to the commissioner.

(2) If the information required to compute a ceiling is not available, then that ceiling remains at the

level at which it was when the information became unavailable until the information again becomes available.

(3) Any court may take judicial notice of the ceilings, and related information, caused to be published in the Texas Register by the consumer credit commissioner pursuant to this Article and of the information published pursuant to Article 2.08 of this Title.<sup>7</sup>

(l) The maximum rate on any contract to renew or extend the terms of payment of any indebtedness at any time incurred, is the applicable ceiling allowed by this Article for a contract entered at the time the renewal or extension is made or agreed to.

(m) The ceilings provided by this Article for a contract, including a contract for an open-end account, are optional and any person may, notwithstanding any other law, contract for, charge, and receive the rates or amounts allowed by this Article for that contract, or the rates or amounts allowed by any other applicable provision of this Title or any other law applicable to such a contract, except as restricted under Section (q) of this Article.

(n)(1) Any loan made under authority of this Article that is extended either primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, or primarily for the purchase of a motor vehicle, and that is payable in two or more installments, not secured by a lien on real estate, and that is entered by a person engaged in the business of making or negotiating those types of loans, is subject to Chapter 4 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title.

(2) Any loan made under this Article that is extended primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, and that is payable in consecutive monthly installments and is described by Section (1), Article 5.01, of this Title and that is made by a person engaged in the business of making those types of loans, is subject to Chapter 5 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title.

(3) In any contract, including any contract for an open-end account, subject to Chapter 6, 6A, or 7 of this Title, the rate or amount contracted for, charged, or received under this Article is considered to be the rate or amount of time price differential within the meanings given to that term in those respective Chapters, and those contracts are not subject to the provisions of Chapters 3, 4, and 5 of this Title.

(4) In any contract, including a contract for an open-end account, which is subject to Chapter 4, 5, 6, 6A, or 7 of this Title, the parties and their

assignees may contract for any rate or amount allowed by that Chapter, or any simple or precomputed contract rate or amount not exceeding those allowed by this Article, but except to the extent inconsistent with this Article in any event the parties to any contract under any of such Chapters or to any contract under Chapter 3 of this Title shall comply with all of the other rights, duties, and obligations under the applicable Chapter and the parties and their assignees have all other rights under the applicable Chapter, including those provisions requiring certain refund credits in event of prepayment or acceleration.

(5) Any person (except a person subject to Chapter 24 of the Insurance Code) engaged in the business of extending open-end credit primarily for personal, family, or household use and charging a rate or amount under authority of this Article 1.04 shall be subject to either the applicable Chapter in Subtitle 2 of this Title or Chapter 15 of this Title, as applicable, except to the extent inconsistent with this Article; the parties to such open-end accounts and their assignees shall comply with and have all other rights, duties and obligations under the applicable Chapter, except to the extent inconsistent with this Article.

(6) Any person subject to the Texas Credit Union Act, as amended (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes), who contracts for, charges, or receives a rate authorized by this Article shall comply with all other duties, obligations, and prohibitions of that Act and the parties to the transaction have all other rights provided by that Act, except to the extent inconsistent with this Article.

(7) Any person subject to a provision of Chapter 24 of the Insurance Code who contracts for, charges, or receives a rate authorized by this Article shall comply with all other applicable duties, obligations, and prohibitions in that law and the parties to those contracts, including those for open-end accounts, have all other rights applicable to those transactions under Chapter 24 of the Insurance Code, except to the extent inconsistent with this Article. The licensing requirements of Subtitle 2 of this Title are not applicable to those persons.

(o)(1) All other written contracts whatsoever, except those otherwise authorized by law, which may in any way, directly or indirectly, provide for a greater rate of interest shall be subject to the appropriate penalties prescribed in this Subtitle.

(2) If, in any contract, including one for an open-end account, subject to Chapter 4, 5, 6, 6A, 7, or 15 of this Title, any person contracts for, charges, or receives a rate or amount of interest or time price differential that exceeds the rate allowed by that Chapter and the rate allowed by this Article, the amount of the penalty for that overcharge shall be determined under Chapter 8 of this Title rather than under this Subtitle and all of the provisions of Articles 8.01, 8.02, 8.03, 8.04, 8.05, and 8.06 of this Title<sup>8</sup> are in effect as to that contract and are



applicable to this Article as if it were a part of Subtitle 2 of this Title. The failure to perform any duty or comply with any prohibition required by Article 1.04, in a contract entered under authority of Article 1.04, shall be subject to the penalties set out in Article 8.01(b) and shall be subject to such of the other provisions of Articles 8.01 through 8.06 which apply to failures to perform duties or comply with prohibitions to the same extent as if the duties and prohibitions in Article 1.04 were contained in Subtitle 2.

(3) The consumer credit commissioner, subject to Section (l), Article 2.01, of this Title,<sup>9</sup> shall enforce Chapters 2, 3, 4, 5, 6, 6A, 7, 8, 15, and 51 of this Title, as modified by this Article and Article 2.08 of this Title, and shall enforce this Article as applicable to contracts subject to those Chapters. Article 3.08 of this Title<sup>10</sup> is applicable to transactions made by licensees pursuant to this Article that otherwise are subject to Chapters 4, 5, or 15 of this Title. The provisions of Article 3.12 of this Title<sup>11</sup> will apply to loans made under authority of this Article which are subject to Chapter 4 of this Title. In any contracts subject to the Texas Credit Union Act, as amended (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes), the credit union commissioner shall enforce this Article.

(4) In any contract subject to Chapter 24 of the Insurance Code, the State Board of Insurance shall enforce this Article.

(p) A person does not violate this Title by contracting for, charging, or receiving any rate or dollar amount, or by any acts done or omitted, that conform to the provisions of this Article, or to the provisions determined by the consumer credit commissioner, or that conform to an interpretation of this Title by the consumer credit commissioner or by a decision of an appellate court of this state or of the United States in effect at the time that the acts were done or omitted.

(q) The maximum rates authorized by this Article do not apply to agreements under which credit is extended for a home solicitation transaction as defined in Chapter 13 of this Title if the agreement is secured by a lien on the obligor's homestead and the credit is extended by the seller or its owner, subsidiary, or corporate affiliate.

(r) In the event of any inconsistency or conflict between the disclosure or notice requirements under this Article and disclosures or notices required or provided under any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting requirements under this Article need not be complied with. A creditor may modify the disclosure and notice requirements under this Article to conform to the

terminology or other provisions required or provided under federal law, regulation, or interpretation.

[Acts 1967, 60th Leg., p. 609, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 274, ch. 111, § 5, eff. May 8, 1981; Acts 1983, 68th Leg., p. 811, ch. 194, § 1, eff. May 24, 1983; §§ 30, 31, eff. July 1, 1983.]

- 1 Article 5069-1.11(a)
- 2 Article 5069-1.01(h)
- 3 Article 5069-15.02(d)
- 4 Article 5069-15.10.
- 5 Article 5069-1.04(a).
- 6 Article 5069-1A.01.
- 7 Article 5069-2.08.
- 8 Articles 5069-8.01 to 5069-8.06.
- 9 Article 5069-2.01.
- 10 Article 5069-3.08.
- 11 Article 5069-3.12.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Section 37(c) of the 1983 amendatory act provides:

"Sections 29 through 36 of this Act take effect July 1, 1983, contingent on this Act receiving the vote required by Article III, Section 39, of the Constitution of the State of Texas. If this Act does not receive the vote required by Article III, Section 39, of the Constitution of the State of Texas, Sections 29 through 36 of this Act will take effect September 1, 1983. Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections. The annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29 through 36 of this Act take effect as to an account under which a credit card transaction may be made, be deemed to equal 18 percent a year on such account, until such expiration dates, and the Consumer Credit Commissioner shall publish such revision in The Credit Code Letter within two weeks from the date this Act takes effect and in the Texas Register as soon as possible. For purposes of Section (d) of Article 15.02 of Title 79 as hereby amended, the quarterly ceiling applicable under that article shall be recomputed in accordance with Section 34 of this Act and, as so recomputed, takes effect on the effective date of that section as to an account, and the Consumer Credit Commissioner shall publish the recomputed quarterly ceiling applicable under Section (d), Article 15.02, of Title 79

in The Credit Code Letter within two weeks from the date such section takes effect and in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

#### Art. 5069-1.05. Rate of Judgments

Sec. 1. All judgments of the courts of this state based on a contract that provides for a specific rate of interest earn interest at a rate equal to the lesser of:

- (1) the rate specified in the contract; or
- (2) 18 percent.

Sec. 2. Except as provided in Section 1 of this article, all judgments of the courts of this state earn interest at the rate published by the consumer credit commissioner in the Texas Register. The consumer credit commissioner shall compute on the 15th day of each month the judgment interest rate by taking the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government as published by the Federal Reserve Board on the most recent date preceding the date of computation. The interest rate so computed shall be the judgment rate, except that if the rate so computed is less than 10 percent, the judgment interest rate shall be 10 percent, and if it be more than 20 percent, the judgment interest rate shall be 20 percent. The rate established on that computation date shall be the interest rate on judgments for the next calendar month.

Sec. 3. (a) Except as provided by Subsection (c) of this section, judgments earn interest for the period beginning on the day the judgment is rendered and ending on the day the judgment is satisfied.

(b) Each judgment shall state the rate of interest to be earned on that judgment.

(c) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a plaintiff at trial, interest does not accrue for the period of extension.

Sec. 4. This article does not apply to a judgment that earns interest that is set by Title 2, Tax Code.<sup>1</sup>

Sec. 5. The consumer credit commissioner shall cause the judgment rate of interest to be published in the Texas Register at the same time other rates directed to be calculated are caused to be published by the consumer credit commissioner under other provisions of this code. The courts of this state shall take judicial notice of such rate as so published.

[Acts 1967, 60th Leg., p. 610, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 730, ch. 288, § 1, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 513, ch. 107, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Tax Code, § 101.001 et seq.

Section 3 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies to judgments rendered on or after that date."

#### Art. 5069-1.06. Penalties

(1) Any person who contracts for, charges or receives interest which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor three times the amount of usurious interest contracted for, charged or received, such usurious interest being the amount the total interest contracted for, charged, or received exceeds the amount of interest allowed by law, and reasonable attorney fees fixed by the court except that in no event shall the amount forfeited be less than Two Thousand Dollars or twenty percent of the principal, whichever is the smaller sum; provided, that there shall be no penalty for any usurious interest which results from an accidental and bona fide error.

(2) Any person who contracts for, charges or receives interest which is in excess of double the amount of interest allowed by this Subtitle shall forfeit as an additional penalty, all principal as well as interest and all other charges and shall pay reasonable attorney fees set by the court; provided further that any such person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not more than One Thousand Dollars. Each contract or transaction in violation of this section shall constitute a separate offense punishable hereunder.

(3) All such actions brought under this Article shall be brought in any court of this State having jurisdiction thereof within four years from the date when the usurious charge was received or collected in the county of the defendant's residence, or in the county where the interest in excess of the amount authorized by this Subtitle has been received or collected, or where such transaction had been entered into or where the parties who paid the interest in excess of the amount authorized by this Subtitle resided when such transaction occurred, or where he resides.

[Acts 1967, 60th Leg., p. 610, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 605, ch. 281, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of this subsection as originally enacted."

#### Art. 5069-1.07. Determination of the Rate of Interest on Loans Secured by a Lien on Any Interest in Real Property

(a) On any loan or agreement to loan secured or to be secured, in whole or in part, by a lien, mortgage, security interest, or other interest in or with respect to any interest in real property, determination of the rate of interest for the purpose of determining whether the loan is usurious under all

applicable Texas laws shall be made by amortizing, prorating, allocating, and spreading, in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged, or received from the borrower in connection with the loan. However, in the event the loan is paid in full by the borrower prior to the end of the full stated term of the loan and the interest received for the actual period of the existence of the loan exceeds the maximum lawful rate, the lender contracting for, charging, or receiving all such interest shall refund to the borrower the amount of the excess or shall credit the amount of the excess against amounts owing under the loan and shall not be subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum lawful rate.

(b) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest not exceeding 18 percent per annum, if such agreement is evidenced by a written bond, note, or other contract of such person providing for a loan or other extension of credit in the original principal amount of \$250,000 or more, or any series of advances of money if the aggregate of all sums advanced or agreed or contemplated to be advanced pursuant to such agreement equals or exceeds \$250,000, or any extension or renewal of such loan or other extension of credit (regardless of whether or not the outstanding principal balance thereof at the time of such renewal or extension is \$250,000 or more); and as to any such agreement to pay or payment, the claim or defense of usury by such person or such person's heirs, personal representatives, successors, substitutes, or anyone else on such person's behalf, or by any person acting as guarantor, surety, accommodation maker, or endorser for or with respect to such agreement to pay or payment, or by any person assuming the obligation of such payment or otherwise becoming liable therefor, or by any person owning or acquiring property subject to a lien securing such agreement to pay or such payment is prohibited. Notwithstanding anything to the contrary contained herein, this Subsection (b) shall not apply to any loan or other extension of credit secured by (i) a lien on a building, constructed or to be constructed, which both is used or intended to be used as a single one-to-four family residence and is occupied or intended to be occupied by a person obligated to pay such loan or other extension of credit or (ii) a lien on land intended to be used primarily for agricultural or ranching purposes. Nothing herein shall be construed to limit or otherwise affect the provisions or application of Article 2.09, Texas Miscellaneous Corporation Laws Act, as amended (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), with respect to loans or other extensions of credit not covered hereby.

(c) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay

pursuant to such an agreement, the same rate of interest as corporations (other than nonprofit corporations) on any loan in the principal amount of \$500,000 or more, which is made for the purpose of the payment of the direct or indirect costs of exploration for oil and gas, the development of oil and gas properties, or the reworking of oil or gas wells, provided that the value of the collateral securing such loan is reasonably estimated by the lender at the time of the making of the loan to be in excess of the amount of the loan. Such a loan shall not be subject to the defense of usury or the penalties for usury unless the interest rate exceeds the maximum lawful interest rate for corporations (other than nonprofit corporations).

*Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 1*

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at such rates as may be permitted by other applicable law or at the lesser of the following rates:

(i) 12 percent per annum; or

(ii) a rate equivalent to the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds as published by the board of governors of the Federal Reserve System for the second calendar month preceding the month in which the lender becomes legally bound to make the loan plus an additional two percent per annum rounded off to the nearest quarter of one percent per annum.

A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) Before the 20th day of each month, the savings and loan commissioner shall ascertain the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds for the preceding calendar month and cause such rate to be published in the Texas Register.

(3) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(4) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925,<sup>1</sup> except where such collection is required by an agency created by federal law.

*Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 3, effective if floating rate provisions of (d) as added by § 1 thereof are held to be unconstitutional*

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at the rate of 12 percent per annum. A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(3) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, except where such collection is required by an agency created by federal law.

(e)(1) In this subsection "financial institution" means a state bank, state savings and loan association, mortgage banking institution, credit union, national bank, or federal savings and loan association, and "housing accommodation" means improved or unimproved real property, or a portion of that property, that is used or occupied or is intended, arranged, or designed to be used or occupied as the residence of one or more individuals.

(2) A financial institution may not charge interest under Subsection (d), Section 1 or Subsection (d) of Section 3 of this Act and the maximum rate of interest that it may charge is limited to 10 percent if the financial institution in connection with such loan discriminates in providing or granting financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation due, in whole or in part, to the consideration of:

(i) conditions, characteristics, or trends in the neighborhood where the property is located, unless the financial institution can demonstrate that such a consideration in the particular case is required to avoid an unsafe or unsound business practice; or

(ii) race, color, religion, sex, marital status, national origin, or ancestry; or

in appraising a housing accommodation or in determining whether or not, or under what terms and conditions, to provide financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation, considers:

(i) the racial, ethnic, religious, or national origin composition of the neighborhood or geographic area surrounding the property; or

(ii) whether or not that composition is undergoing change, or is expected to undergo change.

(f) Notwithstanding the provisions of this Article relating to the date of expiration of authority to charge certain rates of interest, as an alternative to the rates of interest provided for by this Article, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest that does not exceed a rate authorized by Article 1.04 of this Title. If a loan for property that is to be the residential homestead of the borrower is made at a rate of interest that is greater than the rate prescribed by Subsection (d) of this Article, a prepayment charge or penalty may not be collected on the loan unless the charge or penalty is required by an agency created by federal law.

[Acts 1975, 64th Leg., p. 47, ch. 26, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1697, ch. 673, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 704, ch. 305, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1766, ch. 715, §§ 1, 3, 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 280, ch. 111, § 6, eff. May 8, 1981.]

1 Article 5069-1.04.

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim of defense arising prior to its effective date."

Sections 2 and 3 of Acts 1979, 66th Leg., p. 705, ch. 305, provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim or defense arising prior to its effective date."

Sections 2 and 5 of Acts 1979, 66th Leg., ch. 715, provided:

"Sec. 2. The savings and loan section of the finance commission and the savings and loan commissioner are hereby directed to exercise the rule-making powers delegated to them by law and promulgate specific rules and regulations with respect to the procedure to be followed in making variable interest rate real estate loans by savings and loan associations subject to the Texas Savings and Loan Act. [art. 852a]."

"Sec. 5. If any provision of this Act or any rate of interest fixed hereby is held invalid, such invalidity shall not affect any other provision of this Act which can be given effect without the invalid provision and the legislature hereby declares it would have passed such valid provisions despite such invalidity."

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-1.08. Interest Charges by Registered Securities Brokers or Dealers**

Interest charged by a broker or dealer registered under the Federal Securities and Exchange Act of 1934, as now or hereafter amended,<sup>1</sup> and The Securities Act, as now or hereafter amended,<sup>2</sup> for carrying a debit balance in an account for a customer shall not be subject to any of the limitations or other provisions of Title 79, Revised Civil Statutes of Texas (Article 5069-1, et seq., Vernon's Texas Civil Statutes) as now or hereafter amended, if such debit balance is payable on demand, or at will by the customer without penalty, and is secured by stocks, bonds, or other securities, and if such interest does not exceed the greater of the rate allowed by Article 1.04 of this Title or the rate of 1½ percent per month on the monthly debit balance.

[Acts 1977, 65th Leg., p. 945, ch. 355, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 280, ch. 111, § 7, eff. May 8, 1981.]

<sup>1</sup> 15 U.S.C.A. § 77b et seq.

<sup>2</sup> Article 581-1 et seq.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-1.09. Loans Guaranteed or Insured by an Agency of the United States of America**

Any loan insured by the Federal Housing Administration, pursuant to the provisions of the National Housing Act approved June 27, 1934, its amendments and supplements (12 U.S.C.A., Section 17.01

et seq. (1969), as amended), may bear such rate of interest, or be discounted at such rate as is permitted under the National Housing Act, its amendments and supplements, and the regulations promulgated from time to time by the Federal Housing Administration or its successor; and provided further that any loan guaranteed or insured by the Veterans Administration or its successor pursuant to the provisions of the Veterans' Benefits code approved September 2, 1958, its amendments and supplements (Title 38 U.S.C.A. (1959), as amended), may bear such rate of interest or be discounted at such rate as is permitted under the Veterans' Benefits code, its amendments and supplements, and the regulations promulgated from time to time by the Veterans Administration or its successor.

[Acts 1977, 65th Leg., p. 172, ch. 84, § 1, eff. April 28, 1977.]

Section 2 of the 1977 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

**Art. 5069-1.10. Application and Exemption**

(a) Notwithstanding Article 1.04 of this title,<sup>1</sup> a credit union is not subject to Chapter 15 or Subtitle 2 of this title<sup>2</sup> and is not required to obtain a license under this title.

(b) With respect to loans that an employee benefit plan makes to participants in such plan or to their beneficiaries, an employee benefit plan that is subject to the provisions of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sections 1001-1114, as amended, shall not be subject to Chapter 15 or Subtitle 2 of this title and is not required to obtain a license under this title.

[Acts 1983, 68th Leg., p. 812, ch. 194, § 2, eff. May 24, 1983.]

<sup>1</sup> Article 5069-1.04.

<sup>2</sup> Article 5069-15.01 et seq. or 5069-2.01 et seq.

**Art. 5069-1.11. Limitations on Certain Open-End Account Credit Agreements**

(a) This article applies to any open-end account credit agreement pursuant to which credit card transactions are or may be made in which the creditor relies upon one of the ceilings provided by Article 1.04 of this title<sup>1</sup> and no merchant discount, as defined in Section (h) of Article 1.01 of this title,<sup>2</sup> is imposed or received by the creditor in connection with such credit card transactions.

(b) On any open-end account credit agreement subject to this article, no interest or time price differential may be charged for a billing cycle if the obligor's payments during such cycle equal or exceed the balance owed under such agreement at the end of the immediately preceding billing cycle or if no balance is owed at the end of such immediately preceding billing cycle.

(c) Notwithstanding Section (b)(1) of Article 1.04 of this title,<sup>3</sup> if a computation under Section (a)(1), (a)(2), (c), or (d), Article 1.04, of this title<sup>4</sup> is more than 21 percent per annum, the ceiling under this article for the amount owed on credit card transactions under an open-end account credit agreement described in Section (a) of this article is 21 percent per annum. Unless otherwise provided in this article, Article 1.04 of this title is applicable to any credit agreement described in Section (a) of this article and to all transactions under such agreement. All duties, obligations, rights, prohibitions, penalties, and enforcement authority applicable to agreements and transactions under Article 1.04 of this title apply to credit agreements and transactions which are subject to this article, except to the extent inconsistent with this article.

(d) Notwithstanding Section (a) of this article or any other provision of law, a seller or lessor may sell open-end account credit agreements between such seller or lessor and its customers or any balances thereunder to a purchaser who purchases a substantial portion of such seller's or lessor's open-end account credit agreements or any balances thereunder, at such terms, conditions, and price as may be agreed, in accordance with Article 6.07 of this title,<sup>5</sup> and any charges, fees, and discounts on such sales and purchases shall not be deemed to be a merchant discount or to disqualify such credit agreements or any balances thereunder from being subject to a ceiling in Article 1.04 of this title as modified by Section (c) of this article or from coverage by this article, or to subject such accounts to the limitations of Article 15.02(d) of this title.<sup>6</sup>

[Acts 1983, 68th Leg., p. 841, ch. 194, § 32, eff. July 1, 1983.]

<sup>1</sup> Article 5069-1.04.

<sup>2</sup> Article 5069-1.01(h).

<sup>3</sup> Article 5069-1.04(b)(1).

<sup>4</sup> Article 5069-1.04(a)(1), (a)(2), (c), (d).

<sup>5</sup> Article 5069-6.07.

<sup>6</sup> Article 5069-15.02(d).

Section 37(c) of the 1983 Act provides:

"Sections 29 through 36 of this Act take effect July 1, 1983, contingent on this Act receiving the vote required by Article III, Section 39, of the Constitution of the State of Texas. If this Act does not receive the vote required by Article III, Section 39, of the Constitution of the State of Texas, Sections 29 through 36 of this Act will take effect September 1, 1983. Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections. The annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29 through 36 of this Act take effect as to an account under which a credit card transaction may be made, be deemed to equal 18 percent a year on such account, until such expiration dates, and the Consumer Credit

Commissioner shall publish such revision in The Credit Code Letter within two weeks from the date this Act takes effect and in the Texas Register as soon as possible. For purposes of Section (d) of Article 15.02 of Title 79 as hereby amended, the quarterly ceiling applicable under that article shall be recomputed in accordance with Section 34 of this Act and, as so recomputed, takes effect on the effective date of that section as to an account, and the Consumer Credit Commissioner shall publish the recomputed quarterly ceiling applicable under Section (d), Article 15.02, of Title 79 in The Credit Code Letter within two weeks from the date such section takes effect and in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

#### CHAPTER 1A. ALTERNATIVE CREDIT PROVISIONS

##### Art. 5069-1A.01. Conversion of Open-End Accounts

Any creditor electing to implement the provisions of Article 1.04 of this Title, as amended, to an open-end account existing on the effective date of this Act and not previously subject to Article 1.04, as amended, must allow the obligor to pay the balance then existing at the rate previously agreed to and at the minimum payment terms previously agreed to. For this purpose, payments on an account may be applied by the creditor to the balance existing on the account on the effective date of this Act prior to applying same to credit extended after the effective date of this Act.

[Acts 1981, 67th Leg., p. 286, ch. 111, § 26, May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### SUBTITLE TWO—CONSUMER CREDIT

Chapter	Article
2. General Provisions .....	5069-2.01
3. Regulated Loans .....	5069-3.01
4. Installment Loans .....	5069-4.01
5. Secondary Mortgage Loans .....	5069-5.01
6. Retail Installment Sales .....	5069-6.01
6A. Manufactured Home Credit Transactions .....	5069-6A.01

Chapter	Article
7. Motor Vehicle Installment Sales .....	5069-7.01
8. Penalties .....	5069-8.01

**CHAPTER TWO. GENERAL PROVISIONS**

Art.	
5069-2.01.	General Definitions.
5069-2.02.	Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection.
5069-2.02A.	Powers and Duties of Commissioner.
5069-2.02B.	Office Finances.
5069-2.02C.	Employees.
5069-2.02D.	Complaints.
5069-2.03.	Investigation and Enforcement.
5069-2.04.	Hearings and Review.
5069-2.05.	Repealed.
5069-2.06.	Advertising.
5069-2.07.	Credit and Loans to Individuals.
5069-2.08.	Bracket and Ceiling Index.

**Art. 5069-2.01. General Definitions**

The following words and terms used in this Subtitle shall, unless the context clearly requires a different meaning, have the following meanings. The meanings applied to the singular forms shall also apply to the plural.

(a) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity however organized.

(b) "License" means the authority to do business under Chapter 3 of this Subtitle.

(c) "Licensee" means any person to whom one or more licenses have been issued.

(d) "Bank" shall mean any person doing business under the authority of and as permitted by the Texas Banking Code of 1943,<sup>1</sup> as amended, or any person organized under the provisions of Title 12, United States Code, Section 21 (U.S.Rev.Statutes 5133) and the amendments thereto.

(e) "Savings and Loan Association" means any person doing business under the authority of and as permitted by the "Texas Savings and Loan Act"<sup>2</sup> or any person incorporated under the provisions of the Home Owners' Loan Act of 1933 and the amendments thereto.<sup>3</sup>

(f) "Credit Union" means any person doing business under the authority of and as permitted by Articles 2461 through 2484, Revised Civil Statutes of Texas, 1925, as amended and the amendments thereto,<sup>4</sup> and Section 5 of House Bill No. 47, Acts of the 46th Legislature, Regular Session, 1939, and Chapter 173, Acts of the 51st Legislature, Regular Session, 1949, relating to Credit Unions and the amendments thereto,<sup>5</sup> or any person organized under the provisions of the Federal Credit Union Act and the amendments thereto.

(g) "Cash advance" means the amount of cash or its equivalent the borrower actually receives and

shall also include that paid out at his direction or request, on his behalf or for his benefit.

(h) "Interest" is the compensation allowed by law for the use or forbearance or detention of money; provided, however, this term shall not include any time price differential however denominated arising out of a credit sale.

(i) "Amount of loan" means the cash advance plus the interest.

(j) "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date then the last day of such following calendar month, and when computations are made for a fraction of a month a day shall be one-thirtieth of a month.

(k) "Finance Commission" mean the Finance Commission of Texas created by the Texas Banking Code of 1943, or any subcommittee created by any rule or regulation of the Finance Commission.

(l) "Consumer Credit Commissioner" or "Commissioner" when used in general application shall mean the Consumer Credit Commissioner; provided however, the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to state chartered banks operating under the authority of this Subtitle shall mean the Banking Commissioner of the State of Texas and in their relation and application to federally chartered banks operating under the authority of this Subtitle shall mean that official exercising authority over the operations of such banks equivalent to the authority exercised by the Banking Commissioner of the State of Texas; and provided further that the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to state chartered savings and loan associations operating under the authority of this Subtitle shall mean the Savings and Loan Commissioner of the State of Texas, and in their relation and application to federally chartered savings and loan associations operating under the authority of this Subtitle shall mean that official exercising authority over the operation of such savings and loan associations equivalent to the authority exercised by the Savings and Loan Commissioner of the State of Texas; and provided further, that the terms "Consumer Credit Commissioner" or "Commissioner" in their relation and application to credit unions operating under the authority of this Subtitle shall mean the Credit Union Supervisor of the State Banking Department and when used in application to federally chartered credit unions shall mean that official exercising authority equivalent to the authority exercised by the Credit Union Supervisor of the State Banking Department; except however, that all duties to be performed and powers to be exercised regarding issuance of licenses in accordance with the provisions of this Subtitle, promulgation of annual report forms, receipt of annual reports and compilation of information contained therein in accordance with this Subtitle, and promul-

gation of rules and regulations for licensees, adopted by the Finance Commission, in accordance with this Subtitle, shall be performed by the Consumer Credit Commissioner as to all persons holding licenses hereunder.

[Acts 1967, 60th Leg., p. 611, ch. 274, § 2, eff. Oct. 1, 1967.]

<sup>1</sup> Article 342-101 et seq.

<sup>2</sup> Article 852a.

<sup>3</sup> 12 U.S.C.A. § 1461 et seq.

<sup>4</sup> Repealed. See, now, art. 2461-1 et seq.

<sup>5</sup> Article 2462 (repealed. See, now, arts. 2461-15, 2461-24).

**Art. 5069-2.02. Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection**

(1) The Office of Consumer Credit Commissioner of the State of Texas is established.

*Text of (2) as amended by Acts 1983, 68th Leg., p. 1089, ch. 244, § 9*

(2) The Consumer Credit Commissioner shall, from time to time, as directed by the Finance Commission, submit to the Finance Commission a full and complete report of the receipts and expenditures of this Office, and the Finance Commission may, from time to time, examine the financial records of the Office of Consumer Credit Commissioner, or cause them to be examined. In addition, the Office of Consumer Credit Commissioner shall be audited from time to time by the state auditor in the same manner as state departments, and the actual costs of such audit shall be paid to the state auditor from the funds of the Office of Consumer Credit Commissioner.

*Text of (2) as amended by Acts 1983, 68th Leg., p. 812, ch. 194, § 3*

(2) The Commissioner shall be appointed by the Finance Commission and shall serve at the pleasure of the Finance Commission. The Consumer Credit Commissioner shall be an employee of the Finance Commission, subject to its orders and directions.

(3) The Division of Consumer Protection is established under the direction and supervision of the Consumer Credit Commissioner.

(4) If a written contract of an authorized lender is subject to regulation by the Office of Consumer Credit Commissioner, the contract must contain the name, mailing address, and telephone number of the Office of Consumer Credit Commissioner.

(5) The Office of Consumer Credit Commissioner is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(6) The Office of Consumer Credit Commissioner is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and

unless continued in existence as provided by that Act the office is abolished effective September 1, 1995.

[Acts 1967, 60th Leg., p. 612, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1971, 62nd Leg., p. 2379, ch. 739, § 1, eff. June 8, 1971; Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.069, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1503, ch. 648, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 812, ch. 194, § 3, eff. May 24, 1983; Acts 1983, 68th Leg., p. 1089, ch. 244, § 9, eff. Sept. 1, 1983.]

**Art. 5069-2.02A. Powers and Duties of Commissioner**

(1) The Consumer Credit Commissioner shall enforce Chapters 2, 3, 4, 5, 6, 7, 8, 9, and 15 of this title<sup>1</sup> in person or through assistant commissioners or any examiner or employee.

(2) The Consumer Credit Commissioner shall coordinate, encourage, aid, and assist public and private agencies, organizations, and groups and consumer credit institutions in the development and operation of voluntary educational and debt counseling programs designed to promote the prudent and beneficial use of consumer credit by citizens of the state.

(3) The Consumer Credit Commissioner through the Division of Consumer Protection shall coordinate, encourage, aid, and assist public and private agencies, organizations, and groups and consumer protection institutions in the development and operation of voluntary education consumer protection programs designed to promote prudent and informed consumer action by the citizens of the state.

(4) The Consumer Credit Commissioner shall prepare information of consumer interest describing the regulatory functions of the Office of Consumer Credit Commissioner and the procedures by which consumer complaints are filed with and resolved by the Office of Consumer Credit Commissioner. The Consumer Credit Commissioner shall make the information available to the general public and appropriate state agencies.

(5) The Consumer Credit Commissioner shall have authority to appoint and remove and prescribe the duties of such assistant commissioners, examiners, and employees as may be necessary to maintain and operate the Office of Consumer Credit Commissioner and the Division of Consumer Protection.

(6) The Consumer Credit Commissioner shall develop a procedure to ensure that any person holding the Office of Consumer Credit Commissioner and each assistant commissioner, examiner, and employee of the office are informed of the legally required standards of conduct for state officials and employees.

(7) The Consumer Credit Commissioner or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.



(8) The Consumer Credit Commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for employees of the Office of Consumer Credit Commissioner must be based on the system established under this section.

(9) The Consumer Credit Commissioner shall establish reasonable and necessary fees for carrying out his powers and duties under this title.

[Acts 1983, 68th Leg., p. 815, ch. 194, § 4, eff. May 24, 1983.]

<sup>1</sup> Articles 5069-2.01 et seq., 5069-3.01 et seq., 5069-4.01 et seq., 5069-5.01 et seq., 5069-6.01 et seq., 5069-7.01 et seq., 5069-8.01 et seq., 5069-9.01 et seq. and 5069-15.01 et seq.

Section 27 of the 1983 Act provides:

"The requirements under Article 2.02A, Title 79, Revised Statutes (Article 5069-2.02A, Vernon's Texas Civil Statutes), as added by this Act, that the Consumer Credit Commissioner develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1984. The requirement of Article 2.02A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985."

**Art. 5069-2.02B. Office Finances**

*Text of (1) added effective September 1, 1985*

(1) All money collected under this Act shall be deposited in the Office of the Consumer Credit Commissioner expense fund, which is created as a special fund in the State Treasury. Money in the fund may be used only for the administration of this Act. Income earned on money deposited in the expense fund shall be credited to that fund.

(2) The Office of Consumer Credit Commissioner shall be audited from time to time by the State Auditor in the same manner as state departments, and the actual costs of such audit shall be paid to the State Auditor from the funds of the Office of Consumer Credit Commissioner.

[Acts 1983, 68th Leg., p. 816, ch. 194, § 5.]

Section 37(a) and (b) of the 1983 Act provides:

"(a) Except as otherwise provided, this Act takes effect immediately.

"(b) Section (1), Article 2.02B, Title 79, Revised Statutes (Article 5069-2.02B, Vernon's Texas Civil Statutes), as added by Section 5 of this Act, takes effect September 1, 1985."

**Art. 5069-2.02C. Employees**

(1) The Consumer Credit Commissioner, assistant commissioners, examiners, and employees shall, before entering on the duties of the office, take an oath of office and make a fidelity bond in the sum of \$10,000 payable to the Finance Commission and its successors in office, in individual, schedule, or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the Finance Commission. The bond shall be in form approved by the Finance Commission.

(2) The Consumer Credit Commissioner, each assistant commissioner, each examiner, and each employee shall not be personally liable for damages occasioned by his official acts or omissions except

when such acts or omissions are corrupt or malicious. The attorney general shall defend any action brought against any of the above mentioned officers or employees by reason of his official act or omission whether or not at the time of the institution of the act the defendant has terminated his service with the Office of the Consumer Credit Commissioner.

(3) The Consumer Credit Commissioner or an assistant commissioner, examiner, or employee of the office may not be an officer, employee, or paid consultant of a trade association in an industry regulated by the Office of Consumer Credit Commissioner.

(4) The Consumer Credit Commissioner shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plans shall include:

(1) a comprehensive analysis of all the agency's workforce by race, sex, ethnic origin, class of position, and salary or wage;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's workforce; and

(4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement.

The plans shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements.

[Acts 1983, 68th Leg., p. 817, ch. 194, § 6, eff. May 24, 1983.]

**Art. 5069-2.02D. Complaints**

(1) The Consumer Credit Commissioner shall keep an information file about each complaint filed with the Office of Consumer Credit Commissioner relating to a licensee or other lender whom the Office of Consumer Credit Commissioner is authorized to regulate under this title.

(2) If a written complaint is filed with the Office of Consumer Credit Commissioner relating to a licensee or other lender whom the Office of Consumer Credit Commissioner is authorized to regulate under this title, the Consumer Credit Commissioner, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the com-

plaint unless the notice would jeopardize an undercover investigation.

[Acts 1983, 68th Leg., p. 818, ch. 194, § 7, eff. May 24, 1983.]

#### Art. 5069-2.03. Investigation and Enforcement

(1) Upon receipt of written complaint or other reasonable cause to believe that any provision of Subtitles Two or Three of this Title are being violated by any person, the Consumer Credit Commissioner may request such person to furnish information in regard to a specific loan or retail transaction or business practice alleged to be in violation of Subtitles Two or Three of this Title.

(2) If any such person shall fail to comply with such a request the Consumer Credit Commissioner shall have the authority to conduct an investigation to determine whether the provisions of Subtitles Two or Three of this Title are being violated.

(3) In the course of any investigation looking to the enforcement or administration of any provision of Subtitles Two or Three of this Title,<sup>1</sup> the Consumer Credit Commissioner may require by subpoena or summons, issued by the Consumer Credit Commissioner addressed to any peace officer within this State, the attendance and testimony of witnesses, and the production of books, accounts, papers, correspondence, or records (excepting such as are absolutely necessary for the continued course of business which shall not be removed from the office or place of business) which such books, accounts, papers, correspondence, or records the Consumer Credit Commissioner shall have the right to examine or cause to be examined, at the office, or place of business, and to require copies of such portions thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of such concern or an officer of such concern, and shall, when certified by the Consumer Credit Commissioner, be admissible in evidence in any investigation or hearing under Subtitles Two and Three of this Title or in an appeal to the District Court as provided by Subtitles Two and Three of this Title and for this purpose the Consumer Credit Commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the commissioner, the Consumer Credit Commissioner may invoke the aid of the district court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts correspondence, records and other documents touching the matter in question. Upon the filing of such application to enforce such subpoena, which application shall be treated in the same manner as a motion in a civil suit pending in said court, the court shall forthwith set such application for hearing and shall cause a notice of the filing of such application and of such hearing to be served upon

the party to whom such subpoena is directed. Such notice may be served by any peace officer in the State of Texas. Any failure to obey such order of the court may be punished by such court as contempt thereof.

(4) In the course of any investigation described in Section (3) of this Article, the Consumer Credit Commissioner may appoint a hearing officer to conduct such investigation and such hearing officer shall be vested for the purpose of such investigation with the power and authority as the Consumer Credit Commissioner would have if he were personally conducting such investigation, provided that such hearing officer shall not be authorized to make any order upon the subject matter of such investigation; and provided further, that the record of any investigation conducted before the hearing officer may be considered by the Consumer Credit Commissioner in the same manner and to the same extent as evidence that is adduced before him personally in any investigation.

(5) The fee for serving the subpoena shall be the same as that paid a sheriff or constable for similar services. Each witness required to attend before the Commissioner shall receive for each days attendance, the sum of Two Dollars and shall receive in addition the sum of Ten Cents for each mile traveled by such witness by the usual route going to or returning from the place where his presence is required, provided that such fees shall not become payable until the witness has actually appeared at such hearing. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for other expenses incident to the administration and enforcement of Subtitles Two and Three of this Title.

(6) The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Consumer Credit Commissioner upon any party in interest to the record or may be divided between any and all parties in interest to the record in such proportion as the Commissioner may determine.

(7) Whenever the Consumer Credit Commissioner has reasonable cause to believe that any person is violating any provisions of Subtitles Two and Three of this Title he may in addition to all actions provided for, and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. A person may appeal such an order to the Consumer Credit Section of the Finance Commission. The appeal must be made in accordance with rules adopted by the Consumer Credit Section for that purpose. In addition to the order, the Commissioner may bring an action in any district court of this State having jurisdiction and venue, on the relation of the Attorney General at the request of the Commissioner, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunc-

tion as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of Subtitles Two and Three of this Title through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as he would have under Articles 2293 through 2319, inclusive, Revised Civil Statutes of Texas, 1925, as amended, if he had been appointed pursuant to paragraph four of Article 2293.

[Acts 1967, 60th Leg., p. 612, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 2627, ch. 707, § 4(2), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 1090, ch. 244, § 10, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5069-2.01 et seq. or 5069-9.01 et seq.

#### Art. 5069-2.04. Hearings and Review

(1) At all hearings before the Consumer Credit Commissioner, parties in interest shall have the right to appear in person and by counsel, and to present oral and written evidence. If requested by a party in interest, a record shall be made of all evidence offered by such party and all other evidence considered by the Consumer Credit Commissioner.

(2) Any party in interest aggrieved by any order, ruling or decision of the Consumer Credit Commissioner may, within thirty days after the date of entry, file in the District Court of Travis County, Texas, a petition against the Consumer Credit Commissioner officially as defendant, alleging therein in brief detail the order, ruling or decision complained of and praying for a reversal or modification thereof. The Consumer Credit Commissioner shall, within twenty days after the service upon him of such petition, certify to said District Court the record of the proceedings to which the petition refers, or such portion thereof as may be required by the petitioner. The cost of preparing and certifying such record shall be paid to the Consumer Credit Commissioner by the petitioner and taxed as a part of the costs of the case. Upon the filing of an answer by the Consumer Credit Commissioner, the case before the District Court shall be at issue, without further pleadings, and upon application of either party shall be advanced and heard without further delay. The order of the Consumer Credit Commissioner shall be sustained unless the hearing was conducted in a manner contrary to the rudiments of a fair hearing; or the order was based upon an error of law which affected petitioner's substantial rights; or was arbitrary, capricious or unreasonable; or the findings of fact were not reasonably supported by substantial evidence in the record, considered as a whole, adduced before the Consum-

er Credit Commissioner. Provided, however, that any appeal to the District Court of Travis County, Texas, of an order, ruling or decision of the Consumer Credit Commissioner, refusing to grant a license or licenses to an applicant or revoking the license or licenses of a licensee, such appeal shall be upon trial de novo as that term is used in appealing from justice of the peace courts to county courts.

(3) Upon a showing of good cause therefor by a party in interest, the Consumer Credit Commissioner or the court may enter an order staying, pending appeal, the effect of an order of the Consumer Credit Commissioner from which the party in interest desires to appeal.

[Acts 1967, 60th Leg., p. 614, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-2.05. Repealed by Acts 1975, 64th Leg., p. 2239, ch. 707 § 2, eff. Sept. 1, 1975

Section 1 of the 1975 Act revised and amended the Credit Union Act, art. 2461-1.01 et seq.

#### Art. 5069-2.06. Advertising

No person shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan or credit transaction regulated by Subtitle Two. If rates or charges are stated in advertising they shall be stated fully and clearly.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-2.07. Credit and Loans to Individuals

No licensee under Chapter 3 of this Title or other person involved in transactions subject to this Title may deny an individual credit or loans in his or her name, or restrict or limit the credit or loan granted solely on the basis of sex, race, color, religion, or national origin. In interpreting this section, the courts and administrative agencies shall be guided by the federal Equal Credit Opportunity Act<sup>1</sup> and regulations thereunder and interpretations thereof by the Federal Reserve Board to the extent that that Act and those regulations and interpretations pertain to conduct prohibited by this section.

[Acts 1973, 63rd Leg., p. 1293, ch. 483, § 1, eff. Aug. 27, 1973. Amended by Acts 1981, 67th Leg., p. 280, ch. 111, § 8, eff. May 8, 1981.]

<sup>1</sup> 15 U.S.C.A. § 1691 et seq.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of

competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-2.08. Bracket and Ceiling Index

(1) The dollar amount of the ceilings on the cash advance, and the brackets establishing ranges of cash advances or balances to which certain rates of charges apply in this Title, except the brackets in Section (1), Article 3.16; Section (2), Article 3.16; Article 3.21; Section (9)(e), Article 6.02; Section (12)(a), Article 6.02; and Article 15.02, are changed as of the effective date of this Act and shall be, subject to Subsections (a) and (b), Section (2) of this Article, changed from time to time in accordance with the changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1967=100; compiled by the Bureau of Labor Statistics, United States Department of Labor, and referred to in this Article as the Index. The Index for December 1967 is the Reference Base Index period for the purpose of determining the adjustment to be made in the rate, brackets and ceilings.

(2) The designated dollar amounts of the brackets and ceilings shall be calculated on the effective date of this Act and on July 1 of each year thereafter to reflect the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index except that:

(a) the portion of the percentage of change in the Index in excess of a multiple of 10 percent shall be disregarded and the dollar amounts of those brackets and ceilings shall change only in multiples of 10 percent of the amounts appearing in this Title on the date of enactment; and

(b) the dollar amounts of those brackets and ceilings shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section.

(3) If the Index is revised, the percentage of change pursuant to this section after that revision shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is canceled or superseded by the Bureau of Labor Statistics, the Index referred to in this section is to be the Index chosen by the Bureau of Labor Statistics as reflecting most accurately the changes in the purchasing power of the dollar for consumers.

(4) The consumer credit commissioner shall issue and cause to be published in the Texas Register:

(a) before May 1 of each year in which dollar amounts of the brackets and ceilings are to change, the designated changes in dollar amounts of those brackets required by Section (2) of this Article; and

(b) promptly after the changes occur, changes in the Index required by Section (3) of this Article including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) A person does not violate this Title by contracting for, charging, or receiving any rate, amount, ceiling, or bracket, or by any acts done or omitted, that conform to the provisions of this Article or to the provisions determined by the consumer credit commissioner or that conform to an interpretation of this Title by the consumer credit commissioner or a decision of an appellate court of this state or of the United States in effect at the time that the acts were done or omitted.

[Acts 1981, 67th Leg., p. 281, ch. 111, § 9, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

### CHAPTER 3. REGULATED LOANS

#### Art.

- 5069-3.01. Scope.
- 5069-3.02. Application for License, Fees, Bond, Appointment of Statutory Agent.
- 5069-3.03. Issuance or Denial of License.
- 5069-3.04. Repealed.
- 5069-3.05. License, Annual Fee, Minimum Assets.
- 5069-3.06. Offices, Removal.
- 5069-3.07. Revocation, Suspension, Surrender, Reinstatement of Licenses.
- 5069-3.08. Examination of Lenders, Access to Records, Investigation.
- 5069-3.09. Investigation.
- 5069-3.10. Records.
- 5069-3.11. Annual Reports.
- 5069-3.12. Regulations, Copies, Public Record.
- 5069-3.13. Advertising.
- 5069-3.14. More Than One Business in Single Office.

**Art.**

- 5069-3.15. Maximum Rates of Interest.
- 5069-3.16. Alternative Rates of Interest Authorized.
- 5069-3.17. Repealed.
- 5069-3.18. Insurance.
- 5069-3.19. Lender's Duty to Borrower.
- 5069-3.20. Prohibited Practices.
- 5069-3.21. Limitation of Loan Period.

**Art. 5069-3.01. Scope**

(1) Only a person who has obtained a license from the Consumer Credit Commissioner or a bank or savings and loan association doing business under the laws of this state or of the United States is an authorized lender under this Chapter and may engage in the business of making, transacting, or negotiating loans with cash advances of Two Thousand, Five Hundred Dollars or less, and contract for, charge or receive, directly, or indirectly, on or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense or other thing or otherwise, which in the aggregate are greater than such person would be permitted by law to charge if he were not an authorized lender under this Chapter.

(2) The provisions of Section 3.01(1) shall apply to any person who seeks to evade its application by any device, subterfuge or pretense whatsoever.

(3) The dollar amount of the ceiling on the cash advance prescribed by Section (1) of this Article is subject to adjustment from time to time under Article 2.08 of this Title.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1973, 63rd Leg., p. 1772, ch. 648, § 1, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 282, ch. 111, § 10, eff. May 8, 1981; Acts 1983, 68th Leg., p. 819, ch. 194, § 8, eff. May 24, 1983.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-3.02. Application for License, Fees, Bond, Appointment of Statutory Agent**

(1) Application for a license shall be under oath, shall give the approximate location from which the business is to be conducted, and shall contain such relevant information as the Consumer Credit Com-

missioner may require, including identification of the principal parties in interest, to provide the basis for the findings necessary under Article 3.03. When making application, for one or more licenses, the applicant shall pay Two Hundred Dollars to the Consumer Credit Commissioner as an investigation fee and One Hundred Dollars for each license as the annual fee provided in this Chapter for the current calendar year, provided if a license is granted after June 30th in any year, such fee shall be Fifty Dollars for that year.

(2) Every authorized lender shall maintain on file with the Consumer Credit Commissioner a written appointment of a resident of this State as his agent for service of all judicial or other process or legal notice, unless the lender has appointed an agent under another statute of this State. In case of noncompliance, such service may be made on the Consumer Credit Commissioner.

(3) Every applicant shall, also, at the time of filing any such application, file with the Consumer Credit Commissioner, if he so requires, a bond satisfactory to him and in an amount not to exceed Five Thousand Dollars for the first license and One Thousand Dollars for each additional license with a surety company qualified to do business in this State as surety, whose total liability in the aggregate shall not exceed the amount of such bond so fixed. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Chapter. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Chapter and of all rules and regulations lawfully made by the Consumer Credit Commissioner hereunder, and will pay, to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Chapter during the calendar year for which said bond is given.

[Acts 1967, 60th Leg., p. 615, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 819, ch. 194, § 9, eff. May 24, 1983.]

**Art. 5069-3.03. Issuance or Denial of License**

(1) On filing of such application, bond, and payment of the required fees, the Consumer Credit Commissioner shall investigate the facts and if he shall find the financial responsibility, experience, character and general fitness of the applicant are such as to command the confidence of the public and to warrant belief the business will be operated lawfully and fairly, within the purposes of this Chapter, and the applicant has available for the operation of such business net assets of at least Twenty-five Thousand Dollars, he shall grant such application and issue to the applicant a license which shall be his license and authority to make loans under the provisions of this Chapter.

(2) If the Consumer Credit Commissioner shall not so find, he shall notify the applicant, who shall, on request within thirty days, be entitled to a hearing on such application within sixty days after the date of said request. The investigation fee shall be retained by the Consumer Credit Commissioner, but the annual fee shall be returned to the applicant in the event of denial.

(3) The Consumer Credit Commissioner shall grant or deny each application for a license within sixty days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Consumer Credit Commissioner.

[Acts 1967, 60th Leg., p. 616, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.04. Repealed by Acts 1983, 68th Leg., p. 838, ch. 194, § 26, eff. May 24, 1983**

**Art. 5069-3.05. License, Annual Fee, Minimum Assets**

(1) Each license shall state the address of the office from which the business is to be conducted and the name of the licensee. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Consumer Credit Commissioner.

(2) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1st, pay the Consumer Credit Commissioner an annual fee for each license held by him for the succeeding calendar year. The annual fee shall be Two Hundred Dollars, except if on September 30 immediately preceding the due date of the annual fee, the gross unpaid balance of regulated loans in a licensed office is One Hundred Thousand Dollars or less the annual fee for that office shall be One Hundred Dollars. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Consumer Credit Commissioner, the license shall thereupon expire but not before December 31st of any year for which an annual fee has been paid.

(3) (a) Every licensee shall maintain net assets of at least Twenty-five Thousand Dollars, either used or readily available for use, in the conduct of the business of each licensed office.

(b) Provided, however, any person holding a license under the Texas Regulatory Loan Act as of the effective date of this Chapter shall only be required to maintain net assets of at least Fifteen Thousand Dollars either used or readily available for use in the conduct of the business of each such licensed office. If such license is transferred to any other person, such other person shall be required to maintain minimum assets required under Subsection (a) of this Section.

(c) Provided further, that any person who has paid prior to April 1, 1967, the pawnbroker's occupational tax imposed under the terms of Article 19-01(4)<sup>1</sup> of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, and who has applied for a license to operate under the authority of this chapter within thirty days of the effective date of this Chapter shall not be required to meet the requirement of minimum assets imposed in Subsection (a) herein; provided, however, if any license issued on the basis of the payment of such tax is transferred, the person to whom such license is transferred shall be required to meet the minimum assets required under Subsection (a) of this section.

[Acts 1967, 60th Leg., p. 617, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 1, eff. May 30, 1977.]

<sup>1</sup> Repealed.

**Art. 5069-3.06. Offices, Removal**

(1) A separate license shall be required for each office operated under this Chapter. The Consumer Credit Commissioner may issue more than one license to any one person upon compliance with this Chapter as to each license. Nothing contained herein, however, shall be construed to require a license for any place of business devoted to accounting or other recordkeeping and where loans under this Chapter are not made.

(2) When a licensee wishes to move his office to another location he shall give thirty days' written notice to the Consumer Credit Commissioner, who shall amend the license accordingly.

(3) The Consumer Credit Commissioner may issue one or more licenses to any one person on compliance with this Chapter as to each license. Any person holding a license under this Chapter which shall violate any provision hereof shall be subject to forfeiture of his license, and if a corporation, its charter shall be subject to forfeiture, and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file suit for such forfeiture of charter and cancellation of the license in a District Court in Travis County, Texas.

[Acts 1967, 60th Leg., p. 617, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 1, eff. Aug. 27, 1979.]

**Art. 5069-3.07. Revocation, Suspension, Surrender, Reinstatement of Licenses**

(1) The Consumer Credit Commissioner may, after notice and hearing, suspend or revoke any license if he finds that:

(a) The licensee has failed to pay the annual license fee imposed by this Chapter or an examination fee, investigation fee or other fee or charge imposed by the Consumer Credit Commissioner under the authority of this Chapter, or that

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Chapter or any regulation

or order lawfully made pursuant to and within the authority of this Chapter; or that

(c) Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Consumer Credit Commissioner in refusing to issue such license.

(2) The hearing shall be held upon twenty days' notice in writing setting forth the time and place thereof and a concise statement of the facts alleged to sustain the suspension or revocation. The hearing shall be full, fair and public. Such suspension or revocation and its effective date shall be set forth in a written order accompanied by findings of fact and a copy thereof shall be forthwith delivered to the licensee. Such order, findings, and the evidence considered by the Consumer Credit Commissioner shall be filed with the public records of the Consumer Credit Commissioner.

(3) Any licensee may surrender any license by delivering it to the Consumer Credit Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(4) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

(5) The Consumer Credit Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Consumer Credit Commissioner in refusing originally to issue such license under this Chapter.

[Acts 1967, 60th Leg., p. 618, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-3.08. Examination of Lenders, Access to Records, Investigation**

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each authorized lender and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such lender insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such lender, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any authorized lender who shall fail or refuse to let the Commissioner

or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of the lender's license. The information obtained in the course of such examination shall be confidential. Each authorized lender shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, and the total cost so assessed and charged an authorized lender in any one calendar year shall not exceed Five Hundred Dollars for each licensed or otherwise authorized office.

[Acts 1967, 60th Leg. p. 618, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 2, eff. May 30, 1977; Acts 1983, 68th Leg., p. 819, ch. 194, § 10, eff. May 24, 1983.]

**Art. 5069-3.09. Investigation**

For the purpose of discovering violations of this Chapter or of securing information required hereunder, the Consumer Credit Commissioner or his duly authorized representatives may investigate the books, accounts, papers, correspondence and records of any authorized lender or other person whom the Consumer Credit Commissioner has reasonable cause to believe is violating any provision of this Chapter whether or not such person shall claim to be within the authority or scope of this Chapter. For the purposes of this Article any person who advertises for, solicits or holds himself out as willing to make loans with cash advances in the amount or the value of Two Thousand, Five Hundred Dollars or less, shall be presumed to be engaged in the business described in Article 3.01 of this Chapter.

[Acts 1967, 60th Leg., p. 619, ch. 274 § 2, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 820, ch. 194, § 11, eff. May 24, 1983.]

**Art. 5069-3.10. Records**

(1) Each authorized lender shall keep or make available in this State such books and records relating to loans made under this Chapter as are necessary to enable the Commissioner to determine whether the lender is complying with this Chapter. However, an authorized lender making, transacting, or negotiating loans in Texas principally by mail shall pay to the Commissioner an amount to be assessed by him to cover the direct and indirect costs of examinations and a proportionate share of general administrative expense. Such books and records shall be consistent with accepted accounting practices.

(2) Each authorized lender shall preserve or make available such books and records in this State, or at the principal place of business of a lender who makes, transacts, or negotiates loans principally by mail, for four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later. Each lender's system

of records shall be accepted if it discloses such information as may be reasonably required under Section (1) of this Article. All obligations signed by borrowers shall be kept at an office in this State designated by the lender, except when transferred under an agreement which gives the Commissioner access thereto.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1973, 63rd Leg., p. 1772, ch. 648, § 2, eff. Aug. 27, 1973; Acts 1983, 68th Leg., p. 821, ch. 194, § 12, eff. May 24, 1983.]

#### Art. 5069-3.11. Annual Reports

Each authorized lender shall, annually on or before the first day of April or other date thereafter fixed by the Consumer Credit Commissioner file a report with the Consumer Credit Commissioner giving such relevant information as the Consumer Credit Commissioner may reasonably require concerning the business and operations during the preceding calendar year for each licensed or otherwise authorized place of business conducted by the lender within the State. Such report shall be made under oath and shall be in the form prescribed by the Consumer Credit Commissioner, who shall make and publish annually a consolidated analysis and recapitulation of such reports, but the individual reports shall be held confidential.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 822, ch. 194, § 13, eff. May 24, 1983.]

#### Art. 5069-3.12. Regulations, Copies, Public Record

(1) The State Finance Commission may make regulations necessary for the enforcement of this Chapter and consistent with all of its provisions. Each such regulation shall refer to the Article, Section or Subsection to which it applies. Before making a regulation the Consumer Credit Commissioner shall give every authorized lender at least thirty days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any authorized lender or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner shall recommend, and the State Finance Commission, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form stating the date of adoption and the date of promulgation. Each regulation shall be entered in a permanent book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each authorized lender and no regulation shall become effective until the expiration of at least twenty days after such mailing.

(2) On application of any person and payment of the costs therefor, the Consumer Credit Commissioner shall furnish under his seal and signed by him or his assistants, a certificate of good standing

or a certified copy of any license, regulation or order.

(3) Any transcript of any hearing held by the Consumer Credit Commissioner under this Chapter shall be a public record and open to inspection at all reasonable times.

[Acts 1967, 60th Leg., p. 619, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 822, ch. 194, § 14, eff. May 24, 1983.]

#### Art. 5069-3.13. Advertising

No authorized lender shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 823, ch. 194, § 15, eff. May 24, 1983.]

#### Art. 5069-3.14. More Than One Business in Single Office

(1) An authorized lender may conduct the business of making loans under this Chapter within any offices, suite, room or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless the Commissioner shall find, after a hearing, that the conduct by the lender of such other business in the particular office has concealed evasions of this Chapter and shall order such lender in writing, to desist from such conduct in such office.

(2) No licensee shall conduct the business of making loans provided for by this Chapter under any name, or at any place of business within this State, other than that stated in the license.

(3) Nothing in this Chapter shall be construed to limit the loans of any authorized lender to residents of the community in which the licensed or otherwise authorized office is situated or to prohibit the lender from making loans by mail.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 823, ch. 194, § 16, eff. May 24, 1983.]

#### Art. 5069-3.15. Maximum Rates of Interest

(1) Every authorized lender may contract for and receive on any loan made under this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, that does not exceed an add-on interest charge computed on the cash advance for the full term of the loan contract in accordance with the following schedule:

Eighteen Dollars per One Hundred Dollars per annum on that part of the cash advance not in excess of Three Hundred Dollars, and Eight Dollars per One Hundred Dollars per annum on that part of the cash advance in excess of Three Hundred Dol-



lars but not in excess of Twenty-five Hundred Dollars.

(2) Interest authorized in Section (1) of this Article may be computed at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Precomputed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, an authorized lender may make loans which require repayment in other than substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and an authorized lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower may be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the lender and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth the insurance coverages afforded the borrower through the lender and, if a charge for insurance is to be made to the borrower, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such

installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full, as of the date of deferment and the refund which would be required for prepayment in full as one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender makes demand for payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full, bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from the date the loan was made, one-thirtieth of the portion

of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

(b) When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender makes demand for payment in full of the unpaid balance prior to final maturity, the lender may retain earned interest for the period from the date of the loan to the date of prepayment in full or date of demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments, having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the lender, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this Subsection shall be refunded or credited to the borrower.

The lender may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the lender.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c) No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(7) No authorized lender shall induce or permit any person, or husband and wife, to be obligated, directly or indirectly, under more than one loan contract under this chapter at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted by this chapter; but such limitation shall not apply to the acquisition by purchase of bona fide retail installment contracts or revolving charge agreements of the borrower incurred for goods, or services, or to pledged loans made pursuant to Article 3.17, and provided further, if an authorized lender purchases all or substantially all the loan contracts of another authorized lender hereunder and has at the time of purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled to collect principal and authorized charges thereon according to the terms of each loan contract.

(8) In addition to the authorized charges provided in this chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by an authorized lender as court costs; attorney fees assessed by a court; lawful fees for filing, recording, or releasing in any public office any security for a loan; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any security; or fees for noting a lien on or transferring a certificate of title to any motor vehicle offered as security for a loan made under this Chapter, or premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter.

(9) The dollar amounts of the rate brackets and ceiling prescribed by Section (1) of this Article are subject to adjustment from time to time under Article 2.08 of this Title.

[Acts 1967, 60th Leg., p. 620, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 282, ch. 111, § 11, eff. May 8, 1981; Acts 1983, 68th Leg., p. 824, ch. 194, § 17, eff. May 24, 1983.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-3.16. Alternative Rates of Interest Authorized**

(1) On a loan made under this section, an authorized lender may charge, in lieu of charges specified in Article 3.15, the following amounts:

(a) On any amount up to and including Twenty-nine Dollars and Ninety-nine Cents a charge may be added at the ratio of One Dollar for each Five Dollars advanced to the borrower.

(b) On any cash advance in an amount in excess of Twenty-nine Dollars and Ninety-nine Cents up to and including the amount of Thirty-five Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars per month.

(c) On any cash advance of an amount in excess of Thirty-five Dollars but not more than Seventy Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars and Fifty Cents per month.

(d) On any cash advance of an amount in excess of Seventy Dollars but not in excess of One Hundred Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Four Dollars per month.

(e) On any cash advance in an amount in excess of One Hundred Dollars, the maximum acquisition charge may not exceed Ten Dollars and the maximum monthly installment account handling charge may not exceed the ratio of Four Dollars per month per One Hundred Dollars of cash advance.

(2) The maximum term of any loan made under the terms of this Article shall be one month for each Ten Dollars of cash advance up to a maximum term of six months on loans of One Hundred Dollars or less, and one month for each Twenty Dollars of cash advance on loans in excess of One Hundred Dollars as provided for by Section (1)(e) of this Article.

(3) On such loans under this Article, no insurance charges or any other charges of any nature whatsoever shall be permitted.

(4) The acquisition charge authorized on loans made pursuant to Articles 3.16(1)(a), (b), (c), and (d) shall be deemed to be earned at the time a loan is made and shall not be subject to refund. On the prepayment of any loan made pursuant to Articles 3.16(1)(a), (b), (c), and (d) the installment account handling charge shall be subject to the provisions of Article 3.15 as it relates to refunds. On the prepayment of any loan made pursuant to Article 3.16(1)(e) both the acquisition charge and the installment account handling charge shall be subject to the provisions of Article 3.15 as it relates to refunds. Provisions of Article 3.15 relating to default charges on loans and the deferment of loans shall apply to loans made under this Article.

(5) The Commissioner shall have authority to formulate schedules providing for repayment in weekly, bi-weekly or semi-monthly installments for use by an authorized lender on loans made under the authority of this Article provided the ratio of charges permitted under such schedules do not exceed the maximum rates authorized in this Article.

(6) The maximum cash advance of any loan made under this Article shall be One Hundred Dollars as from time to time may be adjusted by the provisions of Article 2.08 of this Title.

[Acts 1967, 60th Leg., p. 623, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 282, ch. 111, § 12, eff. May 8, 1981; Acts 1983, 68th Leg., p. 830, ch. 194, § 18, eff. May 24, 1983.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-3.17. Repealed by Acts 1971, 62nd Leg., p. 2764, ch. 894, § 18, eff. Aug. 30, 1971**

See, now, art. 5069-51.01 et seq.

**Art. 5069-3.18. Insurance**

(1) On any loan having a cash advance of One Hundred Dollars or more, made under the authority of this Chapter, a lender may request or require a

borrower to provide credit life insurance and credit health and accident insurance as additional protection for such a loan. Policies of credit life insurance or credit health and accident insurance may not be in force with respect to any one obligor on any one loan contract at any one time that in combination exceed:

(i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or

(ii) as to credit accident and health insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure tangible personal property offered as security for a loan. Such insurance and the premiums or charges therefor shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article, and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg. p. 624, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1559, ch. 672, §§ 7, 8, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 831, ch. 194, § 19, eff. May 24, 1983; Acts 1983, 68th Leg., p. 5411, ch. 1004, § 1, eff. Aug. 29, 1983.]

Section 6 of Acts 1983, ch. 1004 provides:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed."

**Art. 5069-3.19. Lender's Duty to Borrower**

(1) When a loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The lender shall give a receipt to the person making a cash payment on any loan.

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, property pledged, or other instrument securing such loan which no longer secures any indebtedness of the borrower to the lender.

[Acts 1967, 60th Leg., p. 626, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 9, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 832, ch. 194, § 20, eff. May 24, 1983.]

**Art. 5069-3.20. Prohibited Practices**

(1) No authorized lender shall take an assignment of wages as security for any loan made under this Chapter, but warrants drawn against any state fund, or any claim against a state fund or a state

agency, may be assigned as security for any such loan.

(2) No authorized lender shall take a lien upon real estate as security for any loan made under this Chapter, except such lien as is created by law upon the recording of an abstract of judgment.

(3) No authorized lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding. This prohibition shall not apply to powers of attorney contained in insurance premium finance contracts when limited to the authority to cancel casualty insurance financed under such contract.

(4) No authorized lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

(5) Except as specifically provided in Article 3.15(4) no authorized lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(6) No authorized lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 626, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 10, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 832, ch. 194, § 21, eff. May 24, 1983.]

**Art. 5069-3.21. Limitation of Loan Period**

(1) No authorized lender shall enter any contract of loan having a cash advance of Fifteen Hundred Dollars or less under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than thirty-seven calendar months from the date of making such contract.

(2) No authorized lender shall enter any contract of loan having a cash advance in excess of Fifteen Hundred Dollars but not in excess of Three Thousand Dollars under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than forty-nine calendar months from the date of making such contract.

(3) An authorized lender may not enter into a contract for a loan having a cash advance in excess of Three Thousand Dollars under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than sixty months from the date of making that contract.

[Acts 1967, 60th Leg., p. 627, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 283, ch. 111, § 13, eff. May 8, 1981; Acts 1983, 68th Leg., p. 833, ch. 194, § 22, eff. May 24, 1983.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### CHAPTER FOUR. INSTALLMENT LOANS

##### Art.

- 5069-4.01. Installment Loans Authorized.
- 5069-4.02. Insurance.
- 5069-4.03. Lender's Duty to Borrower.
- 5069-4.04. Prohibited Practices.

##### Art. 5069-4.01. Installment Loans Authorized

(1) Any bank or savings and loan association doing business under the laws of this State or of the United States, and any person licensed to do business under the provisions of Chapter 3 of this Subtitle relating to regulated loans may contract for and receive on any loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, which does not exceed an add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article may be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Precomputed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a lender may make loans which require repayment other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or period of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments, or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal

successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and a lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower shall be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the lender and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth, if a charge for insurance is to be included in the contract, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes precomputed interest, and is payable in substantially equal, successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment

is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual or deferment or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract and containing precomputed interest is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or if the lender demands payment in full of the unpaid balance before the final installment due date, the lender shall retain earned interest for the period from the date of the loan to the date of prepayment in full or demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the lender, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding

installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this subsection shall be refunded or credited to the borrower.

The lender may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the lender.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c)<sup>1</sup> No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(7) In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as court costs, attorney fees assessed by a court, lawful fees for filing, recording, or releasing to any public office any instrument securing a loan; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any security; or fees for noting a lien on or transferring a certificate of title to any motor vehicle offered as security for a loan made under this Chapter, or premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter.

(8) As an alternative to the rate provided by Section (1) of this Article, the parties may agree to

any rate not exceeding a rate authorized by Article 1.04 of this Title.

[Acts 1967, 60th Leg., p. 627, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, §§ 11 to 14, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 283, ch. 111, § 14, eff. May 8, 1981.]

<sup>1</sup> So in enrolled bill; there is no (b).

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-4.02. Insurance

(1) On any loan made under the authority of this Chapter, a lender may request or require a borrower to provide credit life insurance and credit health and accident insurance as additional protection for such a loan. Policies of credit life insurance or credit health and accident insurance may not be in force with respect to any one obligor on any one loan contract at any one time that in combination exceed:

(i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or

(ii) as to credit accident and health insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure tangible personal property offered as security for a loan. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is



cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supplemental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg., p. 629, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1564, ch. 672, §§ 15 to 18, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5412, ch. 1004, § 2, eff. Aug. 29, 1983.]

Section 6 of the 1983 amendatory act provides:

"All laws and part of laws in conflict herewith shall be and the same are hereby repealed."

**Art. 5069-4.03. Lender's Duty to Borrower**

(1) When a loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The lender shall give a receipt to the person making a cash payment on any loan.

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, deed of trust, or other instrument securing such loan which no longer secures any indebtedness of the borrower to the licensee.

[Acts 1967, 60th Leg., p. 631, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1565, ch. 672, § 19, eff. Aug. 27, 1979.]

**Art. 5069-4.04. Prohibited Practices**

(1) No lender shall take an assignment of wages as security for any loan made under this Chapter.

(2) No lender shall take a lien upon real estate as security for any loan made under this Chapter, except such lien as is created by law upon the recording of an abstract of judgment.

(3) No lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

(4) Except as specifically provided by Article 4.01(4), no lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

(5) No lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(6) No lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 631, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, § 20, eff. Aug. 27, 1979.]

**CHAPTER FIVE. SECONDARY MORTGAGE LOANS**

- Art. 5069-5.01. Definition.
- 5069-5.02. Secondary Mortgage Loans Authorized.
- 5069-5.03. Insurance.
- 5069-5.04. Lender's Duty to Borrower.
- 5069-5.05. Prohibited Practices.

**Art. 5069-5.01. Definition**

(1) As used in this Chapter, "secondary mortgage loan" means

(a) a loan made to any person not to be repaid in ninety days or less which is secured, in whole or in part, by any lien or security interest or any interest in real property improved by a dwelling designed for occupancy by four families or less, which property is subject to the lien of one or more liens or security interests, prior mortgages or deeds of trust, or

(b) the purchase of any interest in an existing secondary mortgage loan from the mortgagee made to secure such a loan.

(2) On or after the effective date of this Chapter, no person, except a bank, savings and loan association or credit union doing business under the laws of this State or of the United States and any person licensed to do business under the provisions of Chapter 3 of this Subtitle, shall engage in the business of making secondary mortgage loans and contract for, charge or receive, directly or indirectly in connection with any such loan, any charge for interest which exceeds ten percent per annum on unpaid principal balances and any lawful charge for compensation, consideration, expense, or any other thing incident to or in connection with the loan which exceeds the amounts a person authorized hereunder would be permitted to charge under Article 5.02(5).

(3) The provisions of this Chapter shall not apply to any seller of property who makes a secondary mortgage loan to secure all or part of the unpaid purchase price.

[Acts 1967, 60th Leg., p. 632, ch. 274, § 2, eff. Oct. 1, 1967.]

#### Art. 5069-5.02. Secondary Mortgage Loans Authorized

(1) Any person authorized to do business under the provisions of this Chapter may contract for an receive on any secondary mortgage loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, and add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article shall be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular monthly installments and shall be computed on the basis of a full month for any fractional period in excess of fifteen days. Interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for

such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (4) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter.

(4) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(5) In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly,

charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as:

- (i) court costs;
- (ii) attorney's fees assessed by a court;
- (iii) lawful fees paid to any public office for filing, recording, or releasing any instrument securing a loan;
- (iv) the reasonable cost expended for repossessing, storing, preparing for sale, or selling any security;
- (v) the premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter including a premium or charge for title insurance;
- (vi) an attorney's reasonable fee for title examination and opinion not in excess of the charge or premium set by the State Board of Insurance for title insurance for such a transaction; or
- (vii) the reasonable and necessary charges paid to persons not salaried employees of the lender for: appraisal and inspection of collateral, investigation of the credit standing or credit worthiness of the borrower, legal fees to an attorney for the preparation of documents in connection with the transaction, or official fees for construction permits.

(6) As an alternative to the rate provided by Section (1) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.

[Acts 1967, 60th Leg., p. 632, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, §§ 21, 22, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 15, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for

open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-5.03. Insurance

(1) On any loan made under the authority of this Chapter, a lender may request or require a borrower to provide credit life insurance and credit health and accident insurance as additional protection for such a loan. Policies of credit life insurance or credit health and accident insurance may not be in force with respect to any one obligor on any one loan contract at any one time that in combination exceed:

- (i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or
- (ii) as to credit accident and health insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

(2) On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure property offered as security for a loan. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverages either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made

as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All such insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance written under this Article is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(7) In accepting insurance provided by this Article as protection for a loan, the lender, its officers, agents, or employees may deduct the premiums or identifiable charges for such insurance from the proceeds of the loan, which premiums or identifiable charges shall not exceed those authorized by this Article, and shall pay such premiums to the insurance company writing such insurance. Any gain, or advantage to the lender, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as additional interest or further charge in connection with any loan made under this Chapter except as specifically provided herein. Arranging for, and collecting an identifiable charge, shall not be deemed a sale of insurance.

(8) A lender shall not by any method, directly or indirectly, require the purchase of insurance from an agent or broker designated by the lender, nor shall the lender at any time decline existing coverages providing substantially equal benefits that comply with the provisions of this Article.

(9) Should any additional charge be made for insurance other than that authorized in this Article, the lender shall have no right to collect any charge for insurance or any interest on such charge and all charges collected for insurance and interest collected thereon shall be refunded to the borrower or credited to his account, provided that an overcharge which results from an accidental or bona fide error may be corrected as provided in Article 8.01 of Chapter 8 of this Subtitle. The provision is supple-

mental to and not exclusive of all other remedies and penalties provided in this Subtitle.

[Acts 1967, 60th Leg., p. 634, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, §§ 23, 24, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5412, ch. 1004, § 3, eff. Aug. 29, 1983.]

Section 6 of the 1983 amendatory act provided:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed."

#### **Art. 5069-5.04. Lender's Duty to Borrower**

(1) When a secondary mortgage loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

(2) The lender shall give a receipt to a person making a cash payment on any loan.

(3) At any time during regular business hours, the lender shall permit any loan to be prepaid in full, or, if less than a prepayment in full, in an amount equal to one or more full installments.

(4) When a loan is repaid in full, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, deed of trust, or other instrument representing or securing such loan which no longer secures any indebtedness of the borrower to the licensee.

[Acts 1967, 60th Leg., p. 635, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, § 25, eff. Aug. 27, 1979.]

#### **Art. 5069-5.05. Prohibited Practices**

(1) No lender shall take an assignment of wages as security for any loan made under this Chapter.

(2) No lender shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

(3) No lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

(4) No lender shall take any instrument in which blanks are left to be filled in after the loan is made.

(5) No lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 636, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1568, ch. 672, § 26, eff. Aug. 27, 1979.]

**CHAPTER SIX. RETAIL INSTALLMENT SALES**

Art.

- 5069-6.01. Definitions.
- 5069-6.02. Retail Installment Contracts—Requirements—Disclosure.
- 5069-6.03. Retail Charge Agreements—Requirements—Disclosure.
- 5069-6.04. Insurance.
- 5069-6.05. Prohibited Provisions.
- 5069-6.06. Certificate of Completion or Satisfaction Required in Certain Transactions.
- 5069-6.07. Assignment and Negotiation.
- 5069-6.08. Application.
- 5069-6.09. Waiver.

**Art. 5069-6.01. Definitions**

As used in this Chapter, unless the context otherwise requires:

(a) "Goods" means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use, including such property which is furnished or used at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes, but is not limited to, a structure, except a mobile home, to be used as a residence, any boat, boat-trailer, motor scooter, motor-assisted bicycle, motorcycle, camper-type trailer, horse trailer, any vehicle propelled or drawn exclusively by muscular power, and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

The term does not include (i) money, things in action or intangible personal property, other than merchandise certificates or coupons as herein described; or (ii) any automobile, mobile home, truck, trailer, semi-trailer, truck tractor or bus designed and used primarily to transport persons or property on a public highway; or (iii) any vehicle designed to run only on rails or tracks or in the air, as defined in Chapter 7 of this Subtitle; or (iv) any goods which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle.

(b) "Services" means work, labor, or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use, and includes a maintenance or service contract or agreement or warranty, but does not include (i) the services of a professional person licensed by the State except when those services are

rendered in connection with the purchase of goods; or (ii) services for which the cost is by law fixed or approved by, or filed with or subject to approval or disapproval by the United States or the State of Texas, or any agency, instrumentality or subdivision thereof; or (iii) educational services provided by an accredited college or university or a primary or secondary school providing education required by the State of Texas or services of a kindergarten or nursery school; (iv) any services which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle; or (v) any medical or legal services.

(c) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller.

(d) "Retail seller" or "seller" means a person regularly and substantially engaged in the business of selling goods or services to retail buyers, but does not include the services of a member of a learned profession.

(e) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this Article, which provides for a time price differential, as defined in this Article, and under which the buyer agrees to pay the unpaid balance in one or more installments, together with a time price differential. The term includes transactions made pursuant to a retail credit card arrangement as defined in this Article.

(f) "Retail installment contract" means an instrument (other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto) entered into in this State evidencing a retail installment transaction (whether secured or unsecured). The term "retail installment contract" may include a chattel mortgage, a security agreement, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

(g) "Retail charge agreement" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereunder from time to time (whether secured or unsecured), and under the terms of which a time price differential, as defined in this Article, is to be computed in relation to the buyer's unpaid balance from time to time. The term includes an instrument or instruments prescribing the terms of a retail credit card arrangement.

(h) "Time price differential," however denominated or expressed, means the amount which is paid or

payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. The term includes the amounts authorized by this Chapter when the parties have amended the contract to renew, restate, or reschedule the unpaid balance thereof or to extend or defer the scheduled due date of all or any part of any installment or installments.

In addition the term also includes any amounts paid or payable to a seller or holder as consideration for accepting payment in installments over time for goods and services charged under a retail credit card arrangement as defined by this Chapter.

The term does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees. Nor shall the term be in anywise considered as interest as defined by the laws of this State.

(i) "Cash price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements and any of the charges described in Subsections (i), (iii), (iv), and (vi) of Section (j) of this Article which are not separately itemized on the contract.

(j) "Itemized Charges" however denominated or expressed means those amounts included in the contract or agreement but not included in the cash price for charges made to the buyer for:

(i) the amount of the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying, a retained title lien or other security interest created in connection with a retail installment transaction;

(ii) license registration or certificate of title fees;

(iii) any taxes;

(iv) any other fees or charges set or prescribed by law, and not in excess of the amounts allowed by law, that are connected with the sale or inspection of the goods or services;

(v) any premiums or charges for insurance permitted by Article 6.04;

(vi) official filing, recording, and construction permit fees; and

(vii) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, the reasonable and necessary fees and costs paid by the seller or holder for charge for title insurance or for title examination and opinion not to exceed the charge or premium promulgated by the State Board

of Insurance for title insurance for such a transaction and the reasonable and necessary fees and costs paid by the seller or holder to persons not the salaried employees of the seller or holder of the contract for appraisal and inspection fees, fees and costs of investigation of the credit standing or credit worthiness of applicant, and legal fees to an attorney for the preparation of any and all documents in connection with the transaction.

(k) "Principal balance" means the cash price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein for itemized charges, less the amount of the buyer's down payment in money or goods or both.

(l) [Blank]

(m) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the credit card issuer under the retail credit card arrangement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

(n) "Person" means an individual, partnership, corporation, joint venture, trust, association or any legal entity, however organized.

(o) Words of the masculine gender include the feminine and the neuter and, when the sense so indicates, words of the neuter gender may refer to any gender.

(p) "Retail credit card arrangement" means an arrangement, payable in one or more installments, pursuant to which a retail seller or credit card issuer gives to a retail buyer or lessee the privilege of using a credit card for the purpose of purchasing or leasing goods or services from that person, a person related to that person, others licensed or franchised to do business under his business or trade name or designation, or other persons authorized to honor the card. The term does not include arrangements operated pursuant to any other Chapter of this Title.

(q) "Credit card issuer" means a person who issues a card, plate, or other identification device used to obtain goods or services under a retail credit card arrangement. The term does not include any person who honors the credit card but did not issue it, nor any bank, savings and loan association, credit union, person licensed to do business under the provisions of Chapter 3 or 4 of this Subtitle, nor any other person who is regularly and principally engaged in the business of lending money to persons for personal, family, and household purposes.

[Acts 1967, 60th Leg., p. 636, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 2080, ch. 830, §§ 1, 2, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1568, ch. 672, §§ 27, 28, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2018, ch. 792, §§ 1 to 6, eff. Aug. 27, 1979.]

Art. 5069-6.02. Retail Installment Contracts—  
Requirements—Disclosure

(1) Each retail installment contract shall be in writing, dated, signed by the retail buyer, and completed as to all essential provisions, except as otherwise provided in Sections (7) and (8) of this Article.

(2) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight-point type. The contract shall be designated "Retail Installment Contract" and shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."**

(3) The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, a buyer, who has not received delivery of the goods or been furnished or rendered the services, shall have the right to rescind the contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the trade-in allowance thereof. Any acknowledgement by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(4) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and shall reasonably identify the goods sold or to be sold or services furnished or rendered or to be furnished or rendered. Multiple items of goods or services may be described in detail sufficient to identify them in separate writing.

(5) The retail installment contract shall contain and disclose the following items:

(a) The cash price of the goods or services;

(b) The amount of the buyer's down payment, specifying the amounts paid in money and allowed for goods traded in;

(c) Any itemized charges, as defined in Article 6.01. Any charges for insurance permitted by Article 6.04 may be disclosed in the manner described in Article 6.04;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law, regulation, or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not to be given;

(e) Any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise.

(6)(a) A retail installment contract need not be contained in a single document.

(b) If the contract is contained in more than one document, one such document may be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case, such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this Article and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the statement required by Section (13) of this Article.

(7)(a) Retail installment contracts or retail charge agreements negotiated and entered into by mail or telephone, without solicitations in person by salesmen or other representatives of the seller, and based upon a catalog of the seller or other printed solicitation which clearly sets forth the cash prices of sales to be made through such medium, may be made as provided in this section. The provisions of this Article with respect to retail installment contracts shall be applicable to such sales, except that the designation and notice provisions of Section (2) of this Article shall not be applicable to such contract.

(b) Deleted by Acts 1979, 66th Leg., p. 1569, Ch. 672, § 31, eff. Aug. 27, 1979.

(8) A retail installment contract shall not be signed by any party thereto when it contains blank

spaces for items which are essential provisions of the transaction; provided, however, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirement of this section, of delivery of a copy of the contract shall be presumptive proof, or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof, of such delivery and of compliance with this section and any other requirement relating to completion of the contract prior to execution thereof by the buyer, in any action or proceeding.

(9)(a) Notwithstanding provisions of any other law, a retail installment contract payable in substantially equal successive monthly installments beginning one month from the date of the contract may provide for, and the seller or holder may then charge, collect and receive a time price differential which shall not exceed an amount determined in accordance with the following schedule:

(i) On so much of the principal balance as does not exceed Five Hundred Dollars, Twelve Dollars per One Hundred Dollars per annum;

(ii) On so much of the principal balance as exceeds Five Hundred Dollars, but is not in excess of One Thousand Dollars, Ten Dollars per One Hundred Dollars per annum;

(iii) On so much of the principal balance as exceeds One Thousand Dollars, Eight Dollars per One Hundred Dollars per annum.

(b) Such time price differential shall be computed on the principal balance of the retail installment contract from the date of the contract until the due date of the final installment, notwithstanding that the balance thereof is payable in installments.

(c) If the retail installment contract is payable in successive monthly installments substantially equal in amount beginning one month from the date of the contract for a period less or greater than a year, or for amounts less or greater than One Hundred Dollars, the amount of the maximum time price differential set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of fifteen days or more may be considered a full month.

(d) If a retail installment contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the first installment is not payable one month from the date of the contract, the time price differential may not exceed an amount which will provide the same effective

return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(e) Notwithstanding any other provisions of this Article, a minimum time price differential not in excess of the following amounts may be charged on any retail installment contract: Twelve Dollars on any retail installment contract involving an initial principal balance of Seventy-five Dollars or more; Nine Dollars on a retail installment contract involving an initial principal balance of more than Twenty-five Dollars and less than Seventy-five Dollars and Six Dollars on a retail installment contract involving an initial principal balance of Twenty-five Dollars or less.

(f) No seller shall induce a buyer or any husband and wife to become obligated at substantially the same time under more than one retail installment contract with the same seller for the deliberate purpose of obtaining a higher time price differential than would otherwise be permitted under this Article for one retail installment contract. Provided, however, a subsequent contract entered into between the same buyer and seller more than thirty days from the date of making a prior contract shall be presumed not to be in violation of this subsection.

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, or if the holder demands payment in full of the unpaid balance prior to its final due date, he shall receive a refund credit thereon for such prepayment or upon such demand for payment in full. The amount of such refund credit shall represent at least as great a proportion of the original time price differential, after first deducting therefrom an amount equivalent to the minimum charge authorized in this Article, as

(a) the sum of the monthly unpaid balances under the schedule of payments in the contract (beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under the contract, then as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the date of the contract) bears to

(b) the sum of all the monthly unpaid balances under the schedule of installment payments in the contract. Where the amount of refund credit is less than One Dollar, no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above described method, having due regard for the



amount of each installment and to the irregularity of each installment period.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to restate such contract, they may do so and may amend the contract pursuant to Section (12) of this Article.

(11) The holder of any retail installment contract if it so provides may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of each installment or Five Dollars, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. Provided, that only one such delinquency charge may be collected on any installment regardless of the period during which it remains in default. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the holder of the contract, and for court costs and disbursements.

(12)(a) The holder of a retail installment contract, upon request of the buyer, may agree to one or more amendments to extend or defer the scheduled due date of all or any part of any installment or installments and may collect for same a charge computed on the amount of the scheduled installment or installments extended or deferred for the period of extension or deferment at the rate of Fifteen Cents for each Ten Dollars per month; provided that a minimum extension or deferment charge of One Dollar may be charged and collected. Such amendments may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance provided for in the contract and of any additional necessary official fees.

(b) The holder of a retail installment contract, upon request of the buyer may agree to an amendment to renew, restate or reschedule the unpaid balance of the contract and may collect for same a charge to be computed as follows: The sum of the unpaid balance as of the date of the amendment and the cost of any insurance, any additional necessary official fees and any accrued delinquency charges, after deducting an amount which would be equivalent to the required refund credit applicable in the case of prepayment in full as of the date of the amendment charges, shall constitute a principal balance on which a charge may be computed for the term of the amended contract at the applicable rate of charge as provided in Article 6.02.

(c) Any amendment to a retail installment contract must be confirmed in writing and signed by the buyer, and a copy of the writing shall be delivered to the buyer at the time of execution of same. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

(13) Upon written request of the buyer, the holder of a retail installment contract shall give or

forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for each additional statement. A buyer shall be given a written receipt for any payment when made in cash.

(14)(a) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of such previous contract or contracts. Each subsequent purchase shall be a separate retail installment contract under this Chapter, notwithstanding that the same may be included in and consolidated with one or more of such previous contract or contracts. All the provisions of this Chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this section.

(b) In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this Article, it shall be sufficient if the seller shall prepare a written memorandum of each subsequent purchase, in which case the provisions of Sections (1), (2), (3), and (5) of this Article shall not be applicable. The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(c) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied to the previous purchases; and each payment after such subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with such subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase. The provisions of this Subsection (c) shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection

therewith rendered by the seller at the buyer's request.

(15) The dollar amount of the rate brackets prescribed by Section (9)(a) of this Article are subject to adjustment from time to time under Article 2.08 of this Title. As an alternative to the rates and amounts of time price differential provided by Section (9)(a) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title.

[Acts 1967, 60th Leg., p. 638, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1569, ch. 672, §§ 29 to 34, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 16, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-6.03. Retail Charge Agreements—Requirements—Disclosure

(1) A retail charge agreement may be established by a seller or credit card issuer upon the request of a buyer or prospective buyer. The retail charge agreement shall be in writing and signed by the buyer. A copy of such agreement executed on or after the effective date of this Chapter shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature. No agreement executed on or after the effective date of this Chapter shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. If no copy of the agreement is retained by the seller, a notation in his permanent record showing that such agreement was mailed and the date of mailing shall serve as presumptive proof of such mailing. Any such agreement shall contain substantially the fol-

lowing notice printed or typed in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER—DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS."**

(2) The buyer under the retail charge agreement shall be supplied with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite and disclose a legend to the effect that the buyer may at any time pay his total unpaid balance or any part thereof.

(2a) A retail charge agreement that complies with the applicable duties and requirements regarding disclosure under the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), shall be deemed to comply with the duties and requirements regarding disclosure included in Section (2) of this Article.

(3) A retail charge agreement may provide for, and the seller or holder may then, notwithstanding the provisions of any other law, charge, collect and receive a time price differential for the privilege of paying in installments thereunder, which shall not exceed the following:

(a) On so much of the unpaid balance as does not exceed Five Hundred Dollars, Fifteen Cents per Ten Dollars per month; and

(b) If the unpaid balance exceeds Five Hundred Dollars, Ten Cents per Ten Dollars per month on that portion over Five Hundred Dollars.

(4) The time price differential under this Article shall be computed on all amounts unpaid thereunder from month to month (which need not be a calendar month) or other regular period; provided, however, if the regular period is other than a monthly period such time price differential shall be computed proportionately. The time price differential under this Article may be computed for all unpaid balances within a range of not in excess of Ten Dollars on the basis of the median amount within such range, if as so computed such time price differential is applied to all unpaid balances within such range. A minimum time price differential not in excess of Seventy-five Cents per month may be charged, received and collected for any billing cycle in which a balance is due. In addition, such retail charge agreement may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney, not a salaried employee of the holder of the contract, and for court costs and disbursements.

(5) The dollar amount of the rate brackets in this Article is subject to adjustment from time to time under Article 2.08 of this Title. As an alternative to

the rates or amounts of time price differential provided by Section (3) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title. The provisions of Article 1.04 of this Title applicable to open-end accounts apply to this Article.

[Acts 1967, 60th Leg., p. 643, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1573, ch. 672, §§ 35, 36, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2020, ch. 792, §§ 7, 8, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 17, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-6.04. Insurance

(1) On any retail installment contract or retail charge agreement made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract or agreement and include the cost of such insurance as a separate charge in such contract or agreement. Policies of credit life insurance or credit health and accident insurance may not be in force with respect to any one buyer on any one such contract or agreement at any one time that in combination exceed:

(i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or

(ii) as to credit accident and health insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

(2) A seller or holder may, in addition, request or require a buyer to insure the property purchased in, or improved by, goods and services provided under a retail installment transaction subject to this Chapter, including title insurance on real property involved in the retail installment contract or retail charge agreement and subject to a lien or security

interest of seller or holder, and include the cost of such insurance as a separate charge in such contract or agreement. If the property involved in such contract or agreement is a boat which may be enrolled or licensed as a yacht with the United States Coast Guard and be subject to the maritime laws of the United States, a seller or holder may also require a buyer to provide protection and indemnity insurance, longshoremen's and harbor worker's compensation insurance and medical payments insurance in connection with the boat, and include the cost of such insurance as a separate charge in such contract or agreement. Such insurance and the premiums or charges for that insurance shall bear a reasonable relationship to the amount, term and conditions of the contract or agreement, the existing hazards or risk of loss, damage or destruction, or the potential liability and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the goods or services sold, the anticipated use thereof, or goods or services related to the goods or services sold and which may be insured with the goods and services sold; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily offered in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage purchased and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the buyer a statement which shall clearly and conspicuously state that insurance is required in connection with the contract or agreement, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a premium or rate of charge not fixed or approved by the State Board of Insurance is included in the retail installment contract or under the retail charge agreement, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insur-

ance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 6.02 or the retail charge agreement required by Article 6.03, respectively, or may be made in a separate written statement or statements.

(4) All such insurance subject to Section (1) or (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company or companies authorized to do business in this State.

(5) The contract or agreement, separate written statement, or a specimen copy of a certificate or policy of insurance delivered to the buyer shall identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement.

(6) The buyer shall have the privilege at the time of execution of the contract or agreement of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller or holder, but, in such case the inclusion of the insurance premium in the contract or agreement shall be optional with the seller or holder.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the goods or services sold or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or maintained a coverage required by the retail installment contract or retail charge agreement, the holder may but shall not be required to procure substitute insurance coverage which is substantially equivalent to or more limited than the coverages originally required and may add the premium advanced for that insurance to the unpaid balance of the contract or under the retail charge agreement. The substitute insurance may cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates and in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance of a retail installment contract under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or

the contract may be rescheduled in accordance with Article 6.02. If any premium is added under a retail charge agreement, the premium shall be added to the unpaid balance under the retail charge agreement. When any substitute insurance is obtained by the holder of a retail installment contract or retail charge agreement when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract or agreement, deliver, mail, or cause to be mailed to the buyer at his address as specified in the contract or agreement, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(9) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall, at the seller or holder's option, be applied to replace required insurance coverages or be credited to the final maturing installments of the retail installment contract or retail charge agreement, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(10) Any gain, or advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any contract or agreement made under this Chapter except as specifically provided herein.

[Acts 1967, 60th Leg., p. 645, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 309, ch. 142, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1573, ch. 672, § 37, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5413, ch. 1004, § 4, eff. Aug. 29, 1983.]

Section 6 of the 1983 amendatory act provided:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed."

#### Art. 5069-6.05. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default in the performance of any of his obligations, or (b) the

holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment, or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of goods;

(6) Provide that the buyer agrees not to assert against the seller any claim or defense arising out of the sale;

(7) Provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time price differential does not exceed an annual percentage rate permitted under either this Chapter or Article 1.04 of this Title.

[Acts 1967, 60th Leg., p. 646, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 1, eff. May 4, 1977; Acts 1981, 67th Leg., p. 284, ch. 111, § 18, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-6.06. Certificate of Completion or Satisfaction Required in Certain Transactions**

(1) A seller who has entered into a retail installment transaction to perform services or install goods for the modernization, rehabilitation, repair, alteration, improvement or construction of improve-

ments on real property shall obtain a certificate of completion or certificate of satisfaction (hereinafter designated "certificate") signed by the buyer, when all such goods and/or services purchased under a retail installment contract have been performed or installed as required by such contract; and may obtain such a certificate whether or not any guarantee or warranty of the goods or services remains in force. Such certificate shall be a separate writing and shall have the following notation at the top thereof in at least ten-point bold type:

**WARNING TO BUYER—DO NOT SIGN THIS CERTIFICATE UNTIL ALL SERVICES HAVE BEEN SATISFACTORILY PERFORMED AND MATERIALS SUPPLIED OR GOODS RECEIVED AND FOUND SATISFACTORY.**

(2) Such signed certificate or a copy thereof shall be kept by the seller for a period of two years from the date of execution.

(3) No seller shall knowingly induce a buyer to sign such a certificate or knowingly take or accept from the buyer any executed certificate if performance of the services or installation of the goods required by the retail installment contract is not complete.

(4) Execution of such a certificate by a buyer shall not constitute a waiver of any guaranty or warranty made by a seller, manufacturer or supplier. Failure or refusal on the part of a buyer to execute such certificate, without good cause, shall not affect the validity of the retail installment contract.

[Acts 1967, 60th Leg., p. 646, ch. 274, § 2, eff. Jan. 1, 1968.]

**Art. 5069-6.07. Assignment and Negotiation**

Notwithstanding the provisions of any other law, a person may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from another person on such terms and conditions and for such price as may be mutually agreed upon. Notice to the buyer of the assignment or negotiation and any requirement that the seller be deprived of dominion over payments upon a retail installment contract or retail charge agreement, or over the goods if returned to or repossessed by the seller, is not necessary to the validity of a written assignment or negotiation of the retail installment contract or retail charge agreement or any outstanding balance under either, as against creditors, subsequent purchasers, pledges, mortgages and lien claimants of the seller. Unless the buyer has notice of the assignment or negotiation of his retail installment contract, retail charge agreement or any outstanding balance under either, payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders. No right of action or defense of a buyer arising out of a retail installment transaction which

would be cut off by negotiation, shall be cut off by negotiation of the retail installment contract or retail charge agreement to any third party unless such holder acquires the contract relying in good faith upon a certificate of completion or certificate of satisfaction, if required by the provisions of Article 6.06; and such holder gives notice of the negotiation to the buyer as provided in this Article, and within thirty days of the mailing of such notice receives no written notice from the buyer of any facts giving rise to any claim or defense of the buyer. Such notice of negotiation shall be in writing addressed to the buyer at the address shown on the contract and shall: identify the contract; state the names and addresses of the seller and buyer; describe the goods or services; state the time balance and a description of the payment schedule. The notice of negotiation shall contain the following warning to the buyer in at least ten-point bold face type:

ARE THE TERMS OF THE CONTRACT DESCRIBED ABOVE CORRECT AND ARE YOU SATISFIED WITH THE GOODS OR SERVICES FURNISHED? IF NOT, YOU SHOULD NOTIFY US GIVING DETAILS WITHIN 30 DAYS FROM THE DATE THE ABOVE NOTICE WAS MAILED.

[Acts 1967, 60th Leg., p. 647, ch. 274, § 2, eff. Jan. 1, 1968.]

#### Art. 5069-6.08. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to retail installment transactions as defined in Article 6.01 hereof. The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,<sup>1</sup> other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Acts 1967, 60th Leg., p. 647, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1576, ch. 672, § 38, eff. Aug. 27, 1979.]

<sup>1</sup> Business and Commerce Code, § 1.101 et seq.

#### Art. 5069-6.09. Waiver

No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid waiver of any of the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 648, ch. 274, § 2, eff. Jan. 1, 1968.]

### CHAPTER SIX A. MANUFACTURED HOME CREDIT TRANSACTIONS

#### Art.

- 5069-6A.01. Purpose.
- 5069-6A.02. Definitions.
- 5069-6A.03. Credit Charge.
- 5069-6A.04. Adjustment of Rate Charged.
- 5069-6A.05. Requirements and Disclosures.
- 5069-6A.06. Prepayment.
- 5069-6A.07. Amendment to Extend or Defer.
- 5069-6A.08. Insurance.
- 5069-6A.09. Transfer.
- 5069-6A.10. Default.
- 5069-6A.11. Land and Home Transactions.
- 5069-6A.12. Tax Escrow.
- 5069-6A.13. Prohibited Provisions.
- 5069-6A.14. Transfer of Creditor's Rights in a Credit Transaction.
- 5069-6A.15. Waiver.
- 5069-6A.16. Consumer Credit Commissioner.
- 5069-6A.17. Interpretations by Commissioner and Court Decisions.

*Former Chapter 6A, Manufactured Homes Installment Sales, added by Acts 1979, 66th Leg., p. 1576, ch. 672, § 39, was revised by Acts 1981, 67th Leg., p. 2126, ch. 496.*

#### DISPOSITION TABLE

Showing where provisions of former Chapter 6A are now covered in revised Chapter 6A.

Former Article	New Article
5069-6A.01	5069-6A.01
5069-6A.02	5069-6A.02
5069-6A.03	5069-6A.03
5069-6A.04	5069-6A.05
5069-6A.05	5069-6A.06
5069-6A.06	5069-6A.07
5069-6A.07	5069-6A.08
5069-6A.08	5069-6A.09
5069-6A.09	5069-6A.10
5069-6A.10	5069-6A.13
5069-6A.11	5069-6A.14
5069-6A.12	—
5069-6A.13	5069-6A.15
5069-6A.14	5069-6A.16

**Art. 5069-6A.01. Purpose**

The legislature finds that manufactured homes have become a major source of single family housing and that a large number of manufactured homes are being placed on private property as permanent residences. Accordingly, the legislature has determined that credit transactions, both credit sales and consumer loans, for the purchase of manufactured homes should be regulated equally and in the same chapter. The legislature also finds that there have been substantial revisions in the Federal Truth-in-Lending Act<sup>1</sup> and regulations issued pursuant to that Act and has determined that disclosure requirements should be modified to eliminate duplications and inconsistencies and that certain definitions should be revised to coordinate with federal law and regulations. The legislature also desires to make it clear that, before the effective date of Chapter 6A, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-6A.01 et seq., Vernon's Texas Civil Statutes), mobile home credit sales were regulated exclusively by Chapter 7, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-7.01 et seq., Vernon's Texas Civil Statutes), and modular homes by Chapter 6, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-6.01 et seq., Vernon's Texas Civil Statutes). The legislature also finds that there is a growing need for creative and flexible financing plans for the purchase of manufactured homes in this state.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

**Art. 5069-6A.02. Definitions**

(1) Except as expressly defined by this section, all words or phrases used in this chapter are defined in accordance with Part I of the Consumer Credit Protection Act (also known as the Truth-in-Lending Act), 15 U.S.C. Sec. 1601 et seq., as amended, and as implemented by Regulation Z as promulgated by the Board of Governors of the Federal Reserve System.<sup>1</sup>

(2) In this chapter:

(a) "Manufactured home" is defined in accordance with the definition of manufactured home contained in the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes). The term includes any furniture, appliances, drapes, carpets, wall coverings, or other items that are attached to or contained in the dwelling and that are included in the cash price and sold in conjunction with the dwelling.

(b) "Consumer" means a person to whom credit is extended in a credit transaction and includes a co-maker, endorser, guarantor, surety, or other person that is obligated to repay the extension of credit.

(c) "Creditor" means a person involved in a credit transaction who:

(i) extends or arranges for the extension of the credit; or

(ii) is a retailer or broker, as defined by the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), and participates in arranging for the extension of credit.

(d) "Credit transaction" means a retail purchase of a manufactured home under which the consumer, in a credit document, grants to a creditor a purchase money lien on the manufactured home to secure the extension of credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment, whether in connection with a sale, loan, or otherwise. The term includes a bailment or lease, unless terminable without penalty at any time by the consumer, under which the consumer:

(i) agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved; and

(ii) will become or has the option to become, for no additional consideration or for nominal consideration, the owner of the property on compliance with the agreement.

(e) "Credit document" means the credit sale contract or the loan instruments and includes all the written agreements between the consumer and creditor that relate to the credit transaction. The document may consist of one or more pages.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> 12 C.F.R. § 226.1 et seq.; 15 U.S.C.A., foll. § 1700.

**Art. 5069-6A.03. Credit Charge**

(1) Subject to Subsection (2) of this section, the interest or time price differential in a credit transaction may not exceed the sum obtained by applying a simple interest rate equal to 13.32 percent a year to the unpaid balance for the scheduled term of the transaction.

(2) The rate and limitation prescribed by Subsection (1) of this section are effective only if the federal usury preemptions for residential mortgage loans contained in the Veterans' Disability Compensation and Survivors' Benefits Act of 1979, Public Law 96-128,<sup>1</sup> the Housing and Community Development Act of 1979, Public Law 96-153,<sup>2</sup> and the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221,<sup>3</sup> are expressly made inapplicable to transactions made in this state by an Act of the legislature of this state. The limitation prescribed by Subsection (1) of this section becomes effective on the effective date of such an Act.

(3) By agreement between the consumer and the creditor expressly set forth in the credit document, the credit transaction may provide for an adjustable rate by which the initial contract rate of interest or time price differential is to be adjusted at certain

stated regular intervals in accordance with Section 4 of this chapter. Such an interval is the "rate adjustment period."

(4) For purposes of disclosure only, the finance charge is computed on the unpaid balance from the effective date of the credit transaction as set forth in the credit document until the maturity of the final installment, notwithstanding that the total of payments is required to be paid in installments; if the credit document includes an adjustable rate provision, the finance charge shall be computed on the amount financed using the initial contract rate.

(5) For a period less or greater than 12 months or for amounts less or greater than \$100, the amount of the maximum charge shall be decreased or increased proportionately. A fractional monthly period of 15 days or more may be considered a full month.

(6) If a credit transaction is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments, either in amounts or periods, or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments, or if the first installment is not payable one month from the date of the contract, the finance charge may not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the credit transaction were payable in substantially equal successive monthly installments, beginning one month from the date of the credit document.

(7) As an alternative to the rates and amounts of time price differential that may be charged under this section, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this title.

(8) In a transaction not involving real estate, no documentary fee for the preparation of credit documents shall be charged to the consumer and the only official fees which can be charged to the consumer are (i) the title fee and (ii) the installation fee, both as set by the Commissioner of the Department of Labor and Standards, and (iii) the permit fee for highway movement to the installation site as paid to the State Department of Highways and Public Transportation.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1238, ch. 266, § 1, eff. May 27, 1983; Acts 1983, 68th Leg., p. 4699, ch. 817, § 14, eff. Sept. 1, 1983.]

1 38 U.S.C.A. § 1828.

2 12 U.S.C.A. § 1735f-7.

3 12 U.S.C.A. § 371b-1 (repealed); 12 U.S.C.A. § 371b-1 note.

This article was revised by Acts 1981, 67th Leg., p. 2126, ch. 496, eff. Sept. 1, 1981, without reference to amendment of this article by Acts 1981, 67th Leg., p. 285, ch. 111, § 19, eff. May 8, 1981, which added a § G to read:

"G. Alternate Rate. As an alternative to the rates and amounts of time price differential provided by Subsection A of this section, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by article 1.04 of this Title."

Sections 27 and 28 of the 1981 amendatory act adding § G provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-6A.04. Adjustment of Rate Charged

(1) Adjustments in the rate charged as permitted by Subsection (3) of Section 3 of this chapter must be based on changes in a specific index, as set forth in the credit document, with the index base being fixed by the index value on the first day of the month in which the credit document is dated. The index may be only:

(a) the monthly average gross yield to the Federal National Mortgage Association on accepted bids in weekly or biweekly auctions for four-month commitments to purchase FHA-insured or VA-guaranteed home mortgages, as published in the Federal Reserve Bulletin;

(b) the monthly average yield on United States Treasury securities adjusted to a constant maturity of five years as published in the Federal Reserve Bulletin; or

(c) an index expressly approved by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

(2)(a) Rate adjustments may not exceed one-half of one percent a year for any six-month period. If the stated regular interval for rate adjustments is a 12-month period or longer, rate adjustments may not exceed one percent a year. In no event shall the total of all rate adjustments over the term of the credit transaction exceed the lesser of:

(i) one-half of the initial rate; or

(ii) eight percent; or

(iii) the quotient, expressed as a percentage, of the term of the loan in years divided by two.

(b) It is expressly provided, however, that any credit transaction which contains rate adjustment



provisions pursuant to Subsection (2)(a) shall not contain any other provision which would additionally allow a creditor to renegotiate, modify, or otherwise adjust the rate or term of the credit transaction within a 60-month period. It is intended that this Subsection (2)(b) shall prohibit rate adjustments authorized by Subsection (2)(a) in combination with "rollover" type mortgage loans having a term of five years or less.

(3) Changes in the index shall be calculated by determining the change in the number of points in the index from the index base, or for changes after the initial change from the index value used for the immediately preceding rate adjustment, to the index value on the first day of the month that is more than 50 days before the next rate adjustment period. This change is the rate adjustment. The rate adjustment shall be applied to the initial contract rate or the current adjusted rate, and after proper notice is given to the consumer, the rate shall be increased or decreased by that amount. The rate may not be adjusted unless the rate adjustment is at least one-eighth of one percent a year.

(4) Any increase in the rate authorized or permitted by this section may be waived at the option of the creditor. Any decrease in the rate resulting from a decrease in the index is mandatory, subject to the limitations prescribed by this section. If the creditor agrees to impose periodic or aggregate limitations on rate adjustments that are smaller or more restrictive than the limitations prescribed by this section, those limitations also apply to decreases.

(5) Before the 40th day preceding the payment date on which a rate adjustment is effective, the creditor shall mail to the consumer, postage prepaid, a notice that sets forth:

- (a) the initial contract rate or the current adjusted rate if different from the initial contract rate;
  - (b) the index base, or the index value used for the immediately preceding rate adjustment, if any, and the dates on which the index base or value, as appropriate, was determined;
  - (c) the index value, and the date of the index value, used to calculate the change in the index;
  - (d) the rate adjustment;
  - (e) the new adjusted rate;
  - (f) the amount of current monthly payments on the indebtedness;
  - (g) the adjusted amount of monthly payments and the date on which the adjustment is effective; and
  - (h) a statement of the prepayment rights of the consumer as set forth in the credit document.
- (6) A creditor may not charge any fees or assess a consumer any costs in connection with the processing of any rate adjustment.

(7) Notwithstanding any of the requirements and limitations set forth by Subsections (1) through (6) of this section, a creditor and consumer may agree on any terms or provisions in the credit transaction as may be expressly authorized or permitted in any program for residential mortgage loans by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, or any other federal department, agency, or board. If the creditor and consumer agree on such an alternative residential mortgage loan, the creditor shall comply with all limitations, requirements, and disclosures of the agency that relate thereto.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.05. Requirements and Disclosures**

(1) The creditor shall comply with all applicable requirements and disclosures pursuant to Part I of the Consumer Credit Protection Act (also known as Truth-in-Lending Act), 15 U.S.C. Sec. 1601 et seq., as amended, and as implemented by Regulation Z as promulgated by the Board of Governors of the Federal Reserve System.<sup>1</sup> In the event of any inconsistency or conflict between the provisions of this chapter and federal requirements, disclosures, or interpretations thereof, the federal requirements, disclosures, or interpretations control, and the inconsistent or conflicting provisions of this chapter do not apply.

(2) In a transaction involving more than one creditor, each creditor whose identity is known at the time of the execution of the credit document shall be clearly identified. The disclosure of any one item by any creditor satisfies the requirement to disclose that item regardless of which creditor makes the disclosure.

(3) In a credit transaction involving more than one consumer, the creditor is required to furnish the disclosures required by this chapter to only one of the consumers.

(4) The printed portion of the credit transaction, other than instructions for completion, must be in a size equal to at least eight-point type. The document must contain substantially:

"NOTICE TO THE CONSUMER—DO NOT SIGN THIS DOCUMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE DOCUMENT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND OBTAIN A SUBSTANTIAL REFUND OF THE CREDIT CHARGE. KEEP THIS DOCUMENT TO PROTECT YOUR LEGAL RIGHTS."

(5) The creditor may collect, on each installment in default for a period of more than 15 days, a delinquency charge that may not exceed an amount equal to five percent of each installment or \$20,

whichever is less. Only one delinquency charge may be collected on any installment, regardless of the period for which it remains in default. The creditor shall disclose in the credit document the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments. The charge or collection of a delinquency charge does not affect the right of a creditor to accelerate the debt under Section 10 of this chapter.

(6) The consumer's acknowledgment of delivery of a copy of the credit document is conclusive proof:

- (a) of the document's delivery;
- (b) that the document, when signed by the consumer, did not contain any blank spaces except as provided by this chapter; and
- (c) in any action or proceeding by or against a subsequent creditor who does not have knowledge to the contrary, of compliance with this section by the creditor.

(7)(a) If a consumer desires to order from a creditor a manufactured home that is not in the inventory of the creditor and must be ordered from the manufacturer, and the consumer desires to make the purchase by entering into a credit transaction under this chapter, the creditor may require the consumer to pay a deposit that may not exceed five percent of the estimated cash price. On arrival of the specially ordered manufactured home the consumer shall execute a credit document under this chapter and the creditor shall apply the deposit toward payment of the cash price. Before the execution of the credit document, the consumer may cancel the purchase. If the order is canceled, the creditor may retain all or any portion of the deposit, and the consumer is not responsible for any costs or expenses other than the forfeited deposit. A creditor who is an arranger of credit and who has failed to qualify the consumer for a loan or credit sale may not retain more than 10 percent of the total deposit or \$100, whichever is less.

(b) If a consumer desires that a creditor hold a particular manufactured home that is in inventory for a period of 20 days or more for purchase by the consumer at the later time, the creditor may require the consumer to pay a deposit that may not exceed \$200. On or before the last day that the creditor is obligated to hold the manufactured home, the consumer shall execute a credit document under this chapter and the creditor shall apply the deposit toward payment of the cash price. Before the execution of the credit document the consumer may cancel the agreement to purchase and the hold order. If the order is canceled, the creditor may retain all of the deposit, and the consumer is not responsible for any costs or expenses other than the forfeited deposit.

(c) If the creditor fails to order or fails to hold the manufactured home in inventory in accordance with the deposit agreement, or retains a deposit in excess

of that authorized by this section, the creditor forfeits the deposit and in addition shall pay three times the amount of the deposit.

(d) The consumer shall be given conspicuous written notice of the deposit requirements of this section in a type size equal to at least eight point. The consumer must sign the notice and receive a copy.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4697, ch. 817, § 13, eff. Sept. 1, 1983.]

112 C.F.R. § 226.1 et seq.; 15 U.S.C.A., foll. § 1700.

#### Art. 5069-6A.06. Prepayment

Notwithstanding the provisions of any credit transaction to the contrary, a consumer may prepay the debt in full at any time before maturity. On prepayment, after the deduction of an acquisition charge not exceeding \$50, the consumer is entitled to a refund credit of the time price differential, or interest in the case of loans, calculated on an actuarial basis in accordance with Federal Home Loan Bank Board regulations promulgated pursuant to the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221,<sup>1</sup> for the prepayment of mortgage loans that are secured by first liens on residential manufactured homes. In making the calculation, the creditor may assume that the payments have been made as originally scheduled and ignore any differences created by late or early payments.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> Generally, see 12 U.S.C.A. § 3501 et seq.; 12 C.F.R. § 1201.1 et seq.

#### Art. 5069-6A.07. Amendment to Extend or Defer

(1) The creditor, on request by the consumer, may agree to an amendment to extend or defer the scheduled due date of all or any part of any installment or installments, to renew, restate, or reschedule the unpaid balance of the debt, or to increase or reduce the number of installments and may collect for such an amendment a charge that may not exceed the amount obtained by the application of the actual contract rate of interest or time price differential, as adjusted, to the remaining amount of the unpaid balance, calculated under Section 6 of this chapter, for the period that any sum is extended or deferred. The creditor and consumer may agree to an unlimited number of different extensions, with each extension for as long a period as agreed to by both parties.

(2) Alternatively, the creditor, on request by the consumer, may agree to amend the original credit transaction by renewal, restatement, or rescheduling of the unpaid portion of the total of payments. In such an event, the charge shall be computed in accordance with this subsection. If the original credit transaction is amended, the sum of the unpaid balance as of the date of amendment, the cost of any insurance incidental to the amendment, any

additional necessary official fees, and any accrued delinquency and collection charges remaining after deducting the prepayment refund credit required by Section 6 of this chapter constitutes an unpaid balance on which the charge for the amended transaction may be computed for the term of the amended transaction at the applicable rate provided by Section 3 of this chapter. The provisions of this chapter relating to minimum charges and acquisition costs do not apply in calculating the unpaid balance for the amended transaction.

(3) An amendment to the transaction as authorized by Subsection (2) of this section must be confirmed in writing and signed by the consumer. The writing must set forth the terms of the amendment and the new due dates and amounts of the installments. The creditor shall deliver to the consumer or mail to the consumer at the address shown on the credit document a copy of the writing. The writing together with the original credit document and any previous amendments to the original credit document constitute the credit document.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.08. Insurance.**

(1) In a credit transaction under this chapter, a creditor may require a consumer to insure the property involved in a credit transaction with coverage designated by the creditor. That insurance may include federal flood coverage. The cost of the insurance permitted by this subsection may be included as a separate charge in the credit transaction.

(2) When insurance is required in connection with a credit transaction made under this chapter, the creditor shall furnish to the consumer a statement that clearly and conspicuously states that insurance is required in connection with the transaction and that the consumer has the option of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in this state subject to the limitations of Subsection (9) of this section. Such a statement may be made in conjunction with or be a part of the credit document.

(3) If the consumer fails to obtain the required insurance at any time, the creditor may treat the failure as an event of default or may purchase the required insurance and add the premium of the insurance, together with interest, at the contract rate of interest or time price differential or last adjusted rate to the credit transaction. In addition, the consumer may agree to purchase any insurance allowed by this chapter after the date of the credit document and include the amount of the premium for the insurance in the unpaid balance. The additional insurance premium bears interest at a rate not in excess of the contract rate of interest or time price differential or last adjusted rate. The additional premium and interest may be paid in any

period and any number of installments agreed to by the parties. In the case of forced place insurance, the creditor shall notify the consumer that the insurance has been forced placed and that the premium for the insurance and interest on the premium have been added to the debt. The creditor may require the consumer to pay the premium and interest in any period and in the number of installments as the creditor elects, including but not limited to a lump-sum payment on the date of the last installment, equal increments added to each of the remaining installments, or a lesser number of installments or unequal increments. In addition, the consumer and creditor may agree that the purchase of any additional insurance will be handled in accordance with an insurance premium financing agreement made under the Insurance Code and will be treated separately from the transaction.

(4) A creditor may finance as part of the credit transaction any insurance required in accordance with Subsection (1) of this section, as well as any other insurance coverage requested by the consumer. However, vendor's single interest insurance is prohibited and may not be financed as part of the credit transaction. If the consumer elects to purchase the optional insurance, the consumer must sign a statement indicating the consumer's desire to purchase the insurance and describing the term, premium, and type of insurance purchased. That statement may be included as part of the credit document or may be part of a separate document.

(5) The credit document must disclose the term, premium, and type of insurance that is included in the unpaid balance. If required insurance is not included in the unpaid balance, the creditor shall disclose only the term and type of insurance required.

(6) The premium of any insurance included in the credit transaction may be included in the unpaid balance and paid as part of the total of payments even if the term of the insurance is less than the term of the credit transaction.

(7)(a) If the creditor and consumer agree, the consumer may elect to purchase any insurance through the creditor and include the premiums of the insurance in the credit transaction. In the alternative, the consumer may elect to include in the credit transaction, or pay to the creditor, the first year's premium and, on the date each installment is due, pay a sum equal to one-twelfth of the yearly premium for the insurance as reasonably estimated.

(b) The creditor shall deposit and hold the insurance premium installments paid to the creditor in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply those funds to pay the insurance premiums. The creditor may not charge for holding and applying the funds, analyzing the account, or verifying and compiling the bills. The creditor is not required to pay the consumer any interest or earnings on those funds. The creditor

shall give to the consumer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

(c) If the sum of the insurance premium installments held by the creditor and the future insurance premium installments of funds payable before the due dates of insurance premiums exceeds the amount required to pay the insurance premiums as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future insurance premium installments. If the amount of the insurance premium installments held by the creditor is not sufficient to pay insurance premiums as they come due, the consumer shall pay to the creditor before the 31st day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to insurance required under Subsection (1) of this section, the creditor may treat the deficiency in the same manner as forced placed insurance described by Subsection (3) of this section.

(d) If the consumer agrees to enter into an insurance escrow agreement, the creditor may require the consumer to use that method of payment for the full term of the debt. However, the creditor may not in any way require the consumer initially to enter into an escrow agreement.

(8) All insurance required by the credit transaction or included in the credit transaction shall be written at lawful rates and in accordance with the Insurance Code by a company authorized to do business in this state.

(9) If the consumer procures required insurance from someone other than the creditor, the creditor has the right for good cause to refuse to accept certain insurance policies from insurance companies designated by the creditor. The reason for such a refusal shall, on request by the consumer, be set forth in writing and delivered to the consumer.

(10) If the insurance is canceled, adjusted, or terminated for any reason, the refund for unearned insurance premiums received by the creditor shall be credited to the final maturing installments of the credit transaction; if there is a remaining balance of the unearned insurance premiums, it shall be refunded to the consumer, except that a cash refund is not required if the remaining balance is less than \$1.

(11) Any gain or advantage to the creditor or any employee, officer, director, agent, general agent, affiliate, or associate of the creditor from insurance or its provision or sale may not be considered as an additional charge or further finance charge in connection with any credit transaction made under this

chapter except as specifically provided by this chapter.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

#### Art. 5069-6A.09. Transfer

A creditor may agree to accept a subsequent consumer as an obligor under an existing obligation and, if so, may charge and receive a transfer fee not in excess of one-half of one percent of the outstanding balance computed under Section 6 of this chapter or \$50, whichever is greater.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

#### Art. 5069-6A.10. Default

(1) A creditor may accelerate the maturity of any part or all of the amount owing on a credit transaction only if the consumer is in default on the performance of any obligation under the credit transaction.

(2) Before the 31st day before the day on which the creditor takes any action to accelerate the maturity of any debt, to start any legal action to recover under such an obligation, or to take possession of any security under the credit transaction, the creditor shall mail by registered or certified mail to the address where the manufactured home is located a written notice of intent to take the action. The notice must set forth in a clear and concise manner:

(a) the particular obligation or security interest, including the date of the credit transaction according to the records of the creditor, as well as a brief description of the manufactured home;

(b) the nature of the default claimed, which may be stated in general terms, for example: "failure to maintain property damage insurance";

(c) the action that the creditor proposes to take at the expiration of the notice period; and

(d) the right of the consumer to cure the default and the exact manner in which to cure, including the sum of money that must be tendered, if any, in order to cure, the individual or office address to whom it must be tendered, and the form of acceptable payment in accordance with the provisions of this title.

(3) If the consumer has abandoned or voluntarily surrendered the property that is the subject of the credit transaction, the creditor is not required to give the notice required by Subsection (2) of this section if the creditor retains evidence of the abandonment or surrender to the satisfaction of the commissioner.

(4) In calculating the amount owing, the creditor shall grant to the consumer a refund of the finance charge calculated in accordance with Section 6 of this chapter. In addition, the credit document may provide for the payment of an attorney's reasonable fee and for court costs and disbursements. In the

event of repossession, sequestration, or other action necessary to secure possession of the manufactured home securing the payment of the credit transaction, the credit document may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with repossession or foreclosure, including costs of storing, reconditioning, and reselling the manufactured house, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code, as amended. In the event of default, any sum in the insurance and tax escrow account established under this chapter shall be applied to the remaining balance of the credit transaction.

(5) In the event of acceleration, the outstanding debt as calculated in accordance with this section, including any expenses actually incurred and authorized by this section, bears interest at a rate equal to the contract rate or last adjusted rate. The creditor who possesses the first recorded perfected security interest may repossess the manufactured home. If the manufactured home has been affixed to real property, the creditor, after notice pursuant to this section, may remove the manufactured home from the real property in accordance with the applicable provisions of the Business & Commerce Code, as amended, as if it were personal property.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.11. Land and Home Transactions**

(1) If real estate, not to exceed 200 acres, is purchased by the consumer at the same time as, or in conjunction with, the purchase of a manufactured home, with the agreement that the manufactured home will be attached to the real property within a reasonable time, the real estate, on agreement of the parties, may be considered to be a part of the credit transaction under this chapter and included in the cash price even if the real estate and manufactured home are sold by separate persons.

(2) If the real estate is included in the cash price under Subsection (1) of this section, the creditor may charge fees that are ordinarily associated with real estate transactions, and are not otherwise prohibited by law, including but not limited to those fees associated with real estate transactions that are excluded from the finance charge by the Federal Truth-in-Lending Act<sup>1</sup> and Regulation Z.<sup>2</sup>

(3) In a land and home credit transaction permitted in this section, the creditor may elect to treat the manufactured home as if it were residential real estate for all purposes in connection with the credit transaction. The election must be conspicuously disclosed to the consumer. On such an election the provisions of this chapter, except the definitions in Section 2, are not applicable to the credit transac-

tion, and the credit transaction is considered to be a residential real estate loan for all purposes.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

<sup>2</sup> 12 C.F.R. § 226.1 et seq.; 15 U.S.C.A. foll. § 1700.

**Art. 5069-6A.12. Tax Escrow**

(1) If the creditor and consumer agree, the consumer may elect to pay ad valorem taxes on the manufactured home through the creditor and include these taxes as reasonably estimated for the first year in the credit transaction or pay the tax estimate for the first year to the creditor and, on the date each installment is due, pay a sum equal to one-twelfth of the annual ad valorem taxes as reasonably estimated.

(2) The creditor shall deposit and hold the tax installments paid to the creditor in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply those funds to pay the ad valorem taxes on the manufactured home. The creditor may not charge for holding and applying the funds, analyzing the account, or verifying and compiling the bills. The creditor is not required to pay the consumer any interest or earnings on those funds. The creditor shall give to the consumer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

(3) If the sum of the tax installments held by the creditor and the future tax installments of funds payable before the due dates of taxes on the manufactured home exceeds the amount required to pay the taxes as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future tax installments. If the amount of the tax installments held by the creditor is not sufficient to pay taxes as they come due, the consumer shall pay to the creditor before the 31st day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to the tax installments, the creditor may treat the deficiency in the same manner as forced placed insurance pursuant to Subsection (3) of Section 8 of this chapter.

(4) If the consumer agrees to enter into a tax escrow agreement, the creditor may require the consumer to use that method of payment for the full term of the debt. However, the creditor may not in any way require the consumer initially to enter into a escrow agreement.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.13. Prohibited Provisions**

A credit transaction may not:

(a) contain a power of attorney to confess judgment in this state or an assignment of wages;

(b) provide that the consumer agrees not to assert against a creditor or any assignee of the credit transaction any claim or defense arising out of the sale; or

(c) authorize the creditor or other person acting on the creditor's behalf to enter on the consumer's premises unlawfully or to commit any breach of the peace in the repossession of a manufactured home.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.14. Transfer of Creditor's Rights in a Credit Transaction**

(1) Any person may purchase or acquire or agree to purchase or acquire any credit transaction or any outstanding balance from any other person on the terms and conditions and for the price on which the parties agree.

(2) Notice to the consumer of the transfer of rights and any requirement that the creditor be deprived of dominion over payments on a credit transaction or over the manufactured home, if returned to or repossessed by the creditor, is not necessary to the validity of a written transfer of the credit transaction or any outstanding balance as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the creditor.

(3) Unless the consumer has notice of the transfer of the credit transaction or any outstanding balance under the transaction, payment made before notice by the consumer to the creditor last known to the consumer is binding on all subsequent creditors.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.15. Waiver**

No act or agreement of the consumer before or at the time of the making of a credit transaction or purchase under the transaction constitutes a valid waiver of any of the provisions of this chapter.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.16. Consumer Credit Commissioner**

The Consumer Credit Commissioner of Texas has the same powers and authority to enforce this chapter as those provided by Chapter 2 of this title.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

**Art. 5069-6A.17. Interpretations by Commissioner and Court Decisions**

A person does not violate this chapter by any act done or omitted that conforms to an interpretation of any provision of this chapter by the Consumer Credit Commissioner or by a final decision of an appellate court of this state or of the United States

in effect at the time the act was done or omitted. If such an interpretation or decision is modified, whether in whole or part, or is rescinded or invalidated by either a subsequent interpretation or final decision, the subsequent interpretation or final decision does not apply to a credit transaction made before the effective date of the subsequent interpretation or final decision.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

**CHAPTER SEVEN. MOTOR VEHICLE  
INSTALLMENT SALES**

**Art.**

- 5069-7.01. Definitions.
- 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts.
- 5069-7.03. Finance Charge Limitations.
- 5069-7.04. Refunds on Prepayment.
- 5069-7.05. Amendments of Retail Installment Contracts.
- 5069-7.06. Insurance.
- 5069-7.07. Prohibited Provisions.
- 5069-7.08. Assignment and Negotiation.
- 5069-7.09. Application.
- 5069-7.10. Waiver.

**Art. 5069-7.01. Definitions**

For the purposes of this Chapter, unless the context otherwise requires:

(a) "Motor Vehicle" means and is limited to any automobile, mobile home, truck, truck tractor, trailer, semi-trailer and bus designed and used primarily to transport persons or property on a public highway, including any commercial vehicles and heavy commercial vehicles as defined in this article, excepting however, any boat trailer, any vehicle propelled or drawn exclusively by muscular power or which is designed to run only on rails or tracks or in the air, or other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

(b) "Retail Buyer" or "Buyer" means a person who agrees to buy or buys a motor vehicle other than principally for the purpose of resale, from a retail seller in a retail installment transaction.

(c) "Retail Seller" or "Seller" means a person engaged in the business of selling motor vehicles to retail buyers in retail installment transactions.

(d) "Retail Installment Transaction" or "Transaction" means any transaction as a result of which a retail buyer acquires a motor vehicle from a retail seller under a retail installment contract for a sum consisting of the cash sale price and other charges as limited by this Chapter and agrees with a retail seller to pay part or all of such sum in one or more deferred installments. The term shall include every transaction wherein the promise or agreement to pay the deferred balance of such sum is made by the retail buyer to the retail seller notwithstanding

the existence or occurrence of any one or more of the following events:

(i) that the retail seller has arranged or arranges to sell, transfer or assign the retail buyer's obligation;

(ii) that the amount of the charges is determined by reference to charts or information furnished by a financing institution;

(iii) that the forms of instruments used to evidence the retail installment transaction are furnished by a financing institution; and

(iv) that the credit standing of the retail buyer is or has been evaluated by a financing institution.

(e) "Retail Installment Contract" or "Contract" means a contract entered into in this State evidencing a retail installment transaction. The term includes a chattel mortgage, conditional sale contract, security agreement and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the bailment or lease. The term shall also include a contract which the parties have amended in order to renew, restate or reschedule the unpaid balance thereof, or to extend or defer the scheduled due date of all or any part of any installment or installments, in which case the retail installment contract shall consist of the original contract and the amendments thereto.

(f) "Cash Price" means the price stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought from the seller, the motor vehicle and other goods and services which are the subject matter of such contract if such sale had been a sale for cash. The cash price may include any taxes and charges for delivering, servicing, repairing, altering or improving the motor vehicle, or for installation of the motor vehicle or of goods to the motor vehicle, and charges for accessories and goods related to or used with the motor vehicle, if such charges are made to both cash and credit buyers alike and may include any of the charges described in Subsections (ii) and (iii) of Section (g) of this Article if they are not separately itemized on the contract.

(g) "Itemized Charges" however denominated or expressed means those amounts, if any, included in the contract but not included in the cash price for charges made to the buyer for:

(i) any registration, certificate of title, and license fees;

(ii) any taxes;

(iii) any other fees or charges that are set or prescribed by law, that are not more than the

amounts allowed by law, and that are connected with the sale or inspection of a motor vehicle; and

(iv) any charges permitted by Article 7.06 for insurance, service contracts, or warranties permitted by Article 7.06.

(h) "Principal Balance" means the cash price plus the amounts, if any, included in the retail installment contract for itemized charges, less the amount of the buyer's down payment, if any, in money or goods or both.

(h-1) In addition to the provisions of Section (h) of this article, "principal balance" includes a motor vehicle inspection fee and a documentary fee for services actually rendered to, for, or on behalf of the retail buyer in preparing, handling, and processing documents relating to the motor vehicle and the closing of the transaction evidenced by the retail installment contract. If a documentary fee is charged:

(i) it must be charged to both cash and credit buyers;

(ii) it may not exceed \$25;

(iii) it shall be disclosed on the retail installment contract as a separate itemized charge; and

(iv) all preliminary worksheets which are exhibited to the buyer in which the motor vehicle retail seller calculates a sale price for the buyer, the buyer's order, and the retail installment contract shall include in reasonable proximity to the point in the worksheet, buyer's order, and retail installment contract where the documentary fee is disclosed the amount of the documentary fee to be charged and the following notice in boldface type:

**"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. BUYERS MAY AVOID PAYMENT OF THE FEE TO THE SELLER BY HANDLING THE DOCUMENTS AND PERFORMING THE SERVICES RELATING TO THE CLOSING OF THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$25. THIS NOTICE IS REQUIRED BY LAW."**

(v) If the language primarily used in the oral sales presentation is not the same as that in which the retail installment contract is written, the seller shall furnish to the buyer a written statement containing the notice set out in Subsection (iv) in the language primarily used in the oral sales presentation.

(i) "Time Price Differential" means the total amount to be added to the principal balance to determine the balance of the buyer's indebtedness to be paid under a retail installment contract.

(j) "Holder" means the retail seller of the motor vehicle or assignee if the retail installment contract

or the outstanding balance thereunder is sold or otherwise transferred.

(k) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized.

(l) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(m) [Blank]

(n) "Heavy Commercial Vehicle" means any domestic or foreign truck or truck tractor that weighs 25,000 or more pounds gross vehicular weight (GVW) or any trailer or semitrailer designed for use in combination with any truck or truck tractor weighing 25,000 or more pounds gross vehicular weight (GVW) and that is not used primarily for personal, family, or household use.

[Acts 1967, 60th Leg., p. 648, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 87, ch. 52, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1016, ch. 450, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1587, ch. 672, §§ 40, 41, eff. Aug. 27, 1979.]

#### Art. 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts

(1) Each retail installment contract shall be in writing, dated, signed by both the buyer and the seller, and completed as to all essential provisions before it is signed by the buyer; provided, however, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks or similar information and the due date of the first installment may be inserted in the contract after its execution. A retail installment contract need not be contained in a single document.

(2) The printed portion of the retail installment contract, other than instructions for completion, shall be in a size equal to at least eight-point type. Such contract shall contain substantially the following notice in a size equal to at least ten-point bold type:

**"NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."**

(3) A retail installment contract or separate written statement shall also contain, in a size equal to at least ten-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.

(4) The seller shall deliver to the buyer, or mail to him at his address shown on the retail installment contract, a copy of such contract as accepted by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his contract and to receive a refund of all payments made and a return of all goods traded in to the seller on account of or in contemplation of such contract, or if the goods traded in cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the retail installment contract shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature.

(5) The retail installment contract shall contain the names of the seller and the buyer, the place of business or address of the seller, the residence or other address of the buyer as specified by the buyer, and a description of the motor vehicle sold or to be sold.

(6) The retail installment contract shall specifically set out the following items:

(a) The cash price as defined in Article 7.01;

(b) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in;

(c) Any itemized charges, as defined in Article 7.01. Any charges for insurance, service contracts, or warranties permitted by Article 7.06 may be disclosed in the manner described in Article 7.06;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law or regulation or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not be given.

(e) The above items need not be stated in the sequence or order set forth and additional information may be included.

(7) The buyer's acknowledgment, conforming to the requirements of this Article, of delivery of a copy of the retail installment contract shall be conclusive proof of such delivery, that such contract when signed by the buyer did not contain any blank spaces except as herein provided, and of compliance with this Article in any action or proceeding by or against a holder of such contract without knowledge to the contrary when he purchases it.

(8) Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for



each additional statement. A buyer shall be given a written receipt for any payment when made in cash.

(9)(a) Except as provided in Subsection (b) of this Section, if any scheduled installment of a retail installment contract is more than twice as large as the average of all prior scheduled installments (except the down payment), the buyer has the right, at the buyer's option, to refinance, without being charged an acquisition cost, that payment at the time it is due. The buyer has the right to refinance that payment in installments which are neither larger nor more frequent than the average amount and frequency of payments preceding that payment, and the rate of time price differential applicable to such refinancing shall not exceed that originally agreed upon.

(b) Section (9)(a) of this Article does not apply to:

- (i) a lease;
- (ii) a retail installment transaction for a vehicle to be used primarily for purposes other than personal, family, or household use;
- (iii) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer; or
- (iv) a transaction of a kind determined by the Commissioner as not requiring the protection of the buyer provided in Section (9)(a) of this Article.

[Acts 1967, 60th Leg., p. 649, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1587, ch. 672, § 42, eff. Aug. 27, 1979.]

#### Art. 5069-7.03. Finance Charge Limitations

(1) Notwithstanding the provisions of any other law, the time price differential in a retail installment contract payable in substantially equal successive monthly installments beginning one month after the date of the contract shall not exceed the larger of Twenty-five Dollars or an amount determined under the following schedule:

Class 1. Except the heavy commercial vehicles provided for in Class 2, any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—Seven Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 2. Any new domestic motor vehicle not in Class 1, any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, any used foreign motor vehicle not more than two years old, and any new or used heavy commercial vehicle not more than two years old—Ten Dollars per One Hundred Dollars per annum.

Class 3. Any used motor vehicle not in Class 2 and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made,

and, if a foreign motor vehicle, not more than four years old—Twelve Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 4. Any used motor vehicle not in Class 2 or Class 3—Fifteen Dollars per One Hundred Dollars per year. Provided, however, if the principal balance is Three Hundred Dollars or less, the time price differential shall be Eighteen Dollars per One Hundred Dollars per annum.

(2) Such charge shall be computed on the principal balance as defined under Article 7.01(h) of this Chapter from the date of the contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(3) For a period less or greater than twelve months or for amounts less or greater than One Hundred Dollars, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of fifteen days or more may be considered a full month.

(4) If a retail installment contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in equal successive monthly installments followed by or interspersed with an irregular, unequal or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract, the charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(5) A buyer under a retail installment contract may, upon written consent of the holder, transfer his equity in the motor vehicle at any time to another person, but in that event the holder shall be entitled to a transfer of equity fee not exceeding Twenty-five Dollars or Fifty Dollars in the case of a heavy commercial vehicle retail installment transaction.

(6) The holder of any retail installment contract may collect a delinquency charge on each installment in default for a period of more than ten days in an amount not to exceed five percent of each installment or Five Dollars, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. Provided, that only one such delinquency charge may be collected on any installment regardless of the period during which it remains in default. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the seller or holder of the contract, and for court costs and disbursements, and in the event of repossession, sequestration, or

other action necessary to secure possession of a motor vehicle securing the payment of a retail installment contract, such contracts may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with such repossession or foreclosure, including costs of storing, reconditioning and reselling such motor vehicle, subject to the standards of good faith and commercial reasonableness set by the Uniform Commercial Code as adopted in Texas.

(7) As an alternative to the time price differential authorized by Section (1) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title.

[Acts 1967, 60th Leg., p. 651, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 88, ch. 52, § 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1589, ch. 672, § 43, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 285, ch. 111, § 20, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

#### Art. 5069-7.04. Refunds on Prepayment

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay it in full at any time before maturity, and if he does so, or when the holder demands payment in full of the unpaid balance of the contract before its final installment is due, the buyer is entitled to receive the following refund credit thereon:

On a contract payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of Twenty-five Dollars, as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under such contract, then as of the date after such prepayment

or demand for payment in full, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract. When the amount of refund credit is less than One Dollar no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above-described method, having due regard to the amount of each installment, to the irregularity of each installment period and to the provisions of Sections (2) and (4) of Article 7.03 hereof.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to restate such contract, they may do so and may amend the contract pursuant to Article 7.05 hereof.

[Acts 1967, 60th Leg. p. 652, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1589, ch. 672, § 44, eff. Aug. 27, 1979.]

#### Art. 5069-7.05. Amendments of Retail Installment Contracts

(1) The holder of a retail installment contract upon request by the buyer, may agree to one or more amendments thereto to extend or defer the scheduled due date of all or any part of any installment or installments or to renew, restate or reschedule the unpaid balance of such contract, and may collect for same a charge not to exceed an amount computed under either of the following:

(a) If all or any part of any installment or installments is deferred for not more than three months per amendment, the holder may at his election charge and collect on the amount deferred for the period deferred a charge computed at a rate which will not exceed the same effective return as is permitted on monthly payment contracts under Article 7.03; provided that the minimum charge shall be One Dollar. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance coverages provided for in the contract and any additional necessary official fees.

(b) In any other extension, renewal, restatement or rescheduling of the unpaid balance, the charge may be computed as follows: The sum of the unpaid balance as of the date of amendment and the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting the prepayment refund credit required by Article 7.04, shall constitute a principal balance on which the charge may be computed for the term of the amended contract at the applicable time price differential provided in Article 7.03 after reclassifying the motor vehicle by its year model at the time of the amendment. The provisions of this Chapter relating to minimum charges under Article 7.03 and acquisition costs under the refund schedule in Arti-

cle 7.04 shall not apply in calculating the principal balance of the amended contract. The amendment to the contract must be confirmed in a writing signed by the buyer, and a copy of the writing shall either be delivered to the buyer or mailed to him at his last known address as shown by the records of the holder. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[Acts 1967, 60th Leg., p. 652, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1590, ch. 672, § 45, eff. Aug. 27, 1979.]

#### Art. 5069-7.06. Insurance

(1) On any retail installment contract made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract, and include the cost of such insurance as a separate charge in such contract. Policies of credit life insurance or credit health and accident insurance may not be in force with respect to any one buyer on any one contract at any one time that in combination exceed:

(i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or

(ii) as to credit accident and health insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

(2) A seller or holder may, in addition, request or require a buyer to insure tangible personal property purchased in a retail installment transaction subject to this Chapter and accessories and related goods subject to the seller's security interest, and include the cost of such insurance as a separate charge in such contract. Such insurance and the premiums or charges therefrom shall bear a reasonable relationship to the amount, term and conditions of the contract, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public. Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the motor vehicle, the use thereof, or goods or services related to the motor vehicle and which may ordinarily be insured with the motor vehicle; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily available in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage pur-

chased and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the contract, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a premium or rate of charge not fixed or approved by the State Board of Insurance is included in the contract for that insurance, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing or delivery of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 7.02 or may be made in a separate written statement or statements.

(4) All insurance described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) The retail installment contract must identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which separate charges are included in the retail installment contract.

(6) If dual interest insurance on the motor vehicle is purchased by the seller or seller's assignee, as the case may be, it shall within a reasonable time after execution of the retail installment contract, send or cause to be sent to the buyer a policy, or policies, or certificates of insurance written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance. The buyer shall have the privilege at the time of execution of the contract of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insur-

ance premium in the retail installment contract shall be optional with the seller.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the motor vehicle or use thereof or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or maintained a coverage required by the contract, the holder may but shall not be required to procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, and may add the additional premium to the unpaid balance of the contract. The substitute insurance may at the holder's option cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Article 7.05, without reclassifying the motor vehicle by its year model at the time of the amendment. When any substitute insurance is obtained by the holder when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall, at holder's option, be applied to replace required insurance coverages, or be credited to the final maturing installments of the retail installment contract, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(9) A buyer and seller may agree to include motor vehicle property damage or bodily injury liability insurance, mechanical breakdown insurance, or a warranty or service contract relating to the motor vehicle as a separate charge in a contract for the sale of a motor vehicle. If a charge is added to a contract as provided by this section, the contract shall clearly and conspicuously disclose that fact.

(10) Any gain, advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any retail installment contract made under this Chapter except as specifically provided herein.

[Acts 1967, 60th Leg., p. 653, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1977, 65th Leg., p. 1355, ch. 536, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1591, ch. 672, § 46, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5414, ch. 1004, § 5, eff. Aug. 29, 1983].

Section 6 of the 1983 amendatory act provided:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed."

#### Art. 5069-7.07. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the seller or holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default on the performance of any of his obligations or (b) the seller or holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment in this State or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises in violation of Chapter 9, Business & Commerce Code, as amended, or to commit any breach of the peace in the repossession of a motor vehicle;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of a motor vehicle;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of a motor vehicle;

(6) Provide that the buyer agrees not to assert against the seller or holder of any claim or defense arising out of the sale;

(7) Contain an authorization for the seller or holder or any person acting on the seller's or holder's behalf to retain or dispose of other tangible personal property that is not subject to a security interest and that is acquired in the repossession of a motor vehicle, except property attached to the vehicle, unless the contract or a separate writing requires the seller or holder to send written notice of such an acquisition to the last known address of the buyer as shown by the records of the holder within fifteen days of the discovery of the personal property by the seller or holder. Such notice shall disclose to the buyer:

(a) that the buyer may identify and claim the property at a reasonable time before the end of the thirtieth day after the day on which the notice was mailed or delivered; and

(b) the location at which and reasonable times at which the buyer may identify and claim the property during that period.

If a contract contains an authorization complying with this Section and such property is not claimed within the thirty days after notice is mailed or delivered, the seller or holder may retain such property subject to any legal rights of buyer or dispose of such property in a reasonable manner and distribute any proceeds of such disposition according to applicable law.

[Acts 1967, 60th Leg., p. 654, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1593, ch. 672, § 47, eff. Aug. 27, 1979.]

#### Art. 5069-7.08. Assignment and Negotiation

(1) Any person may purchase or acquire or agree to purchase or acquire any retail installment contract or any outstanding balance from any other person on such terms and conditions and for such price as may be mutually agreed upon;

(2) Notice to the buyer of the assignment or negotiation and any requirement that the seller be deprived of dominion over payments upon a retail installment contract, or over the motor vehicle if returned to or repossessed by the seller, is not necessary to the validity of a written assignment or negotiation of the retail installment contract or any outstanding balance as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller;

(3) Unless the buyer has notice of the assignment or negotiation of his retail installment contract, or any outstanding balance thereunder payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders;

(4) Repealed by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.]

#### Art. 5069-7.09. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to, or governing retail installment sales not otherwise subject hereto. This Chapter

shall apply exclusively to all retail installment transactions as defined in Article 7.01.

The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,<sup>1</sup> other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968. Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 49, eff. Aug. 27, 1979.]

<sup>1</sup> Business and Commerce Code, § 1.101 et seq.

#### Art. 5069-7.10. Waiver

No act or agreement of the buyer before, or at the time of the making of a retail installment contract, or purchase thereunder, shall constitute a valid waiver of any of the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 655, ch. 274, § 2, eff. Jan. 1, 1968.]

### CHAPTER EIGHT. PENALTIES

#### Art.

- 5069-8.01. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized; Failure to Perform Duty or Committing Prohibited Act; Correction of Violations.
- 5069-8.02. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized.
- 5069-8.03. Engaging in Lending Business Without License.
- 5069-8.04. Venue and Limitation Periods.
- 5069-8.05. Violating Terms of Injunction.
- 5069-8.06. Violation of Art. 5069-2.07.

#### Art. 5069-8.01. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized; Failure to Perform Duty or Committing Prohibited Act; Correction of Violations

(a) Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(b) Any person who violates this Subtitle or Chapter 14 of this Title by (i) failing to perform any duty or requirement specifically imposed on him by any provision of this Subtitle or Chapter 14 of this Title, or by (ii) committing any act or practice prohibited

by this Subtitle or Chapter 14 of this Title, shall be liable to the obligor for a penalty in an amount equal to twice the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 in a transaction in which the amount financed is \$5,000 or less, and not to exceed \$4,000 in a transaction in which the amount financed is in excess of \$5,000 and reasonable attorneys' fees fixed by the court.

(c)(1) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if within 60 days after having actually discovered such violation such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such violation prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

As used herein, the term "actually discovered" shall not be construed, interpreted, or applied in such manner as to refer to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but such term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact, provided, however, that the actual discovery of such violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such nature that it would necessarily be repeated and would be clearly apparent in such other transactions without the necessity of examining all such other transactions.

(2) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if prior to the effective date of the Act or within 60 days after the effective date of the Act such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such correction prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

(3) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(b) of this Act, such violation is corrected as to such obligor by performing the required duty or act and written notice of such violation is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for,

charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(4) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(a) of this Act for contracting for, charging, or receiving (i) other charges in excess of the amount authorized by law, or (ii) interest or time price differential in excess of the amount authorized by law, where such excess is directly and solely attributable to and calculated upon the amount of such other charges, or (iii) both of the foregoing, such violation is corrected as to such obligor by refunding the amount of the excess and written notice of such refund is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed \$2,000 and reasonable attorneys' fees fixed by the court.

(5) For purposes of this Article the giving of written notice shall be accomplished by and upon the delivery of such notice to the person to whom such notice is directed or to such person's duly authorized agent or attorney of record, such delivery to be made either in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of such notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of such notice to such person.

(d) The action of a person who corrects a violation of this Subtitle or of Chapter 14 of this Title pursuant to Article 8.01(c) of this Act shall be effective as to all persons in the same transaction, and such persons shall be entitled to the same protection as that provided by Article 8.01(c) of this Act to the person who makes the correction.

(e) If a person has violated both Articles 8.01(a) and 8.01(b) of this Act as part of the same transaction, then he shall be liable only for the penalties set forth in Article 8.01(a) of this Act.

(f) A person may not be held liable in any action brought under this Article for a violation of this Subtitle or of Chapter 14 of this Title if such person shows by a preponderance of evidence that (1) the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such violation or that (2) the violation was an act done or omitted in good faith in conformity with any rule, regulation, or interpretation of this Title by any state agency, board, or commission, or with the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) or with any rule, regulation, or interpretation thereof by any federal agency, board,

or commission, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Multiple violations of this Subtitle or Chapter 14 of this Title occurring in a single transaction shall entitle the obligor to a single recovery.

(h) The liability of any person under this Article for a violation of this Subtitle is in lieu of and not in addition to his liability under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.). A final judgment granting or denying relief under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) shall bar any subsequent action under this Article by the same obligor with respect to the same violation. If a final judgment has been rendered against any person in favor of an obligor pursuant to this Article and thereafter an action is instituted with respect to the same violation by the obligor under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against the same person, then such person may in the same or in an independent action have a cause of action against the obligor who obtained such judgment to recover the amount of the judgment rendered under this Article and reasonable attorneys' fees fixed by the court.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Section 2 of the 1977 amendatory act added subsec. (i) to art. 5069-14.19; §§ 3 to 5 thereof provided:

"Sec. 3. The provisions of this Act shall become effective at midnight on August 31, 1977, and shall apply to all transactions entered into prior to such date; provided, however, that this Act shall not apply to any action brought under Subtitle 2 or Chapter 14 of Title 79 that is pending on such date; and provided further, that the penalty for any violation of Title 79 of the type referred to in Article 8.01(b) of Section 1 of this Act occurring in a transaction entered into prior to July 1, 1976, which violation has not been corrected as provided in Article 8.01(c) of Section 1 of this Act, shall be determined by the law in effect prior to the effective date of this Act so that the penalty provided for in Article 8.01(b) shall apply only to violations in transactions entered into after June 30, 1976, which have not been corrected as provided in Article 8.01(c).

"Sec. 4. This Act shall supersede any other act passed at the Regular Session of the 65th Legislature which amends any article or section of Chapter 8 or Chapter 14 of Title 79, Revised Civil Statutes of Texas, 1925, as amended, regardless of the relative date of the passage or approval of such other act.

"Sec. 5. If any provision, paragraph, subsection, or section of this Act or the application thereof to any person or circumstance is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other application thereof which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions, paragraphs, subsections, and sections of the Act are severable."

#### Art. 5069-8.02. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are in the aggregate in excess of double the total amount of inter-

est, time price differential and other charges authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, and all other charges, and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

#### Art. 5069-8.03. Engaging in Lending Business Without License

In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapters 3, 4, or 5 of this Subtitle without first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorneys' fees incurred by the obligor.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

#### Art. 5069-8.04. Venue and Limitation Periods

(a) Actions under this Chapter may be brought in the county where the transaction was entered into or where the Defendant resides at the time the action was filed. Such actions may be brought within four years from the date of the loan or retail installment transaction or within two years from the date of the occurrence of the violation, whichever is later; provided, however, that in the case of open-end credit transactions, such actions may be brought within two years from the date of the occurrence of the violation.

(b) If an action alleging any violation or violations of this Subtitle or Chapter 14 of this Title<sup>1</sup> is brought as a class action and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of a violation or violations. The court may assess a penalty of: (i) such amount for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action as could be recovered by such persons under this Chapter; (ii) such amount as the court may allow for all other class members, except

as to each such member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$100,000 or five percent of the net worth of the person; and (iii) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional or reckless.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977; Acts 1979, 66th Leg., p. 1594, ch. 672, § 50, eff. Aug. 27, 1979.]

<sup>1</sup> Repealed.

**Art. 5069-8.05. Violating Terms of Injunction**

Any person who violates the terms of an injunction duly issued under this Subtitle shall forfeit and pay to the State a civil penalty of not more than One Thousand Dollars per violation. For the purposes of this Article, the District Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General may petition for recovery of such civil penalties.

[Acts 1967, 60th Leg., p. 656, ch. 274, § 2, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

**Art. 5069-8.06. Violation of Article 5069-2.07**

(a) Any person who violates the terms of Article 2.07 of this Title is liable to the aggrieved individual for the actual damages caused by the denial, or for \$50.00, whichever is greater, and court costs.

(b) In addition to the liabilities prescribed in Subsection (a) of this section, any licensee under this Subtitle who violates Article 2.07 of this Subtitle is subject to revocation or suspension of his license.

[Acts 1973, 63rd Leg., p. 1293, ch. 483, § 2, eff. Aug. 27, 1973. Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

**SUBTITLE THREE—CONSUMER PROTECTION**

Chapter	Article
9. Consumer Debt Counseling and Education .....	5069-9.01
10. Deceptive Trade Practices [Repealed] ...	5069-10.01
11. Debt Collection .....	5069-11.01
12. Financing of Insurance Premiums [Repealed] .....	5069-12.01
13. Home Solicitation Transactions .....	5069-13.01
14. Alternative Disclosure Requirements in	

Chapter	Article
Coordination With Federal Law [Repealed] .....	5069-14.01
15. Revolving Loan and Revolving Triparty Accounts .....	5069-15.01
16. Business Opportunities .....	5069-16.01
17 to 49. [Reserved for expansion]	
50. Miscellaneous Provisions .....	5069-50.01
51. Pawnshops .....	5069-51.01

**CHAPTER NINE. CONSUMER DEBT COUNSELING AND EDUCATION**

Art.	Description
5069-9.01.	Duties of the Commissioner.
5069-9.02.	Debt Pooling.
5069-9.03.	Exemption.
5069-9.04.	Penalty.

**Art. 5069-9.01. Duties of the Commissioner**

(1) The Consumer Credit Commissioner shall provide advice, assistance and counsel to encourage the establishment and operation of voluntary non-profit debt counseling services for the citizens of this State.

(2) The Consumer Credit Commissioner shall provide advice, assistance and counsel to coordinate, encourage, aid and assist public and private agencies, organizations and groups and consumer credit institutions in the development and operation of voluntary education programs designed to promote the prudent and beneficial use of consumer credit by the citizens of this State.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-9.02. Debt Pooling**

(1) Except as provided in Article 9.03 nothing herein shall be construed to permit any debt pooling contracts wherein a contract is entered into by any person with a debtor by the terms of which contract the debtor agrees to deposit periodically or otherwise with such person a specified sum of money and said person agrees to distribute said sums of money among creditors of the debtor, for which service the debtor agrees to pay a valuable consideration.

(2) Any such contract as described herein shall be void and of no effect.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

**Art. 5069-9.03. Exemption**

The provisions of Article 9.02 shall not apply to:

(a) Any bank, savings and loan association, trust company or credit union doing business under the laws of this State or of the United States;

(b) Any attorney at law;

(c) Any judicial officer or other person acting under the orders of a court of this State or of the United States;



(d) Any agency, instrumentality or subdivision of this State or of the United States;

(e) Any retail merchants association or non-profit trade association formed for the purpose of collecting accounts and exchanging credit information; and

(f) Any non-profit organization providing debt-counseling services to citizens of this State.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

Art. 5069-9.04. Penalty

Any person violating Article 9.02 shall be guilty of a misdemeanor, and upon conviction shall be fined not less than One Hundred Dollars nor more than Five Hundred Dollars for each conviction. Each act of debt pooling as defined in Article 9.02 shall constitute a separate offense.

[Acts 1967, 60th Leg., p. 657, ch. 274, § 2, eff. Oct. 1, 1967.]

CHAPTER TEN. DECEPTIVE TRADE PRACTICES [REPEALED]

Arts. 5069-10.01 to 5069-10.08. Repealed by Acts 1973, 63rd Leg., p. 342, ch. 143, § 3, eff. May 21, 1973

See, now, Business and Commerce Code, § 17.41 et seq.

CHAPTER ELEVEN. DEBT COLLECTION

Art.

- 5069-11.01. Definitions.
- 5069-11.02. Threats or Coercion.
- 5069-11.03. Harassment; Abuse.
- 5069-11.04. Unfair or Unconscionable Means.
- 5069-11.05. Fraudulent, Deceptive, or Misleading Representations.
- 5069-11.06. Deceptive Use of Credit Bureau Name.
- 5069-11.07. Use of Independent Debt Collectors.
- 5069-11.08. Bona Fide Error.
- 5069-11.09. Penalties.
- 5069-11.10. Civil Remedies.
- 5069-11.11. Other Remedies.

Art. 5069-11.01. Definitions

As used in this subchapter:

(a) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

(b) "Debt collection" means any action, conduct, or practice in soliciting debts for collection or in collecting debts owed or due, or alleged to be owed or due a creditor by a consumer.

(c) "Debt collector" means any person engaging directly or indirectly in debt collection, as defined herein, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect debts.

(d) "Consumer" means an individual who owes or allegedly owes a debt created primarily for personal, family, or household purposes.

(e) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(f) "Creditor" means a party to a consumer transaction other than a consumer.

(g) "Person" means individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 1, eff. Aug. 27, 1973.]

Art. 5069-11.02. Threats or Coercion

No debt collector may collect or attempt to collect any debt alleged to be due and owing by any threats, coercion, or attempts to coerce which employ any of the following practices:

(a) using or threatening to use violence or other criminal means to cause harm to the person or property of any person;

(b) accusing falsely or threatening to accuse falsely any person of fraud or any other crime;

(c) representing or threatening to represent to a third party or any other person, that a consumer is willfully refusing to pay a non-disputed debt when the debt is in dispute for any reason and the consumer has notified such debt collector in writing of the dispute;

(d) threatening to sell or assign to another the obligation of the consumer with an attending false representation that the result of such sale or assignment would be that the consumer would lose any defense to the alleged debt or would be subject to illegal collection attempts;

(e) threatening that the debtor will be arrested for nonpayment of an alleged debt without proper court proceedings; however, nothing herein shall prevent a debt collector from informing the debtor that the debtor may be arrested after proper court proceedings in cases where the debtor has violated the criminal laws of this state;

(f) threatening to file charges, complaints, or criminal action against a debtor when in fact the debtor has not violated any criminal laws; provided, however, nothing herein shall prevent a debt collector from threatening to institute civil lawsuits or other judicial proceedings to collect a debt;

(g) threatening that nonpayment of an alleged debt will result in the seizure, repossession, or sale of any property of that person without proper court proceedings; however, nothing herein shall prevent a debt collector from exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale which does not require court proceedings; or

(h) threatening to take any action prohibited by law.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 2, eff. Aug. 27, 1973.]

**Art. 5069-11.03. Harassment; Abuse**

In connection with the collection of or attempt to collect any debt alleged to be due and owing by a consumer, no debt collector may oppress, harass, or abuse any person by methods which employ the following practices:

(a) using profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) placing telephone calls without disclosure of the name of the individual making the call, and with the willful intent to annoy or harass or threaten any person at the called number;

(c) causing expense to any person in the form of long distance telephone tolls, telegram fees, or other charges incurred by a medium of communication, without first disclosing the name of the person making the telephone call or transmitting the communication; or

(d) causing a telephone to ring repeatedly or continuously or making repeated and continuous telephone calls, with the willful intent to harass any person at the called number.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 3, eff. Aug. 27, 1973.]

**Art. 5069-11.04. Unfair or Unconscionable Means**

No debt collector may collect or attempt to collect any debt by unfair or unconscionable means employing the following practices:

(a) seeking or obtaining any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessities of life where the obligation was not in fact incurred for such necessities; or

(b) collecting or attempting to collect any interest or other charge, fee, or expense incidental to the obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer. However, creditors may charge reasonable reinstatement fees as consideration for renewal of a real estate loan or contract of sale, after default, if the additional fees are included in a written contract executed at the time of renewal.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 4, eff. Aug. 27, 1973.]

**Art. 5069-11.05. Fraudulent, Deceptive, or Misleading Representations**

No debt collector may collect or attempt to collect debts or obtain information concerning a consumer

by any fraudulent, deceptive, or misleading representations which employ the following practices:

(a) using any name while engaged in the collection of debts other than the true business or professional name or the true personal or legal name of the debt collector; or failing to maintain a list of all business or professional names known to be used or formerly used by individual persons collecting debts or attempting to collect debts for the debt collector;

(b) falsely representing that the debt collector has information in his possession or something of value for the consumer in order to solicit or discover information about the consumer;

(c) failing to clearly disclose, in any communication with the debtor, the name of the person to whom the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans);

(d) failing to clearly disclose, in any communication with the debtor, that the debt collector is attempting to collect a debt, unless such communication is for the purpose of discovering the whereabouts of the debtor;

(e) using any written communication which fails to clearly indicate the name of the debt collector and the debt collector's street address, when the written notice refers to an alleged delinquent debt; (the foregoing shall not require disclosure of names and addresses of employees of debt collectors);

(f) using any written communication which demands a response to a place other than the debt collector's or creditor's street address or post office box; (the foregoing shall not require response to the address of an employee of a debt collector);

(g) misrepresenting the character, extent, or amount of a debt against a consumer, or misrepresenting its status in any judicial or governmental proceedings;

(h) falsely representing that any debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of this state or any agency of federal, state, or local government;

(i) using, distributing, or selling any written communication which simulates or falsely represents to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other legally constituted or authorized governmental authority, or which creates a false impression about its source, authorization, or approval; or using any seal or insignia or design which simulates that of any governmental agency;

(j) representing that a debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when there is no written contract or statute authorizing such additional fees or charges;

(k) representing that a debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges when the award of such fee or charge is discretionary by a court of law;

(l) falsely representing the status or true nature of the services rendered by the debt collector or his business;

(m) using any written communication which violates or fails to conform to the United States postal laws and regulations;

(n) using any communication which purports to be from any attorney or law firm, when in fact it is not;

(o) representing that a debt is being collected by an attorney when it is not; or

(p) representing that a debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person to whom the debt is owed; however, nothing herein shall prohibit a creditor from owning or operating its own bona fide debt collection agency.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 5, eff. Aug. 27, 1973.]

**Art. 5069-11.06. Deceptive Use of Credit Bureau Name**

No person shall use the term "credit bureau," "retail merchants," or "retail merchants association" in his business or trade name unless such person is in fact engaged in gathering, recording, and disseminating favorable as well as unfavorable information relative to the credit worthiness, financial responsibility, paying habits and other similar information regarding individuals, firms, corporations and any other legal entity being considered for credit extension so that a prospective creditor may be able to make a sound decision in the extension of credit. This paragraph shall not apply to any nonprofit retail trade association consisting of individual members and qualifying as a bona fide business league as defined by the United States Internal Revenue Service, and which nonprofit retail trade association does not engage in the business of debt collection or credit reporting.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 6, eff. Aug. 27, 1973.]

**Art. 5069-11.07. Use of Independent Debt Collectors**

No creditor may use any independent debt collector who repeatedly and continuously engages in acts or practices which are prohibited by this Act after the creditor has actual knowledge that an independent debt collector is in fact repeatedly and continuously engaging in such acts or practices. [Acts 1973, 63rd Leg., p. 1513, ch. 547, § 7, eff. Aug. 27, 1973.]

**Art. 5069-11.08. Bona Fide Error**

No person shall be guilty of a violation of this Act if the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid such error.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 8, eff. Aug. 27, 1973.]

**Art. 5069-11.09. Penalties**

Any person who violates a provision of this Act is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 for each violation. Such misdemeanor charge must be filed within one year of the date of the alleged violation.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 9, eff. Aug. 27, 1973.]

**Art. 5069-11.10. Civil Remedies**

(a) Any person may seek injunctive relief to prevent or restrain a violation of this Act and any person may maintain an action for actual damages sustained as a result of a violation of this Act. A person who successfully maintains such action shall be awarded attorneys' fees reasonable in relation to the amount of work expended and costs. On a finding by the court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorneys' fees reasonable in relation to the work expended and costs.

(b) When the attorney general has reason to believe that a person is violating or is about to violate a provision of this Act, the attorney general may bring an action in the name of the state against the person to restrain or enjoin the person from violating this Act.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 10, eff. Aug. 27, 1973. Amended by Acts 1983, 68th Leg., p. 2884, ch. 490, § 2, eff. Aug. 29, 1983.]

**Art. 5069-11.11. Other Remedies**

(a) A violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code,<sup>1</sup> and is actionable pursuant to said subchapter. As such, the venue provision and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

(b) None of the provisions of this Act shall affect or alter any remedies at law or in equity otherwise available to debtors, creditors, governmental entities, or any other legal entity.

[Acts 1973, 63rd Leg., p. 1513, ch. 547, § 11, eff. Aug. 27, 1973. Amended by Acts 1983, 68th Leg., p. 3259, ch. 564, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

**CHAPTER TWELVE. FINANCING OF INSURANCE PREMIUMS [REPEALED]**

Arts. 5069-12.01 to 5069-12.20. Repealed by Acts 1979, 66th Leg., p. 2158, ch. 825, § 3, eff. Jan. 1, 1980

**CHAPTER THIRTEEN. HOME SOLICITATION TRANSACTIONS**

- 5069-13.01. Definitions.  
 5069-13.02. Consumer's Right to Cancel.  
 5069-13.03. Violations.  
 5069-13.04. Merchant's Compensation.  
 5069-13.05. Retention of Goods or Realty.  
 5069-13.06. Duty of Consumer.  
 5069-13.07. Injunctions.

**Art. 5069-13.01. Definitions**

As used in this Act:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(4) "Merchant" means a party to a consumer transaction other than a consumer.

(5) "Home solicitation transaction" means a consumer transaction:

(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds \$25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(B) for the purchase of realty, payable in installments or in cash where the consideration exceeds \$100 in which the merchant or person acting for him engages in a solicitation of the sale to the consumer at the residence of the consumer and the consumer's agreement or offer to purchase is given at the residence of the consumer; but it does not include a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker or in which the transaction is being

negotiated by the person who owns the realty not at the residence of the consumer.

[Acts 1973, 63rd Leg., p. 574, ch. 246, § 1, eff. June 11, 1973. Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 1, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

**Art. 5069-13.02. Consumer's Right to Cancel**

(a) In addition to any other right to revoke an offer or to rescind a transaction, or to any other remedy for the merchant's breach, the consumer has the right to cancel a home solicitation transaction until midnight of the third business day after the day on which the consumer signs an agreement or offer to purchase in a home solicitation transaction.

(b) The merchant must furnish the consumer with a fully completed receipt or copy of any contract pertaining to the home solicitation transaction at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the merchant, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

**"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."**

(c) The merchant must furnish each consumer, at the time he signs the home solicitation transaction contract or otherwise agrees to buy realty, consumer goods or services from the merchant, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10 point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

**"NOTICE OF CANCELLATION**

(enter date of transaction)

**"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.**

**"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUT-**

ED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. TELEGRAM, TO (Name of merchant), AT (Address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (Date) .

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)"

(d) Use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with this section.

(e) A home solicitation sale in which the contract price does not exceed \$200 complies with the notice requirements of this Act if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for them, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously set forth on the face or reverse side of the sales ticket.

[Acts 1973, 63rd Leg., p. 575, ch. 246, § 2, eff. June 11, 1973. Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided:

"All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 5069-13.03. Violations

(a) It shall constitute a deceptive trade practice and a violation of this Act for any merchant to:

(1) fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the merchant, the address of the merchant's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation;

(2) include in any home solicitation transaction contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this Act including specifically his right to cancel the transaction in accordance with the provisions of this Act;

(3) fail to inform each consumer orally, at the time he signs the contract or purchases the realty, goods or services, of the consumer's right to cancel;

(4) misrepresent in any manner the consumer's right to cancel;

(5) fail or refuse to honor any valid notice of cancellation by a consumer and, within 10 business days after the receipt of such notice, to:

(A) fail to refund all payments made under the contract or sale;

(B) fail to return any goods or property traded in, in substantially as good condition as when received by the merchant;

(C) fail to cancel and return any negotiable instrument executed by the consumer in connection with the contract of sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; or

(D) fail to restore improvements on real property to the condition in which he found them unless requested otherwise by the consumer;

(6) negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; or

(7) fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the merchant intends to repossess or to abandon any shipped or delivered goods.

(b) Any sale or contract entered into in a home solicitation transaction in violation of this Act as set out in Subsection (a) of this section is void and unenforceable.

(c) Any merchant who violates a provision of this Act is liable to the consumer for any actual damages suffered by the consumer as a result of the violation, attorneys' fees reasonable in relation to the amount of work done, and court costs.

(d) If the merchant fails to tender the goods or property traded in, in substantially as good condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(e) A violation of any provision of this Act is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code,<sup>1</sup> and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

[Acts 1973, 63rd Leg., p. 576, ch. 246, § 3, eff. June 11, 1973. Amended by Acts 1983, 68th Leg., p. 3260, ch. 564, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

#### Art. 5069-13.04. Merchant's Compensation

If the merchant has performed any services pursuant to a home solicitation transaction prior to its cancellation under this Act the merchant is entitled to no compensation.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 4, eff. June 11, 1973.]

#### Art. 5069-13.05. Retention of Goods or Realty

Until the merchant has complied with the obligations imposed by this Act, the consumer may retain possession of goods or right or title to realty delivered to him by the merchant and has a lien on the goods or realty in his possession or control for any recovery to which he is entitled.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 5, eff. June 11, 1973.]

#### Art. 5069-13.06. Duty of Consumer

(a) Within a reasonable time after a home solicitation transaction has been cancelled or an offer to purchase revoked, the consumer on demand must tender to the merchant any goods delivered by the merchant pursuant to the sale, or tender to the merchant the transfer of any right or title to realty delivered by the merchant back to him. The consumer is not obligated to tender goods at any place other than his residence. If the merchant fails to demand possession of the goods or the right or title to realty within a reasonable time after cancellation or revocation, the goods or the realty become the property of the consumer without obligation to pay for them. For the purpose of this section, 20 days is presumed to be a reasonable time.

(b) The consumer has a duty to take reasonable care of the goods or the realty in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods or realty are otherwise at the merchant's risk.

[Acts 1973, 63rd Leg., p. 577, ch. 246, § 6, eff. June 11, 1973.]

#### Art. 5069-13.07. Injunctions

When the attorney general has reason to believe that a person is violating or is about to violate a provision of this Act, the attorney general may bring an action in the name of the state against the person to restrain or enjoin the person from violating this Act.

[Acts 1983, 68th Leg., p. 2883, ch. 490, § 1, eff. Aug. 29, 1983.]

### CHAPTER 14. ALTERNATIVE DISCLOSURE REQUIREMENTS IN COORDINATION WITH FEDERAL LAW [REPEALED]

Arts. 5069-14.01 to 5069-14.28. Repealed by Acts 1979, 66th Leg., p. 1595, ch. 672, § 51, eff. Aug. 27, 1979

### CHAPTER 15. REVOLVING LOAN AND REVOLVING TRIPARTY ACCOUNTS

#### Art.

- 5069-15.01. Definitions.
- 5069-15.02. Maximum Rates of Interest.
- 5069-15.03. More Than One Account.
- 5069-15.04. Credit Covered.
- 5069-15.05. Amendments.
- 5069-15.06. Compliance with Federal Consumer Credit Protection Act.
- 5069-15.07. Collateral and Insurance.
- 5069-15.08. Recovery of Expenses.
- 5069-15.09. Conflicts.
- 5069-15.10. Application of This Chapter 15.
- 5069-15.11. Penalties.

#### Art. 5069-15.01. Definitions

The following terms used in this chapter shall have the meanings shown:

(a) "Account" means a revolving loan account or a revolving triparty account.

(b) "Arrangement" means a written agreement that makes an account available to a person and that is accepted by use of the account.

(c) "Average daily balance" means the sum of each day's ending balance in an account during a billing cycle (less any interest included in such balance), divided by the number of days in such billing cycle. Each day's ending balance shall begin with the previous day's ending balance and may include loans posted to the account on such day and may also include leases of goods or purchases of goods or services posted to the account on such day and shall be reduced by credits and payments posted to the account on such day.

(d) "Bank" means a person doing business under the authority of and as permitted by The Texas Banking Code of 1943, as amended (Article 342-101 et seq., Vernon's Texas Civil Statutes), and any person organized under Title 12, United States Code, as amended.

(e) "Billing cycle" means the time interval between periodic billing statements. Billing cycles in

any 12-month period may be considered equal if no billing cycle within such 12-month period varies more than eight days in length from any other billing cycle and if the number of billing cycles in such 12-month period does not exceed 12.

(f) "Creditor" means a bank, savings and loan association, or licensee who lends money or otherwise extends credit to a customer under a credit card or cards and who may authorize other persons to honor such credit card or cards.

(g) "Credit card" means a card, confirmation or identification, or check or other written request by which a customer obtains access to an account.

(h) "Customer" means a person who has accepted an arrangement.

(i) "Licensee" means the holder of a license issued pursuant to Chapter 3 of Subtitle 2 of this Title 79.<sup>1</sup>

(j) "Person" means an individual or a partnership, corporation, joint venture, trust, association, or other legal entity however organized.

(k) "Revolving loan account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) the customer may obtain loans from the creditor;

(2) the unpaid balance of the loans and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(l) "Revolving triparty account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) by means of a credit card, the customer may obtain loans from the creditor, which may be advanced by other participating persons, and lease goods or purchase goods or services from participating lessors or sellers, and the creditor will pay the other participating persons, lessors, or sellers and the customer is obligated to pay the creditor the amount of such loans or the cost of such leases or purchases;

(2) the unpaid balance of such loans, leases, and purchases and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(m) "Savings and loan association" means any person doing business under the authority of and as permitted by the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) or any

person incorporated under the provisions of the Home Owners Loan Act of 1933, as amended.<sup>2</sup>

[Acts 1979, 66th Leg., p. 1501, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 21, eff. May 8, 1981; Acts 1983, 68th Leg., p. 842, ch. 194, § 33, eff. July 1, 1983.]

<sup>1</sup> Article 5069-3.01 et seq.

<sup>2</sup> 12 U.S.C.A. § 1461 et seq.

Section 3 of the 1979 Act provided:

"The invalidity for any reason of any paragraph, phrase, clause, article, or section of this statute shall not affect the validity or the enforceability of any portion of the remainder."

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (B) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Section 37(c) of the 1983 amendatory act provides:

"Sections 29 through 36 of this Act take effect July 1, 1983, contingent on this Act receiving the vote required by Article III, Section 39, of the Constitution of the State of Texas. If this Act does not receive the vote required by Article III, Section 39, of the Constitution of the State of Texas, Sections 29 through 36 of this Act will take effect September 1, 1983. Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections. The annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29 through 36 of this Act take effect as to an account under which a credit card transaction may be made, be deemed to equal 18 percent a year on such account, until such expiration dates, and the Consumer Credit Commissioner shall publish such revision in The Credit Code Letter within two weeks from the date this Act takes effect and in the Texas Register as soon as possible. For purposes of Section (d) of Article 15.02 of Title 79 as hereby amended, the quarterly ceiling applicable under that article shall be recomputed in accordance with Section 34 of this Act and, as so recomputed, takes effect on the effective date of that section as to an account, and the Consumer Credit Commissioner shall publish the recomputed quarterly ceiling applicable under Section (d), Article 15.02, of Title 79 in The Credit Code Letter within two weeks from the date such section takes effect and in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and

that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

#### Art. 5069-15.02. Maximum Rates of Interest

(a) A creditor may charge and collect interest on an account either

(1)(i) on that portion of the average daily balance not above \$1,500 at an annual rate not above 18 percent; and (ii) on that portion of the average daily balance above \$1,500 and not above \$2,500 at an annual rate not above 12 percent; and (iii) on that portion of the average daily balance above \$2,500 at an annual rate not above 10 percent; or

(2) on the entire average daily balance at the annual rate of 14.4 percent.

(b) A creditor may charge one-twelfth of the applicable annual rate under Section (a) of Article 15.02 of this chapter in any billing cycle on the average daily balance of an account during such billing cycle, if billing cycles may be considered equal under Article 15.01(e) of this chapter.

(c) The maximum interest which may be contracted for and collected under this article may be computed by a method other than the average daily balance method as defined in this chapter if the amount of interest computed by the other method will not exceed the amount of interest computed under such average daily balance method.

(d) Notwithstanding Article 1.04<sup>1</sup> of this Title or any other provision of law, on any open-end account authorized under Article 3.15(4), 4.01(4), 15.01(k), or 15.01(l)<sup>2</sup> of this Title, pursuant to which credit card transactions as defined in Article 1.01(g)<sup>3</sup> of this Title may be made or in connection with which account a merchant discount as defined in Article 1.01(h)<sup>4</sup> of this Title is imposed or received by the creditor, the rate of interest from time to time in effect on such account is subject to and may not exceed the quarterly ceiling from time to time in effect as computed pursuant to Article 1.04 of this Title and as further limited by this section, and the ceiling on such account is subject to quarterly adjustment, which adjustment shall be made at the option of the creditor either on the quarterly calendar dates set out in Article 1.04(d)<sup>5</sup> of this Title or on the first day of the first billing cycle of an account immediately following said quarterly calendar dates. If a computation of the quarterly ceiling under Article 1.04(a)(2)<sup>6</sup> of this Title is more than 22 percent per annum, the ceiling under this provision shall be 22 percent per annum. If the computation under Article 1.04(a)(2) of this Title is less than 14 percent per annum, the ceiling under this provision shall be 14 percent per annum. Notwithstanding any other provision of this Title, a creditor charging a rate limited by this section shall not be required to disclose any decreases which may from time to time occur in the rate on its account.

(e) Except as provided in Section (d) of this Article, as an alternative to the rates authorized by Section (a) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.

(f) No fees shall be charged to or collected from the customer in connection with an account subject to this chapter unless authorized by statute.

[Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 22, eff. May 8, 1981; Acts 1983, 68th Leg., p. 843, ch. 194, §§ 34 to 36, eff. July 1, 1983.]

<sup>1</sup> Article 5069-1.04.

<sup>2</sup> Articles 5069-3.15(4), 5069-4.01(4), 5069-15.01(k), 5069-15.01(l).

<sup>3</sup> Article 5069-1.01(g).

<sup>4</sup> Article 5069-1.01(h).

<sup>5</sup> Article 5069-1.04(d).

<sup>6</sup> Article 5069-1.04(a)(2).

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Section 37(c) of the 1983 amendatory act provides:

"Sections 29 through 36 of this Act take effect July 1, 1983, contingent on this Act receiving the vote required by Article III, Section 39, of the Constitution of the State of Texas. If this Act does not receive the vote required by Article III, Section 39, of the Constitution of the State of Texas, Sections 29 through 36 of this Act will take effect September 1, 1983. Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections. The annualized ceilings which took effect during the last two quarters of 1982 and expire during the last two quarters of 1983 and the annualized ceilings which took effect in the first two quarters of 1983 and expire in the first two quarters of 1984 shall, as of the date Sections 29 through 36 of this Act take effect as to an account under which a credit card transaction may be made, be deemed to equal 18 percent a year on such account, until such expiration dates, and the Consumer Credit Commissioner shall publish such revision in The Credit Code Letter within two weeks from the date this Act takes effect and in the Texas Register as soon as possible. For purposes of Section (d) of Article 15.02 of Title 79 as hereby amended, the quarterly ceiling applicable under that article shall be recomputed in accordance with Section 34 of this Act and, as so recomputed, takes effect on



the effective date of that section as to an account, and the Consumer Credit Commissioner shall publish the recomputed quarterly ceiling applicable under Section (d), Article 15.02, of Title 79 in The Credit Code Letter within two weeks from the date such section takes effect and in the Texas Register as soon as possible. Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

**Art. 5069-15.03. More Than One Account**

Any customer may request and a creditor may make available to any customer more than one account, and the creditor may charge interest at the rates set out in Article 15.02 of this chapter on each such account, but no creditor may require that a customer have more than one such account for the purpose of collecting more interest.

[Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.04. Credit Covered**

The provisions of this Chapter 15 shall apply to loans and extensions of credit for both consumer and business purposes under an arrangement.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.05. Amendments**

A creditor unilaterally may amend an agreement covering an arrangement and account, but no change adverse to the customer shall be effective as to existing balances or future credit until the first billing cycle beginning more than 90 days after written notice of the change to the customer. However, a creditor may amend an agreement or contract covering an open-end account by complying with Section (i), Article 1.04, of this Title.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 23, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-15.06. Compliance with Federal Consumer Credit Protection Act**

Nothing in this chapter shall be construed to alter any creditor's obligation to comply with the federal Consumer Credit Protection Act.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.07. Collateral and Insurance**

Creditors may require and take in connection with an account only such insurance and collateral as are allowed under Chapter 4 of Subtitle 2 of this Title 79.<sup>1</sup>

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

<sup>1</sup> Article 5069-4.01 et seq.

**Art. 5069-15.08. Recovery of Expenses**

Creditors may recover from customers amounts actually incurred by a creditor as court costs; attorneys' fees set by a court; lawful fees for filing, recording, or releasing in any public office any document securing an account; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any collateral; fees for noting a lien on or transferring a certificate of title to any motor vehicle securing an account; and premiums or other identifiable charges received in connection with permitted sale of insurance.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.09. Conflicts**

Arrangements and accounts covered by this chapter shall not be subject to the provisions of any other chapters of this title except as herein specifically provided.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.10. Application of This Chapter 15**

This Chapter 15 on and after its effective date shall apply

(a) to arrangements and accounts existing on the date of enactment when, before or after the effective date hereof, the creditor shall amend agreements covering such arrangements and accounts to give notice of the application of this Chapter 15 to such arrangements and accounts in compliance with Section 15.05 of this Chapter 15; and

(b) to all arrangements and accounts created after the enactment of this Chapter 15 unless the agreement providing for such arrangement or account provides otherwise.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

**Art. 5069-15.11. Penalties**

The provisions of Chapter 8 of Subtitle 2 of this Title 79<sup>1</sup> shall apply to violations of this Chapter 15.

[Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

<sup>1</sup> Article 5069-8.01 et seq.

**CHAPTER 16. BUSINESS OPPORTUNITIES****Art.**

- 5069-16.01. Short Title.
- 5069-16.02. Waivers: Public Policy.
- 5069-16.03. Cumulative Remedies.
- 5069-16.04. Construction and Application.
- 5069-16.05. Definitions.
- 5069-16.06. Exemptions.
- 5069-16.07. Relation to Other Regulatory Agencies.
- 5069-16.08. Registration and Filing.
- 5069-16.09. Required Disclosure Statement.
- 5069-16.10. Writing Requirement.
- 5069-16.11. Business Opportunity Contract.
- 5069-16.12. Transfer of Business Opportunity.
- 5069-16.13. Record Keeping.
- 5069-16.14. Bond or Trust Account Required.
- 5069-16.15. Prohibited Acts and Remedies.

**Art. 5069-16.01. Short Title**

This statute may be cited as the Business Opportunity Act.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.02. Waivers: Public Policy**

Any waiver by a person of the provisions of this statute is contrary to public policy and is unenforceable and void.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.03. Cumulative Remedies**

The provisions of this statute are not exclusive. The remedies provided in this statute are in addition to any other procedures or remedies provided for in any other law.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1 eff. Aug. 31, 1981.]

**Art. 5069-16.04. Construction and Application**

This statute shall be liberally construed and applied to promote its underlying purposes which are to protect persons against false, misleading, or deceptive practices in the advertising, offering for sale or lease, and sale or lease of business opportunities to provide efficient and economical procedures to secure such protection.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1 eff. Aug. 31, 1981.]

**Art. 5069-16.05. Definitions**

As used in this statute:

(1) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(2) "Business opportunity" means the sale or lease of any products, equipment, supplies, or services:

(A) which are sold to the purchaser upon payment of an initial required consideration exceeding \$500 which will be used by or on behalf of the purchaser to begin a business; and

(B) in which the seller represents that the purchaser will earn or is likely to earn a profit in excess of the initial consideration paid by the purchaser; and

(i) that the seller will provide locations or assist the purchaser in finding locations for the use or operation of the products, equipment, supplies, or services on premises neither owned nor leased by the purchaser or seller; or

(ii) that the seller will provide a sales, production, or marketing program; provided that this subsection shall not apply to sales, production, or marketing programs offered in conjunction with a federally or Texas State registered trademark or service mark; or

(iii) that the seller will buy back or is likely to buy back any products, supplies, or equipment purchased or any product made, produced, fabricated, grown, or bred by the purchaser using in whole or in part the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller.

(3) "Seller" is a principal or agent who sells or leases or offers to sell or lease a business opportunity.

(4) "Purchaser" means a person who is solicited to become obligated or does become obligated on a business opportunity contract.

(5) "Equipment" includes machines, all electrical devices, video and audio devices, molds, display racks, vending machines, coin-operated game machines, machines which dispense products, and display units of all kinds.

(6) "Supplies" includes any and all materials used to produce, grow, breed, or make any product or item.

(7) "Product" includes any tangible chattel, including food or living animals.

(8) "Services" includes any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain a business opportunity.

(9) "Business opportunity contract" means any agreement which is intended to or does obligate a purchaser to a seller.

(10) "Initial consideration" means the total amount a purchaser is obligated to pay under the terms of a business opportunity contract prior to or

at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the business opportunity plan. If the contract sets forth a specific total sale price for purchase of the business opportunity plan which total price is to be paid partially as a down payment and then in an additional payment or installments, then "initial consideration" means the entire total sale price. Initial consideration shall not include the not-for-profit sale of sales demonstration materials, samples, and equipment, not to exceed \$500.

(11) "Buy-back" or "secured investment" means any representation which implies in any manner that the purchaser's payment is protected from loss.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4320, ch. 688, § 1, eff. Aug. 29, 1983.]

**Art. 5069-16.06. Exemptions**

As used in this statute:

(1) "Business opportunity" does not include:

(A) the sale or lease of an established and ongoing business or enterprise, whether comprised of one or more than one component businesses or enterprises, where the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of such business or enterprise or liquidation thereof; or

(B) any contract or agreement by which a retailer of goods or services sells the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining the retail business establishment as a department or division thereof; or

(C) transactions regulated by the Texas Motor Vehicle Commission, Texas Department of Labor and Standards, State Board of Insurance, or the Texas Real Estate Commission when engaged in by persons licensed by such agencies; or

(D) real estate syndications; or

(E) a sale or lease to an existing or beginning business enterprise which also sells or leases equipment, products, and supplies or performs services (1) which are not supplied by the seller and (2) which the purchaser does not utilize with the equipment, products, supplies, or services of the seller.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4321, ch. 688, § 2, eff. Aug. 29, 1983.]

**Art. 5069-16.07. Relation to Other Regulatory Agencies**

Whenever any disclosures are required by this statute, a seller may use copies of similar disclosure documents which are required by the State Securities Board, Securities Exchange Commission, or Federal Trade Commission in transactions with purchasers or prospective purchasers or for purposes

of filing with the secretary of state. Copies of such documents may be used, however, only when such copies contain all of the information required to be disclosed by this statute.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.08. Registration and Filing**

(a) Prior to the sale or offer for sale, including advertising, of a business opportunity, the principal seller shall register said business opportunity with the secretary of state by filing a copy of all disclosure statements required under Sections 16.09 and 16.11 of this chapter, as well as a list of the names and resident addresses of those individuals who sell or will sell the business opportunity on behalf of the principal seller. The disclosure statements on file shall be updated through a new filing whenever material changes occur, but at least once a year. The list of salespersons shall be updated through a new filing every six months. If the principal seller is required to provide a bond or establish a trust account, he shall contemporaneously file with the secretary of state a copy of the bond or a copy of the formal notification by the depository that the trust account is established.

(b) The secretary of state may charge a reasonable fee to cover the costs incurred as a result of the filing herein required.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4322, ch. 688, § 3, eff. Aug. 29, 1983.]

**Art. 5069-16.09. Required Disclosure Statement**

At least 10 business days prior to the time the purchaser signs a business opportunity contract or at least 10 business days prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled, in at least 12-point bold face capital letters "DISCLOSURES REQUIRED BY TEXAS LAW." Under this title shall appear the following statement in at least 10-point bold face type: "The State of Texas has not reviewed and does not endorse, approve, recommend, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

(1) the name of the seller, whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller;

(2) the names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, stockholders owning more than 20 percent of the stock shares of the seller, and any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities;

(3) the length of time the seller has:

(A) sold business opportunities; and

(B) sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser;

(4) a full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser;

(5) a copy of a current (not older than 13 months from date prepared) financial statement of the seller prepared according to generally accepted accounting principles, updated to reflect material changes in the seller's financial condition;

(6) if training is promised by the seller, a complete description of the training, the length of training, and the cost or travel and lodging expenses of that training, which cost or expense the purchaser will be required to incur;

(7) if the seller promises services to be performed in connection with the placement of equipment, products, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed;

(8) if the business opportunity seller is required to secure a bond or establish a trust account, either of the following statements:

(A) "As required by Texas law, the seller has secured a bond issued by \_\_\_\_\_, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(B) "As required by Texas law, the seller has established a trust account with \_\_\_\_\_. Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account.";

(9) the following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract.";

(10) if the seller makes any statement concerning sales or earnings that may be made through this business opportunity, a statement disclosing:

(A) the total number of purchasers of business opportunities involving the product, equipment, sup-

plies, or services being offered who to the seller's knowledge have actually achieved sales of or received earnings in the amount or range specified, within three years prior to the date of the disclosure statement;

(B) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement;

(11) a statement disclosing which, if any, of the persons listed in Subdivisions (1) and (2) of this article:

(A) has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment, or has settled out of court any civil action or is a party to any civil action involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(C) is subject to any currently effective injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department; such statement shall set forth the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of the settlement or the terms of the order, and the date, nature, and issuer of each such order or ruling;

(12) a statement disclosing who, if any, of the persons listed in Subdivisions (1) and (2) of this article at any time during the previous seven fiscal years has:

(A) filed in bankruptcy;

(B) been adjudged bankrupt;

(C) been reorganized due to insolvency;

(D) been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within one year after the period that such person held such position in relation to such other person; if so, the name and location of the person having so filed or having been adjudged or reorganized, the date thereof, or any other material facts relating thereto, shall be set forth;

(13) a copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.10. Writing Requirement**

Every business opportunity contract shall be in writing and shall be subject to the provisions of this statute. A copy of the fully completed contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time he signs the contract.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.11. Business Opportunity Contract**

Every business opportunity contract shall set forth the following in 10-point type or equivalent size, if handwritten:

(1) the terms and conditions of payment including the initial consideration, additional payments, and down payment required;

(2) a full and detailed description of the acts or services the seller will undertake to perform for the purchaser;

(3) the seller's principal business address and the name and the address of its agent in the State of Texas authorized to receive service of process;

(4) the delivery date, or when the contract provides for staggered delivery times to the purchaser, the approximate delivery date of those products, equipment, or supplies the seller is to deliver to the purchaser's home or business address or are to be placed by the seller at locations owned or managed by persons other than the purchaser;

(5) a complete description of the nature of the "buy-back" or "security" arrangement, if the seller has represented orally or in writing when selling or leasing, soliciting, or offering a business opportunity that there is a "buy-back" or that the initial consideration is "secured."

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.12. Transfer of Business Opportunity**

Any assignee of the business opportunity contract or the seller's rights is subject to all equities, rights, and defenses of the purchaser against the seller.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.13. Record Keeping**

Every seller shall at all times keep and maintain a complete set of books, records, and accounts of business opportunity sales made by the seller. All documents relating to each specific business opportunity sold or leased shall be maintained for four years after the date of the business opportunity contract.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

**Art. 5069-16.14. Bond or Trust Account Required**

If the business opportunity seller makes any of the representations set forth in Subsection (B) of Section (2) of Article 16.05 of this chapter, or otherwise represents that the buyer is assured of making a profit from the business opportunity in question, the principal seller must either have obtained a surety bond by a surety company authorized to do business in this state or have established a trust account. The amount of the bond or trust account shall be in an amount not less than \$25,000. The bond or trust account shall be in the favor of the State of Texas. Any person who is damaged by any violation of this chapter, or by the seller's breach of contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or trust account to recover damages suffered; provided that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4323, ch. 688, § 4, eff. Aug. 29, 1983.]

**Art. 5069-16.15. Prohibited Acts and Remedies**

(a) A business opportunity seller shall not:

(1) fail to comply with any provision of this statute; or

(2) employ any representation, device, scheme, or artifice to deceive a purchaser; or

(3) make any untrue statement of a material fact or omit to state a material fact in connection with the documents and information required to be furnished to the secretary of state or prospective purchaser; or

(4) represent that the business opportunity provides or will provide income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses this data to the prospective purchaser at the time such representations are made; or

(5) make any claim or representation in advertising or promotional material or in any oral sales presentation, solicitation, or discussion between the seller and the prospective purchaser, which is inconsistent with the information required to be disclosed by this statute.

(b) Any violation of the provisions of this chapter is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Deceptive Trade Practices-Consumer Protection Act, Subchapter E, Chapter 17, Title 2 of the Business & Commerce Code, as amended. Any public or private right or remedy set forth in Chapter 17 of the Business & Commerce Code may be used to enforce the provisions of this chapter.

(c) The attorney general may review the required disclosure statements filed with the secretary of state pursuant to Articles 16.08 and 16.09. If a disclosure statement fails to comply with the requirements of this Act in any way, the attorney general may:

(1) notify the secretary of state and the seller in writing of such deficiency; the secretary of state shall attach a copy of the notice from the attorney general to the front of the disclosure statement; upon inquiry of the status of such a disclosure statement, the secretary of state shall disclose that a statement has been filed but that its correctness has been questioned by the attorney general's office; and

(2) file suit to enjoin a seller from doing business until such failure to comply has been corrected.

[Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

[Chapters 17 to 49 reserved for expansion]

#### CHAPTER FIFTY. MISCELLANEOUS PROVISIONS

##### Art.

5069-50.01. Applicability of Standard Rules of Construction.

5069-50.02. Saving Clause.

5069-50.03. Statutes Repealed.

5069-50.04. Act Cumulative.

5069-50.05. Severability.

5069-50.06. Effective Date.

*[The provisions of this Chapter apply to Acts 1967, 60th Leg., p. 609, ch. 274, § 2, enacting Chapters 1 to 9 of this Title.]*

##### Art. 5069-50.01. Applicability of Standard Rules of Construction

Unless specifically altered by this Act or unless the context requires otherwise, the provisions of Articles 10, 11, 12, 14, 22 and 23, Revised Civil Statutes of Texas, 1925, and of Acts, 50th Legislature 1947, Chapter 359, compiled as Texas Civil Statutes, Article 23a (Vernon's 1948) apply to this Act. Division headings are not a part of this Act. They are mere catchwords designed to give some indication of the contents of the sections and articles to which they are attached.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 3, eff. Oct. 1, 1967.]

##### Art. 5069-50.02. Saving Clause

The repeal of any law, or the creation of any new law, by this Act shall not affect or impair any act done or obligation, right, license or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force of the purpose of sustaining any proper action concerning any such obligation, right, license, or penalty. Fees or penalties incurred under any law repealed by this Act are an obligation within the

meaning of this Section. A person now licensed under the Texas Regulatory Loan Act,<sup>1</sup> upon surrender of the existing license, shall be issued a license under Chapter 3 of this Act without application therefor or payment of any investigation fee or any annual fee for a period for which an annual Texas Regulatory Loan Act license fee has been paid. At any time within thirty days after the effective date of Chapter 3 of this Act a person who before April 1, 1967, has paid the pawnbrokers occupation tax imposed by Article 19.01(4)<sup>2</sup> of Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, for the calendar year 1967 shall, upon surrender of the receipt of such payment, be issued a license under Chapter 3 of this Act without application therefor or payment of any investigation fee or any license fee for the calendar year 1967. In addition, all records, funds, equipment or other assets of the Office of Regulatory Loan Commissioner, created by the Texas Regulatory Loan Act, shall become vested in the Office of Consumer Credit Commissioner, for use in carrying out the duties imposed by this Act.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 4, eff. Oct. 1, 1967.]

<sup>1</sup> Article 6165b (repealed).

<sup>2</sup> Repealed.

##### Art. 5069-50.03. Statutes Repealed

Chapter 199, Acts of the 59th Legislature, Regular Session, 1965, compiled as Article 1137p, Vernon's Texas Penal Code, Chapter 467, Acts of the 52nd Legislature, 1951, compiled as Article 5074a, Vernon's Texas Civil Statutes; and Title 79 of the Revised Civil Statutes of Texas, 1925, as amended; and Chapter 205, Acts of the 58th Legislature, Regular Session, 1963, otherwise known as the "Texas Regulatory Loan Act," compiled as Article 6165b, Vernon's Texas Civil Statutes; Chapter 144, Acts of the 48th Legislature, 1943, as amended by Chapter 205, Section 25, Acts of the 58th Legislature, Regular Session, 1963, compiled as Article 4646b, Vernon's Texas Civil Statutes; and Articles 6146 through 6161, Revised Civil Statutes of Texas, 1925; and that part of Chapter 1, Acts of the 56th Legislature, 3rd Called Session, 1959, compiled as Article 19.01(4), Vernon's Texas Civil Statutes; and Article 1126 of the Texas Penal Code are hereby repealed. All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency, except as otherwise provided in this Act, and except that nothing herein contained in this Act shall affect those laws specified. Provided further, that the amendment or repeal of any law of this State by this Act shall not affect any right accrued or established, or any liability or penalty incurred under the provisions of any of such other laws prior to the amendment or repeal thereof.

[Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967.]

**Art. 5069-50.04. Act Cumulative**

The provisions of this Act are cumulative of the Texas Banking Code of 1943, as amended;<sup>1</sup> the "Texas Savings and Loan Act," as amended;<sup>2</sup> and Article 2461 through 2484, Revised Civil Statutes of Texas, 1925, as amended and the amendments thereto,<sup>3</sup> and Section 5 of House Bill No. 47, Acts of the 46th Legislature, Regular Session, 1939, and Chapter 173, Acts of the 51st Legislature, Regular Session, 1949, relating to Credit Unions and the amendments thereto.<sup>4</sup>

[Acts 1967, 60th Leg., p. 660, ch. 274, § 6, eff. Oct. 1, 1967.]

<sup>1</sup> Article 342-101 et seq.

<sup>2</sup> Article 852a.

<sup>3</sup> Repealed. See, now, art. 2461-1 et seq.

<sup>4</sup> Articles 2461 to 2484c (repealed).

**Art. 5069-50.05. Severability**

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1967, 60th Leg., p. 660, ch. 274, § 7, eff. Oct. 1, 1967.]

**Art. 5069-50.06. Effective Date**

This Act shall become effective at midnight on September 30, 1967. It applies to transactions entered into after that date. Provided, however, that Chapters 6 and 7 of Section 2 of this Act shall not become effective until midnight on December 31, 1967. Insofar as these two Chapters are concerned, this Act applies to transactions entered into after that date.

[Acts 1967, 60th Leg., p. 660, ch. 274, § 8, eff. Oct. 1, 1967.]

**CHAPTER FIFTY-ONE. PAWNSHOPS**

- Art.
- 5069-51.01. Short Title
- 5069-51.01A. Purpose.
- 5069-51.02. Definitions.
- 5069-51.03. License Required.
- 5069-51.03A. Eligibility for a Pawnshop License.
- 5069-51.04. Application for Pawnshop License—Contents, Bond.
- 5069-51.05. Issuance or Denial of License; Fees.
- 5069-51.06. Effect of License; Annual Fee; Statutory Agent; Minimum Assets.
- 5069-51.07. Revocation, Suspension, Surrender, Reinstatement of Licenses.
- 5069-51.07A. Employee License; Eligibility; Application.
- 5069-51.07B. Issuance or Denial of an Employee License; Fee.
- 5069-51.07C. Suspension, Revocation, Surrender, or Reinstatement of Employee License.
- 5069-51.07D. Expiration Dates of Licenses.
- 5069-51.08. Examinations.
- 5069-51.09. Form of Books and Records; Regulations.

- Art.
- 5069-51.10. Pawn Ticket.
- 5069-51.11. Pledgor's Liability Prohibited.
- 5069-51.12. Pawn Service Charge.
- 5069-51.12A. Bracket and Ceiling Adjustment.
- 5069-51.13. Unredeemed Pledged Goods.
- 5069-51.14. Presentation of Ticket; Presumption.
- 5069-51.15. Lost or Destroyed Ticket.
- 5069-51.16. Prohibited Practices.
- 5069-51.17. Penalties and Administrative Enforcement.
- 5069-51.17A. Records Supplied by Department of Public Safety.
- 5069-51.18. Repealer.
- 5069-51.19. Severability.
- 5069 to 5074a. Repealed.

**Art. 5069-51.01. Short Title**

This Act shall be known and may be cited as the "Texas Pawnshop Act."

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 1, eff. Aug. 30, 1971.]

**Art. 5069-51.01A. Purpose**

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops vitally affects the general economy of this state and the public interest and welfare of its citizens. To prevent frauds, unfair practices, discriminations, impositions, and abuses of the citizens of the state, it is the policy of this state and the purpose of the Texas Pawnshop Act to:

- (1) exercise the state's police power to ensure a sound system of making pawn loans and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers and certain persons employed by or in pawnshops;
- (2) provide for licensing fees, investigation fees, and minimum capital requirements of licensees;
- (3) ensure financial responsibility to the state and the public;
- (4) ensure compliance with federal, state, and local laws, rules, regulations, and ordinances; and
- (5) assist local governments in the exercise of their police power.

[Acts 1981, 67th Leg., p. 221, ch. 99, § 1, eff. Aug. 31, 1981.]

**Art. 5069-51.02. Definitions**

The following definitions apply where such words appear in this Act:

- (a) "Person"—means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized.
- (b) "Pawnbroker"—means any person engaged in the business of lending money on the security of pledged goods; or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

(c) "Pledged goods"—means tangible personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

(d) "Pawnshop"—means the location at which or premises in which a pawnbroker regularly conducts business.

(e) "Month"—means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then the last day of such following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth of a month.

(f) "Commissioner"—means the Consumer Credit Commissioner as defined in Article 2.01(1) of Chapter 274, Acts of 60th Legislature, Regular Session, 1967 (Article 5069-2.01(1), Vernon's Texas Civil Statutes), or his successor.

(g) "Net assets"—means the book value of the current assets of a person or pawnbroker less its applicable liabilities as stated in this subsection. Current assets include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawn service charge. Current assets do not include the investments made in fixed assets of real estate, furniture, fixtures, or equipment; investments made in stocks, bonds, or other securities; or investments made in prepaid expenses or other general intangibles. Applicable liabilities include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses; and notes or other payables that are unsecured or secured in whole or part by current assets. Applicable liabilities do not include liabilities secured by assets other than current assets. Net assets must be represented by a capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Texas Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles.

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 2, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 221, ch. 99, § 2, eff. Aug. 31, 1981.]

#### Art. 5069-51.03. License Required

(a) A person may not engage in business as a pawnbroker unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business operated under this Act. The commissioner may issue more than one license to a person if the person complies with this Act for each license. A new

license or application to transfer an existing license is required upon any change, directly or beneficially, in the ownership of any licensed pawnshop, and an application must be made to the commissioner in accordance with this Act.

(b) A pawnbroker may not employ an individual for the purpose of writing pawn transactions after the 30-day grace period for filing an application for a pawnshop employee license unless the person:

(1) has timely filed an application for a pawnshop employee license and is awaiting the commissioner's decision on the application; or

(2) possesses a valid pawnshop employee license.

(c) Notwithstanding the requirement of Subsection (b) of this section, a pawnbroker may employ an individual without a pawnshop employee license if the individual:

(1) owns the pawnshop; or

(2) owns a controlling interest in the person who owns the pawnshop and is named in the application for the pawnshop's license.

[Acts 1971, 62nd Leg., p. 2757, ch. 894, § 3, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 222, ch. 99, § 3, eff. Aug. 31, 1981.]

#### Art. 5069-51.03A. Eligibility for a Pawnshop License

(a) To be eligible for a pawnshop license, an applicant must:

(1) be of good moral character;

(2) have net assets of at least \$75,000 readily available for use in conducting the business of each licensed pawnshop; and

(3) show that the pawnshop will be operated lawfully and fairly within the purposes of this Act.

(b) Despite an applicant's eligibility for a pawnshop license under Subsection (a) of this section, the commissioner, in accordance with Article 6252-13c, Revised Statutes, may find ineligible an applicant whose felony or misdemeanor conviction:

(1) directly relates to the duties and responsibilities of the occupation of pawnbroker; or

(2) otherwise makes the applicant presently unfit for a pawnshop license.

(c) If an applicant for a pawnshop license is a business entity, the eligibility requirements of Subdivision (1) of Subsection (a) of this section apply to each operator and each legal or beneficial owner, and, as to a corporation, to each officer, shareholder, and director.

[Acts 1981, 67th Leg., p. 222, ch. 99, § 4, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 834, ch. 194, § 23, eff. May 24, 1983.]

Section 28 of the 1983 amendatory act provides:

"The eligibility requirements for a pawnshop license or a pawnshop employee license provided by this Act apply to any applicant whose application is pending on the effective date of this Act and



to any applicant who submits his application on or after the effective date of this Act."

**Art. 5069-51.04. Application for Pawnshop License—Contents, Bond**

(a) An application for a new pawnshop license, the transfer of an existing pawnshop license, or the approval of a change in the ownership of a licensed pawnshop must be under oath and must state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the Commissioner. If the applicant is a partnership, the application must state the full name and address of each member. If the applicant is a corporation, the application must state the full name and address of each officer, shareholder, and director.

(b) The application must be accompanied by:

(1) an investigation fee of \$500 if the applicant is unlicensed at the time of applying for the pawnshop license or \$250 if the application involves a second or additional license to an applicant previously licensed for a separate location or involves substantially identical principals and owners of a licensed pawnshop at a separate location;

(2) proof of general liability and fire insurance coverage if and as required by the Commissioner; and

(3) an annual fee of \$100.

(c) Each applicant for a pawnshop license at the time of filing application shall file with the Commissioner, if he so requires, a bond satisfactory to him and in an amount not to exceed \$5,000 for each license with a surety company qualified to do business in this State. The aggregate liability of such surety shall not exceed the amount stated in the bond. The said bond shall run to the State for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that the obligor will comply with the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act during the time such bond is in effect.

[Acts 1971, 62nd Leg., p. 2758, ch. 894, § 4, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 222, ch. 99, § 5, eff. Aug. 31, 1981.]

**Art. 5069-51.05. Issuance or Denial of License; Fees**

(a) When an application and the required fees are received, the Commissioner shall investigate the facts and shall notify the Department of Public Safety and all local law enforcement agencies in the county in which the business is to be conducted that the application has been filed. In the notice, the

Commissioner shall state the names and addresses of the persons that are required to be listed on the license application under Subsection (a) of Section 4 of this Act.<sup>1</sup> The Commissioner shall give those law enforcement agencies a reasonable time to respond with information concerning those persons or with any other relevant information.

(b) The Commissioner shall conduct a public hearing before issuing a pawnshop license and shall approve an application and issue to the applicant a license that will evidence the authority to do business under the provisions of this Act if the Commissioner:

(1) finds that the eligibility requirements for the license are satisfied; and

(2) finds that the financial responsibility, experience, character, and general fitness of the applicant or of its owners and managers are such as to warrant belief that the business will be operated lawfully and fairly within the purposes of this Act.

(c) If the Commissioner does not so find, he shall notify the applicant, who shall, on request within thirty days, be entitled to a hearing on such application within sixty days after the date of said request. The investigation fee shall be retained by the Commissioner, but the annual fee shall be returned to the applicant in the event of denial.

(d) The Commissioner shall grant or deny each application for a license within sixty days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Commissioner.

(e) If a license is granted pursuant to an application filed after June 30 of any year, the annual license fee for the remainder of that year is \$50 and the Commissioner shall return to the applicant the balance of the annual fee filed with the application. If a license is denied, the Commissioner shall retain the investigation fee but shall return the annual license fee to the applicant.

(f) Any license issued to a pawnshop before October 1, 1981, remains valid as long as the licensee complies with this Act.

(g) Notwithstanding the other provisions of this Act, the Commissioner may issue a temporary license authorizing the operation of a pawnshop on the receipt of an application to transfer a license from one person to another or on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed pawnshop. The temporary license is effective until the permanent license is issued or denied.

[Acts 1971, 62nd Leg., p. 2758, ch. 894, § 5, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 223, ch. 99, § 6, eff. Aug. 31, 1981.]

<sup>1</sup> Article 5069-51.04.

**Art. 5069-51.06. Effect of License; Annual Fee; Statutory Agent; Minimum Assets**

(a) Each license shall state the name of the licensee and the address at which the business is to be conducted. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Commissioner.

(b) When a licensee wishes to move a pawnshop to another location, the licensee must give thirty days' written notice to the Commissioner, who shall amend the license accordingly.

(c) Each licensee shall maintain on file with the Commissioner a written appointment of a resident of this state as his agent for service of all judicial or other process or legal notice unless the licensee has appointed an agent under another statute of this state. In case of noncompliance, the service may be made on the Commissioner.

(d) Each licensee shall maintain net assets either used or readily available for use in the conduct of the business of each licensed pawnshop in the amount of \$75,000, as determined by using the definition of net assets prescribed by this Act; provided, however,

(1) as to licenses in force on the effective date of this Act, the then applicable net assets requirement shall continue to apply to such license until there is a change of ownership of the licensed business; and

(2) as to license applications pending on the effective date of this Act, the net assets requirement shall be \$25,000, as determined by the definition and policy of the Commissioner in force at the time the application was filed, and shall remain \$25,000 until there is a change of ownership of the licensed business.

(e) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee, on or before each December 1st, shall pay the Commissioner \$100 for each license held by him as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Commissioner, the license shall thereupon expire, but not before December 31st of any year for which an annual fee has been paid.

[Acts 1971, 62nd Leg., p. 2759, ch. 894, § 6, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 224, ch. 99, § 7, eff. Aug. 31, 1981.]

**Art. 5069-51.07. Revocation, Suspension, Surrender, Reinstatement of Licenses**

(a) The Commissioner may, after notice and hearing, suspend or revoke any license if he finds that:

(1) The licensee has failed to pay any fee or charge properly imposed by the Commissioner under the authority of this Act;

(2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act;

(3) Any fact or condition exists which, if it has existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing to issue such license;

(4) The licensee has established an association with an unlicensed person who, with the knowledge of the licensee, has acted in violation of this Act;

(5) The licensee has aided, abetted, or conspired with a person to circumvent the requirements of this Act; or

(6) The licensee or a legal or beneficial owner of the licensee is not of good moral character or has been convicted of a crime that the Commissioner finds directly relates to the duties and responsibilities of the occupation of pawnbroker or otherwise makes the applicant presently unfit for a license under Section 3A of this Act.

(b) The Commissioner may place on probation a person whose license has been suspended or reprimand a licensee for a violation of this Act or a rule adopted under this Act.

(c) The manner of giving notice and conducting a hearing as required by Subsection (a) of this section is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect the licensee's civil or criminal liability for acts committed prior thereto.

(e) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor.

(f) The Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Act.

(g) On application of any person and payment of the cost thereof, the Commissioner shall furnish under his seal and signature a certificate of good standing or a certified copy of any license.

[Acts 1971, 62nd Leg., p. 2759, ch. 894, § 7, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 225, ch. 99, § 8, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 835, ch. 194, § 24, eff. May 24, 1983.]

**Art. 5069-51.07A. Employee License; Eligibility; Application**

(a) To be eligible for a pawnshop employee license an individual must be of good business repute.

(b) Despite an applicant's eligibility for a pawnshop employee license under Subsection (a) of this section, the commissioner, in accordance with Article 6252-13c, Revised Statutes, may find ineligible an applicant whose felony or misdemeanor conviction:

(1) directly relates to the duties and responsibilities of the occupation of pawnshop employee; or

(2) otherwise makes the applicant presently unfit for a pawnshop employee license.

(c) An individual who begins employment at a licensed pawnshop must file an application with the commissioner for a pawnshop employee license within 30 days after the day employment begins. The application must state:

(1) the applicant's name and address;

(2) the name of the pawnshop at which the applicant is employed;

(3) whether the applicant has been convicted of or is under indictment for any crime;

(4) whether the applicant has had a license to engage in any occupation, business, or profession revoked or suspended and the reason for the action;

(5) whether the applicant has been refused a pawnshop employee license or any other occupational, business, or professional license in this or any other state;

(6) the business or occupation engaged in by the applicant for five years immediately preceding the date of application; and

(7) other relevant information that the commissioner requires.

(d) The application for an employee license must be accompanied by an investigation and annual fee of \$25.

[Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 836, ch. 194, § 25, eff. May 24, 1983.]

Section 28 of the 1983 amendatory act provides:

"The eligibility requirements for a pawnshop license or a pawnshop employee license provided by this Act apply to any applicant whose application is pending on the effective date of this Act and to any applicant who submits his application on or after the effective date of this Act."

**Art. 5069-51.07B. Issuance or Denial of an Employee License; Fee**

(a) If the application for a pawnshop employee license is timely made, the applicant may continue employment until the license is granted or denied. The commissioner shall determine whether the applicant is qualified for a license within 60 days after the date the application is filed. If the commission-

er finds that an applicant is qualified for a license, the commissioner shall approve the application and issue a license. Otherwise, the commissioner shall notify the applicant and the employing pawnbroker licensee in writing that the application will be denied unless the applicant, not later than the 30th day after the date of the notice, makes a written request for a hearing on the application.

(b) If an applicant who is given notice of his opportunity for a hearing does not request a hearing within the time allowed, the application is denied on the day after the last day for requesting a hearing. If the applicant requests a hearing within the time allowed, the commissioner shall conduct a hearing on the application in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). On the conclusion of the hearing, the commissioner shall either grant or deny the application.

(c) A pawnshop employee license is effective until surrendered, suspended, revoked, or expired. On or before December 1, a licensee shall pay the commissioner a \$10 annual fee to renew the license for the succeeding calendar year. The commissioner shall send a written notice of delinquency to the licensee if the licensee does not pay the fee on or before December 1. The licensee has 15 days after the date of the delinquency notice to pay the annual fee. If the licensee does not pay the fee within this period, the license expires on January 1 of the year for which the renewal fee was not paid or on the 16th day after the date of the delinquency notice, whichever date is later.

[Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

**Art. 5069-51.07C. Suspension, Revocation, Surrender, or Reinstatement of Employee License**

(a) The commissioner may, after notice and hearing, suspend or revoke a pawnshop employee license if the commissioner finds that:

(1) the licensee knowingly or recklessly violated a provision of this Act or a rule or order issued under this Act; or

(2) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application, clearly would have justified the refusal to issue the license.

(b) The commissioner shall send written notice of the hearing to the licensee and the employing pawnbroker licensee and shall hold the hearing not less than 20 days after the day the notice was sent. The commissioner shall conduct the hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) A licensed employee may surrender his license by delivering it to the commissioner with written

notice of the surrender. The surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(d) The commissioner may reinstate a suspended license or issue a new license to an individual whose license has been revoked if no fact or condition exists that clearly would have justified the refusal to issue the license under this Act.

(e) On application and payment of the cost, the commissioner shall furnish, under the commissioner's seal and signature, a certificate of good standing and a certified copy of a pawnshop employee license.

[Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

#### **Art. 5069-51.07D. Expiration Dates of Licenses**

The commissioner by rule may adopt a system under which the licenses issued under this Act expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

[Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

#### **Art. 5069-51.08. Examinations**

(a) At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records at such licensee insofar as they pertain to the business regulated by this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes, and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the

course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examinations and a proportionate share of general administrative expense, not to exceed \$500 in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), and by this Act shall not exceed \$500 in any calendar year.

(b) If the Commissioner questions the net assets requirement of a licensed pawnshop, the Commissioner may require certification by an independent certified public accountant that the accountant has reviewed a licensee's books, records, and transactions during the reporting year, that the books and records are maintained using generally accepted accounting principles, and that the licensee fulfills the net assets requirement of this Act.

[Acts 1971, 62nd Leg., p. 2760, ch. 894, § 8, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 878, ch. 329, § 3, eff. May 30, 1977; Acts 1981, 67th Leg., p. 227, ch. 99, § 10, eff. Aug. 31, 1981.]

#### **Art. 5069-51.09. Form of Books and Records; Regulations**

(a) Each licensee shall keep, consistent with accepted accounting practices, adequate books and records relating to the licensee's pawn transactions, which books and records shall be preserved for a period of at least two years from the date of the last transaction recorded therein.

(b) The Commissioner may make regulations necessary for the enforcement of this Act and consistent with all its provisions. Before making a regulation the Commissioner shall give each licensee at least thirty days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty days after such mailing. On the application of any person and payment

of the cost thereof, the Commissioner shall furnish such person a certified copy of any such regulation.

[Acts 1971, 62nd Leg., p. 2761, ch. 894, § 9, eff. Aug. 30, 1971.]

**Art. 5069-51.10. Pawn Ticket**

The pawnbroker, at the time the pawn transaction is entered, shall deliver to the pledgor a memorandum or ticket on which shall be clearly set forth the following:

- (a) The name and address of the pawnshop;
- (b) The name and address of the pledgor and pledgor's description or the distinctive number from pledgor's driver's license or military identification;
- (c) The date of the transaction;
- (d) An identification and description of the pledged goods, including serial numbers if reasonably available;
- (e) The amount of cash advanced or credit extended to the pledgor, designated as the "Amount Financed";
- (f) The amount of the pawn service charge, designated as the "Finance Charge";
- (g) The total amount (the Amount Financed plus the Finance Charge) which must be paid to redeem the pledged goods on the maturity date, designated as the "Total of Payments";
- (h) The "Annual Percentage Rate", computed in accordance with the regulations issued by the Federal Reserve Board of the United States pursuant to the Truth-in-Lending Act, Title I, Act of May 29, 1968, Public Law 90-321, 82 Stat. 146, as amended;<sup>1</sup>
- (i) The maturity date of the pawn transaction;
- (j) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

[Acts 1971, 62nd Leg., p. 2761, ch. 894, § 10, eff. Aug. 30, 1971.]

<sup>1</sup> 15 U.S.C.A. § 1601 et seq.

**Art. 5069-51.11. Pledgor's Liability Prohibited**

A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 11, eff. Aug. 30, 1971.]

**Art. 5069-51.12. Pawn Service Charge**

No pawnbroker may contract for, charge or receive any amount as a charge for credit in connection with a pawn transaction other than a pawn service charge, and no pawn service charge may exceed the charge disclosed in the pawn ticket or other memorandum delivered to the pledgor. The pawn service charge may not exceed an amount equal to twenty percent of any amount of Thirty

Dollars or less financed for one month, fifteen percent of the total amount when the total amount is greater than Thirty Dollars but not in excess of One Hundred Dollars financed for one month, two and one-half percent of the total amount when the total amount is greater than One Hundred Dollars but not in excess of Three Hundred Dollars financed for one month, and one percent of the total amount when the total amount is greater than Three Hundred Dollars financed for one month, with proportionate adjustment for lesser periods of time, and in no case shall the amount financed exceed \$2,500.00. In the event pawned merchandise is redeemed by the pledgor prior to the maturity date of the pawn transaction, that portion of the pawn service charge in excess of Fifteen Dollars shall be reduced by an amount equal to one-thirtieth of the total pawn service charge for each day between the day on which redemption occurs and the original maturity date. The maturity date of any pawn transaction may be changed to a subsequent date by agreement between the pledgor and the pawnbroker evidenced by a written memorandum, a copy of which shall be supplied the pledgor, which shall clearly set out the new redemption date and any additional pawn service charge to be paid. No pawnbroker shall separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn service charge in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 12, eff. Aug. 30, 1971.]

**Art. 5069-51.12A. Bracket and Ceiling Adjustment**

The dollar amounts of the brackets establishing rates of charge, and the ceilings on the size of transactions that are subject to this Chapter, are subject to adjustment from time to time under Article 2.08 of this Title.

[Acts 1981, 67th Leg., p. 286, ch. 111, § 24, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

**Art. 5069-51.13. Unredeemed Pledged Goods**

Pledged goods not redeemed by the pledgor on or before the date fixed and set out in the pawn ticket issued in connection with any transaction shall be held by the pawnbroker for at least sixty days following such date, and may be redeemed by the pledgor within such period by the payment of the originally agreed redemption price, and the payment of an additional pawn service charge equal to one-thirtieth of the original monthly pawn service charge for each day following the original maturity date including the day on which the pledged goods are finally redeemed. Pledged goods not redeemed within sixty days following the originally fixed maturity date may thereafter, at the option of the pawnbroker be forfeited and become the property of the pawnbroker.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 13, eff. Aug. 30, 1971.]

**Art. 5069-51.14. Presentation of Ticket; Presumption**

Except as otherwise provided by this Act, any person properly identifying himself and presenting a pawn ticket to the pawnbroker shall be presumed to be entitled to redeem the pledged goods described therein.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 14, eff. Aug. 30, 1971.]

**Art. 5069-51.15. Lost or Destroyed Ticket**

If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make affidavit of the loss, destruction or theft of the ticket.

[Acts 1971, 62nd Leg., p. 2762, ch. 894, § 15, eff. Aug. 30, 1971.]

**Art. 5069-51.16. Prohibited Practices**

A pawnbroker shall not:

- (a) Accept a pledge from a person under the age of eighteen years.
- (b) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.
- (c) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Act.
- (d) Fail to exercise reasonable care to protect pledged goods from loss or damage.
- (e) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker it shall be the responsibility of

the pawnbroker to replace the lost or damaged goods with like kind(s) of merchandise. All such replacements are subject to the approval or rejection of the Commissioner.

(f) Make any charge for insurance in connection with a pawn transaction.

(g) Enter any pawn transaction which has a maturity date more than one month after the date of the transaction.

(h) Display for sale in storefront windows or sidewalk display case so that same may be viewed from the street, any pistol, dirk, dagger, blackjack, hand chain, sword cane, knuckles made of any metal or any hard substance, switchblade knife, springblade knife, or throwblade knife, or depict same on any sign or advertisement which may be viewed from the street.

[Acts 1971, 62nd Leg., p. 2763, ch. 894, § 16, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 228, ch. 99, § 11, eff. Aug. 31, 1981.]

**Art. 5069-51.17. Penalties and Administrative Enforcement**

(a) Any person who engages in the business of operating a pawnshop without first securing the license prescribed by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of \$10,000 or by confinement in the County Jail for not more than one year, or both. Any person who accepts employment at a pawnshop writing pawn loan transactions and does not timely file an application for an employee license or any person who continues employment at a pawnshop after his employee license application has been denied or after his employee license has expired or has been revoked, suspended, or surrendered commits a Class B misdemeanor.

(b) Any licensee who violates this Act by contracting for, charging or receiving a pawn service charge in excess of that authorized by this Act or by failing to perform any duty imposed herein or by the commission of any act or practice herein prohibited shall forfeit the right to collect twice the amount of the pawn service charge contracted for in the pawn transaction and upon the pledgor's request shall be obligated to return to the pledgor the pledged goods delivered to the licensee in connection with the pawn transaction upon payment of the balance remaining due, provided that there shall be no penalty for a violation resulting from an accidental and bona fide error, corrected upon discovery.

(c) Any licensee who violates this Act by contracting for, charging or receiving a pawn service charge in excess of twice the amount authorized by this Act shall forfeit the right to collect any amount on the pawn transaction and upon the pledgor's request shall be obligated to return to the pledgor the pledged goods delivered to the licensee in connection with the pawn transaction, provided that there shall be no penalty for a violation resulting from an

accidental and bona fide error, corrected upon discovery.

(d) In addition to any other penalty which may be applicable, any licensee who willfully violates any provision of this Act or who willfully makes a false entry in any records specifically required by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of \$1,000.00.

(e) Compliance with the provisions of this Act may be enforced by the Commissioner, who may exercise, for such purpose, any authority conferred upon him by law.

(f) When the commissioner has reasonable cause to believe that a person is violating any provision of this Act, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this Act, may enter an order requiring the person to stop or to refrain from the violation. At the request of the commissioner, the attorney general or an attorney authorized to represent the state in the district court shall sue in any district court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

[Acts 1971, 62nd Leg., p. 2763, ch. 894, § 17, eff. Aug. 30, 1971. Amended by Acts 1981, 67th Leg., p. 228, ch. 99, §§ 12, 13, eff. Aug. 31, 1981.]

**Art. 5069-51.17A. Records Supplied by Department of Public Safety**

The Department of Public Safety on request shall supply to the Consumer Credit Commissioner any

available arrest and conviction records of an individual applying for or holding a license under this Act.

[Acts 1981, 67th Leg., p. 229, ch. 99, § 14, eff. Aug. 31, 1981.]

**Art. 5069-51.18. Repealer**

Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, codified as Article 5069-1.01, et seq., Vernon's Texas Civil Statutes, and also known as the Texas Credit Code, is amended by repealing Article 3.17 thereof.

[Acts 1971, 62nd Leg., p. 2764, ch. 894, § 18, eff. Aug. 30, 1971.]

**Art. 5069-51.19. Severability**

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1971, 62nd Leg., p. 2764, ch. 894, § 19, eff. Aug. 30, 1971.]

**Arts. 5069 to 5073. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967**

**Art. 5074. Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)**

**Art. 5074a. Repealed by Acts 1967, 60th Leg., p. 659, ch. 274, § 5, eff. Oct. 1, 1967**

**TITLE 80  
INTOXICATING LIQUOR [REPEALED]**

**Arts. 5075 to 5114. Repealed by Acts 1935, 44th Leg., 2nd C.S., p. 1795, ch. 467, § 49**

See, now, Alcoholic Beverage Code.

## TITLE 81

### JAILS

- Art.  
5115. Jails Provided.  
5115.1. Commission on Jail Standards.  
5115a. Counties of Less Than 20,000; Joint Financing, Construction, Maintenance and Operation With Cities; Bonds.  
5115b. Counties of 84,000 to 86,000; Contracts with Cities for Jails or Jail Facilities.  
5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities.  
5115d. Contracts With Private Sector for Detention Facilities.  
5116. Sheriff and Jailer.  
5117. Federal Officer May Use Jail.  
5118. Prisoner Sent to Another Jail.  
5118a. Commutation for Good Conduct; Forfeiture of Commutation; Record.  
5118b. Work Release Program.

#### Art. 5115. Jails Provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.

#### SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per

capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of twenty-four (24) hours, during which period he shall be kept under observation continuously. At the end of the twenty-four (24) hour period, such person shall be released or taken to a hospital or mental hospital. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

#### SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18)



square feet for each prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block.

#### SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act, as amended, shall become applicable to all jails upon its effective date. The standards prescribed by this Act are minimum standards only. The provisions of this Act are enforceable by the Commission on Jail Standards.

[Acts 1925, S.B. 84; Acts 1957, 55th Leg., p. 637, ch. 277, § 1. Amended by Acts 1975, 64th Leg., p. 1283, ch. 480, § 15, eff. June 19, 1975.]

#### Art. 5115.1. Commission on Jail Standards

##### Policy

Sec. 1. It is the policy of the State of Texas that all county jail facilities in the state conform to certain minimum standards of construction, maintenance, and operation. It is the purpose of the legislature by this Act to implement this policy by establishing a commission on jail standards with the authority and responsibility to administer the provision of this Act and other laws relating to standards for county jails.

#### Definitions

Sec. 2. In this Act:

- (1) "Commission" means the Commission on Jail Standards.
- (2) "Executive director" means the executive director of the Commission on Jail Standards.
- (3) "County jail" means any jail, lockup, or other facility that is operated by or for a county for the confinement of persons accused or convicted of an offense.
- (4) "Prisoners" means persons confined in a county jail.

#### Commission Created

Sec. 3. The Commission on Jail Standards is created.

#### Application of Sunset Act

Sec. 3a. The Commission on Jail Standards is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

<sup>1</sup> Article 5429k.

#### Membership—Appointment, Terms, Vacancies

Sec. 4. (a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. Two members shall be county sheriffs, one from a county with a population of over 200,000 persons and one from a county with a population of 200,000 or less, according to the latest United States census. One member shall be a county judge; one shall be a practitioner of medicine licensed by the State Board of Medical Examiners; the other five positions shall be filled by citizens of the state who hold no public office. The sheriffs and the county judge appointed to the commission shall perform the duties of a member of the commission in addition to their other duties.

(b) Except as provided by Subsection (c) of this section, members are appointed for a term of six years expiring on January 31 of an odd-numbered year.

(c) For terms that begin within 60 days after the effective date of this Act, the governor shall appoint:

- (1) three members for terms that expire on January 31, 1981;
- (2) three members for terms that expire on January 31, 1979; and
- (3) three members for terms that expire on January 31, 1977.

(d) If a sheriff or county judge on the commission ceases to hold office or if a vacancy otherwise occurs in the membership of the commission, the governor shall appoint a replacement who possesses the same qualifications as the member who vacated

his position, with the advice and consent of the senate, to serve the unexpired portion of the term. If a vacancy occurs at a time when the senate is not in session, the vacancy shall nevertheless be filled on an interim basis, and the interim appointee shall serve as a member of the commission until his nomination has been acted on by the senate.

**Chairman; Vice-Chairman**

Sec. 5. The commission shall biennially elect one of its members chairman and one vice-chairman for a term of two years beginning on February 1 of each odd-numbered year.

**Meetings; Quorum; Rules**

Sec. 6. (a) The commission shall hold a regular meeting each calendar quarter and may hold special meetings at the call of the chairman or on the written request of three members. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the commission.

(b) Five members constitute a quorum for the transaction of business.

(c) The commission shall adopt, amend, and rescind rules for the conduct of its proceedings.

**Expenses**

Sec. 7. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

**Director; Staff**

Sec. 8. (a) The commission shall employ an executive director to serve at the will of the commission. The executive director is subject to the policy direction of the commission and is the chief executive officer of the commission.

(b) The executive director may employ personnel as necessary to enforce and administer this Act.

(c) The executive director and employees are entitled to compensation and expenses as provided by legislative appropriation.

**Duties of the Commission**

Sec. 9. (a) The commission shall:

(1) promulgate reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) promulgate reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) promulgate reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) promulgate reasonable rules and procedures establishing minimum requirements for programs

of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary, in a manner not inconsistent with this Act;

(6) provide consultation and technical assistance to local government officials with respect to county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules promulgated under this Act;

(9) review the reports submitted under Subdivision (8) of this subsection and require its employees to inspect county jails regularly to insure compliance with state law, commission orders, and rules and procedures promulgated under this Act; and

(10) determine annually, or more often, whether each county jail is in compliance with the rules and procedures promulgated under this Act.

(b) The fact that compliance with a commission rule or procedure requires major modification or renovation of an existing jail or construction of a new jail does not render a commission rule or procedure unreasonable.

**Annual Report**

Sec. 10. The commission shall make a report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than January 31 of each year, covering its operations, its findings concerning county jails during the preceding year, and whatever recommendations it deems appropriate.

**Enforcement of Jail Standards**

Sec. 11. (a) The commission shall be granted access at any reasonable time to any county jail facility or part of any county jail facility and shall be granted access to all books, records, and data pertaining to any county jail which the commission or the executive director deems necessary for the administration of the commission's functions, powers, and duties. The commissioners and sheriff of each county shall furnish the commission or any of its members, or the executive director or any employee designated by the executive director, any information which he states is necessary to enable the commission to discharge its functions, powers, and duties, to determine whether its rules are being observed or whether its orders are being obeyed and otherwise to implement the purposes of this Act. In the exercise of its function, powers, and duties, the commission may issue subpoenas and

subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, administer oaths, and take testimony concerning all matters within its jurisdiction. The commission is not bound by strict rules of evidence or procedure in the conduct of its proceedings, but its determinations shall be founded on sufficient legal evidence to sustain them. The commission may delegate to the executive director the authority conferred by this subsection.

(b) When the commission finds that a county jail is not in compliance with state law, or the rules and procedures of the commission, or fails to meet the minimum standards prescribed by the commission or by state law, it shall report the noncompliance to the commissioners and sheriff of the county responsible for the jail that is not in compliance. The commission shall send a copy of the report to the governor.

(c) The commission shall grant the county or sheriff a reasonable time, not to exceed one year after a report of noncompliance, to comply with its rules and procedures and with state law. On application of the sheriff or commissioners of a county, if clearly justified by the facts and circumstances, the commission may grant reasonable variances for operation of county jails not in strict compliance with state law, except that no variance may be granted to permit unhealthy, unsanitary, or unsafe conditions.

(d) If the commissioners or sheriff does not comply within the time granted by the commission, the commission may, by order, prohibit the confinement of prisoners in the noncomplying jail. The commission shall then furnish the sheriff with a list of qualified detention centers to which the prisoners may be transferred for their confinement. If a prohibition and transfer order is issued, the sheriff of the county in which the noncomplying jail is situated shall immediately transfer the number of prisoners necessary to bring the jail into compliance to a detention facility that agrees to accept the prisoners. The agreement must be in writing and must be signed by the sheriff of the county transferring the prisoners and the sheriff of the county receiving the prisoners. A county transferring prisoners under this subsection shall immediately remove the prisoners from the receiving facility if the sheriff of the receiving county requests their removal.

(e) The county responsible for a nonconforming jail shall bear the liability for and the cost of transportation and maintenance of prisoners transferred from a noncomplying jail by order of the commission. The costs of transportation and maintenance shall be determined by agreement between the participating counties and shall be paid into the treasury of the entity operating the detention facility to which the prisoners are transferred.

(f) The commission, in lieu of closing a county jail, may institute an action in its own name to

enforce, or enjoin the violation of, its orders, rules, or procedures, or of Article 5115, Revised Civil Statutes of Texas, 1925, as amended. The commission shall be represented by the attorney general. An action brought pursuant to this subsection is in addition to any other action, proceeding, or remedy provided by law, and may be brought in a district court of Travis County. A suit brought under this subsection shall be given preferential setting and shall be tried by the court, without a jury, unless the county requests a jury trial. The court shall issue an injunction ordering compliance if it finds:

(1) that the county jail is being operated in such a manner that it does not comply with the rules and procedures promulgated by the commission or with state law; and

(2) that the commissioners or sheriff has been given a reasonable time to comply with the rules and procedures and has failed to do so.

#### Judicial Review

Sec. 12. (a) A county may appeal a commission order issued under Subsection (d), Section 11, of this Act by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the commission's order.

(c) Service of citation on the commission must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director.

(d) In an action brought under this section, the court is confined to the record developed by the commission, and the only issues before the court are:

(1) whether the order of the commission is based on substantial evidence; and

(2) whether the order is arbitrary, capricious, or illegal.

#### Regulations

Sec. 13. (a) The commission shall promulgate the regulations required by Section 9 of this Act on or before January 1, 1977.

(b) On or before March 1, 1977, the commission shall mail a copy of the regulations promulgated pursuant to Section 9 of this Act to each county sheriff in this state. The chairman shall certify to the governor that the commission has complied with the requirements established by this section.

#### Qualifications of Jail Personnel

Sec. 14. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum physical, mental, educational, and moral standards for persons employed or utilized in the operation of county jails.

(b) The authority and power of the Commission on Law Enforcement Officer Standards and Educa-

tion is extended to cover all county jail personnel. The staff of the Commission on Law Enforcement Officer Standards and Education shall be enlarged sufficiently to discharge the additional responsibilities imposed by this section. Counties shall have a period of one year following establishment of standards for county jail personnel within which to have all jail personnel certified by the Commission on Law Enforcement Officers Standards and Education.

(c) A standard requiring a person to have any degree of formal education or the equivalent is not applicable to a person who was employed or whose services were utilized in the operation of a county jail on August 29, 1977.

[Acts 1975, 64th Leg., p. 1278, ch. 480, §§ 1 to 14, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.131, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1596, ch. 673, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 5006, ch. 898, § 1, eff. Aug. 29, 1983.]

**Art. 5115a. Counties of Less Than 20,000; Joint Financing, Construction, Maintenance and Operation With Cities; Bonds**

Sec. 1. That any county having less than 20,000 population according to the last or any succeeding Federal Census and any city or cities therein located are hereby authorized and empowered to finance, construct, maintain and operate jail, jails or jail facilities for the joint and mutual use of such county and city or cities. The Commissioners Court of any such county and the governing body of any such city or cities are hereby authorized and empowered to enter into contracts between any such county or city determining the obligations of each for the financing, construction, maintenance and operation of such jail, jails, or jail facilities, provided that the term of any such contract for the maintenance and operation of such jail, jails or jail facilities shall not exceed twenty (20) years. Such contracts where not in conflict with the provisions of the Constitution of the State of Texas may provide for the custody, control and operation of such jail, jails or jail facilities, including providing for a jailer to be custodian of such jail, jails or jail facilities, which said jailer shall be under the control and supervision of the sheriff of such county and shall be appointed by the sheriff with the advice and consent of the Commissioners Court and the governing body of such city or cities; providing that the salary for such jailer shall be in an amount as may be now or hereafter authorized by law for a deputy sheriff of such county and may be paid by such city or cities and by such county out of the Officers Salary Fund in such proportions as may be agreed upon by contract as herein provided. Where not expressly provided to the contrary herein, any such jailer, his rights, duties, salary and tenure of office shall be controlled by the laws governing deputy sheriffs.

Sec. 2. Such county and city or cities are hereby authorized to issue and sell bonds as now provided

by law and to expend the proceeds for the purposes herein authorized, but any such bonds shall be and remain the sole obligation of the authority issuing such bonds. Any funds of such county and city or cities derived from sale of such bonds shall remain in the possession and control of the issuing authority until expended by such authority as herein authorized.

Sec. 3. This Act shall be cumulative of all other laws pertaining to county and city jails; provided, however, that to the extent that the provisions of this Act may be in conflict with the provisions of any other law, the provisions of this Act shall take precedence and prevail.

[Acts 1961, 57th Leg., p. 1023, ch. 450.]

**Art. 5115b. Counties of 84,000 to 86,000; Contracts with Cities for Jails or Jail Facilities**

Sec. 1. That any county having a population of not less than 84,000 nor more than 86,000 according to the last preceding federal census, in lieu of providing and maintaining its own jail, is hereby authorized to provide safe and suitable jail, jails or jail facilities for such counties by contracting with the city which is the county seat of any such county, for incarceration of the counties' prisoners in the jail, jails or jail facilities owned by said city or cities, on a daily per capita basis, for the lease of a portion of the jail, jails or jail facilities owned by such city or for joint operation and maintenance of the jail, jails or jail facilities owned and operated by such city for the mutual use and benefit of any such county and city, provided said jail, jails or jail facilities meet the requirements set forth in Chapter 277, Section 1, page 637, Acts 1957, 55th Legislature (Article 5115, Revised Civil Statutes of Texas, 1925, as amended). The Commissioners Court of any such county and the governing body of any such city are hereby authorized and empowered to enter into contracts for the incarceration of any such county's prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, jails or jail facilities or at a daily rate mutually agreed upon by the contracting counties and cities; contracts for lease of a portion of the jail, jails or jail facilities at a rate based upon the proportion of the total area of the jail, jails or jail facilities that is occupied by such counties' prisoners; and contracts for the joint maintenance and operation of such jail, jails or jail facilities determining the respective obligations of each for the maintenance and operation of any such jail or jails, provided that any such contract for lease or for joint maintenance and operation shall not exceed 20 years. Such contracts where not in conflict with the Constitution of the State of Texas may provide for custody, control and operation of such jail, jails or jail facilities, including providing for a jailer to be custodian of such jail, jails or jail facilities, which said jailer shall be under the control and supervision of the sheriff of such county and shall be appointed by the sheriff with the advice and

consent of the Commissioners Court and the governing body of such city; providing that the salary of such jailer shall be in an amount as may be now or hereafter authorized by law for a deputy sheriff of such county and may be paid by such city or cities and by such counties in such proportions as may be agreed upon by such contracts as herein provided. Where not expressly provided to the contrary herein, any such jailer, his rights, duties, salary and tenure of office shall be controlled by the laws governing deputy sheriffs.

Sec. 2. This Act shall be cumulative of all other laws pertaining to county and city jails; provided, however, that to the extent that the provisions hereof conflict with any other law, the provision of this Act shall take precedence and prevail.

[Acts 1967, 60th Leg., p. 1969, ch. 731, eff. Aug. 28, 1967. Amended by Acts 1971, 62nd Leg., p. 1821, ch. 542, § 23, eff. Sept. 1, 1971; Acts 1981, 67th Leg., p. 589, ch. 237, § 119, eff. Sept. 1, 1981.]

**Art. 5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities**

Sec. 1. Two or more counties, acting through their commissioners courts, may contract with one another for the joint operation of a jail to serve the contracting counties. The contract may provide for the construction or acquisition of a facility for this purpose or for the use of an existing facility. The joint facility is not required to be located at the county seat of one of the contracting counties.

Sec. 2. A county that is party to a contract under this Act may use any method of financing its share of the capital expenditures under the contract for acquisition, construction, enlargement, or improvement of the joint facility, including necessary acquisition of land, as would be available to it if the county operated its own jail, including the issuance as provided by law of general obligation bonds or other evidences of indebtedness.

Sec. 3. (a) The administration of a jail operated under this Act is the responsibility of the sheriff of the county where the jail is located unless he declines that responsibility by filing a written statement to that effect with the commissioners court of that county. If the sheriff so declines, the commissioners courts of the contracting counties by joint action shall appoint a jail administrator for the jail.

(b) The sheriff or jail administrator responsible for the administration of the jail has all the powers, duties, and responsibilities with regard to the keeping of prisoners and operation of the jail that are conferred by law on a sheriff in a county that operates its own jail.

(c) Action by a sheriff declining the responsibility for the administration of a jail operated under this Act does not take effect until a jail administrator has been appointed and has assumed his duties. If there is a vacancy in the position of jail administrator, the sheriff of the county where the jail is

located is responsible for the administration of the jail until a new jail administrator is appointed and assumes the position.

[Acts 1977, 65th Leg., p. 1436, ch. 581, §§ 1 to 3, eff. Aug. 29, 1977.]

**Art. 5115d. Contracts With Private Sector for Detention Facilities**

(a) The commissioners court of a county with approval of the sheriff of that county may contract with a private organization for the purpose of placing low-risk county inmates in a detention facility operated by the organization.

(b) The commissioners court may not contract with a private organization in which a member of the court or an elected or appointed peace officer who serves in the county has a financial interest or in which an employee or commissioner of the Commission on Jail Standards has a financial interest. A contract made in violation of this subsection is void.

[Acts 1983, 68th Leg., p. 5007, ch. 898, § 2, eff. Aug. 29, 1983.]

**Art. 5116. Sheriff and Jailer**

(a) Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners.

(b) The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail.

(c) The commissioners court of Bexar County, Texas may appoint a jail administrator who shall exercise all authority, supervision, and control over the jail, as well as all other statutory duties of the sheriff with respect to the jail.

[Acts 1925, S.B. 84. Amended by Acts 1973, 63rd Leg., p. 520, ch. 224, § 1, eff. June 11, 1973.]

**Art. 5117. Federal Officer May Use Jail**

(a) Sheriffs and jailers may receive into their jails such federal prisoners as may be delivered or tendered to them by any federal law enforcement officer, unless the sheriff or jailer determines that to receive the federal prisoners may result in a violation of a state or federal court order or statute or a rule promulgated by the Commission on Jail Standards. The sheriff or jailer shall safely keep such prisoners until they are transferred or until they are discharged by due course of law. The federal law enforcement officer by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases.

(b) In this article, "federal law enforcement officer" has the meaning given by 5 U.S.C. Section 8331(20).

[Acts 1925, S.B. 84. Amended by Acts 1981, 67th Leg., p. 603, ch. 241, § 1, eff. May 28, 1981.]

#### Art. 5118. Prisoner Sent to Another Jail

A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

[Acts 1925, S.B. 84.]

#### Art. 5118a. Commutation for Good Conduct; Forfeiture of Commutation; Record

In order to encourage county jail discipline, a distinction may be made in the terms of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one (1) day for each day of the original sentence actually served may be made from the term or terms of sentences when no charge of misconduct has been sustained against the prisoner. This Act shall be applicable regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine; provided, however, that such deduction in time shall not exceed one-third ( $\frac{1}{3}$ ) of the original sentence as to fines and court costs assessed in the judgment of conviction. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For such sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape) any part or all of the commutation which shall have accrued under this Act in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the sheriff, provided that the sheriff has complied with discipline proceedings as approved by the Texas Commission on Jail Standards. No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences. The sheriff shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all forfeitures of commutation time and the reasons therefor.

[Acts 1955, 54th Leg., p. 1182, ch. 461, § 1. Amended by Acts 1963, 58th Leg., p. 943, ch. 371, § 1; Acts 1981, 67th Leg., p. 850, ch. 299, § 1, eff. June 8, 1981; Acts 1981, 67th Leg., p. 2648, ch. 708, § 2, eff. Aug. 31, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 2649, ch. 708, provides:

"This Act affects the term of a prisoner serving a sentence in a county jail on the effective date of this Act only to the extent that the sentence is served on or after the effective date of this Act."

#### Art. 5118b. Work Release Program

Sec. 1. (a) The sheriff of each county may attempt to secure employment for each prisoner sentenced to the county jail work release program under Section 6, Article 42.03, Code of Criminal Procedure, 1965.

(b) The employer of a prisoner participating in a program under this section shall pay the prisoner's salary to the sheriff. The sheriff shall deposit the salary into a special fund to be given to the prisoner on his release after deducting:

(1) the cost to the county, as determined by the commissioners court of the county, for the prisoner's incarceration during the pay period;

(2) support of the prisoner's dependents; and

(3) restitution to the victims of an offense committed by the prisoner.

(c) At the time of sentencing or at a later date, the court sentencing a prisoner may direct the sheriff not to deduct the cost described under Subdivision (1) of Subsection (b) of this section if the court determines that the deduction would cause a significant financial hardship to the family of the defendant.

(d) If the sheriff does not find employment for a prisoner who would otherwise be sentenced to imprisonment in the Texas Department of Corrections, the sheriff shall transfer the prisoner to:

(1) the sheriff of a county who agrees to accept the prisoner as a participant in the county jail work release program; or

(2) the department, if no sheriff agrees to accept the prisoner.

Sec. 2. A prisoner participating in a program under this Act shall be confined in the county jail or in another facility designated by the sheriff at all times except for:

(1) time spent at work and traveling to or from work; and

(2) time spent attending or traveling to or from an education or rehabilitation program approved by the sheriff.

Sec. 3. (a) The sheriff of each county shall classify each felon serving a sentence in the county jail work release program for the purpose of awarding good conduct time credit in the same manner as inmates of the Texas Department of Corrections are classified under Article 6181-1, Revised Statutes, and shall award good conduct time in the same manner as the director of the department does in that article.

(b) If at a hearing requested by a sheriff the court that sentenced the prisoner to participation in a county jail work release program determines that the prisoner is conducting himself in a manner that is dangerous to inmates in the county jail or to

society as a whole, the court shall order the prisoner's participation in the program terminated and order the prisoner to the term of confinement or imprisonment that the prisoner would have received had he not entered the program. The prisoner shall receive as credit toward his sentence any time served as a participant in the program.

[Acts 1983, 68th Leg., p. 3790, ch. 586, §§ 1 to 3, eff. Aug. 29, 1983.]

Section 5 of the 1983 Act provides:

"The change in the law made by this Act applies only to the imposition of a sentence on or after the effective date of this Act. A sentence imposed before the effective date of this Act is covered by the law in effect at the time of the imposition, and the former law is continued in effect for that purpose."

## TITLE 82 JUVENILES

Art.	Art.
5119, 5119a. Repealed.	5139U. Waller County Juvenile Board.
5119a-1. Transfer of Gatesville State School for Boys to Department of Corrections.	5139V. Juvenile Boards in Hardin and Tyler Counties.
5119b to 5126. Repealed.	5139W. Lamar County Juvenile Board.
5127. Escape and Apprehension.	5139X. Winkler County Juvenile Board.
5128 to 5138. Repealed.	5139Y. Juvenile Board in Fisher, Mitchell, and Nolan Counties.
5138a. Parental Homes and Schools for Delinquents in Certain Counties.	5139Z. Andrews County Juvenile Board.
5138b. Parental Homes and Schools for Delinquents in Counties of 900,000 or More.	5139AA. Marion County Juvenile Board.
5138c. Certificates of Indebtedness for Homes and Schools for Delinquents in Counties of 900,000 or More Inhabitants.	5139BB. Liberty County Juvenile Board.
5138d. Establishment of Juvenile Probation Departments in All Counties.	5139CC. Hunt County Juvenile Board.
5139. County Juvenile Board.	5139DD. Gray County Juvenile Board.
5139.1. Juvenile Boards in Counties Where None Established by Statute or Joint Boards in Two or More Counties.	5139EE. Crane County Juvenile Board.
5139A. Juvenile Board in Certain Counties.	5139FF. Hutchinson County Juvenile Board.
5139B. Counties Over 100,000 Bordering on Mexico.	5139GG. Howard County Juvenile Board.
5139C. Laws Saved From Repeal; County Judges' Compensation Not Counted as Fees.	5139HH. Morris County Juvenile Board.
5139D. Juvenile Board in Certain Counties in District Bordering on Mexico.	5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties.
5139E. Juvenile Boards in Certain Counties.	5139II-1. Juvenile Placement Special Fund; Comal County.
5139E-1. Smith County Juvenile Board.	5139JJ. Victoria County Juvenile Board.
5139E-2. Appointment of Judge of Court of Domestic Relations as Juvenile Board Member in Counties of 99,400 to 100,000.	5139KK. Travis County Juvenile Board.
5139F. Juvenile Board in Counties of 121,000 to 128,000 or 155,000 to 160,000.	5139LL. Repealed.
5139G. Juvenile Board in Counties Comprising 9th, Second 9th, and 221st Judicial District.	5139MM. Dawson County Juvenile Board.
5139H. Juvenile Boards in Counties of 12th Judicial District.	5139NN. Coleman County Juvenile Board.
5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts.	5139OO. Rannels County Juvenile Board.
5139H-2. Juvenile Boards in Counties of Second 38th Judicial District.	5139PP. Bell County Juvenile Board.
5139H-3. Juvenile Boards in Counties of Second 38th Judicial District; Additional Compensation.	5139QQ. Bosque County Juvenile Board.
5139H-4. Juvenile Boards in Atascosa, Frio, LaSalle, Wilson, and Karnes Counties.	5139RR. Comanche County Juvenile Board.
5139H-5. Juvenile Boards in 36th and 156th Judicial Districts.	5139SS. Coryell County Juvenile Board.
5139H-6. Juvenile Boards in 24th and 135th Judicial Districts.	5139TT. Hidalgo County Juvenile Board.
5139I. Juvenile Board in Washington County.	5139UU. Ector County Juvenile Board.
5139J. Juvenile Boards in Harrison and Rusk Counties.	5139VV. Harris County Juvenile and Children's Protective Services Boards.
5139K. Juvenile Board in Waller County.	5139WW. Van Zandt County Juvenile Board.
5139L. Juvenile Board in Fannin County.	5139XX. Kaufman County Juvenile Board.
5139M. Juvenile Board in Bowie County.	5139YY. Moore County Juvenile Board.
5139N. Cass County Juvenile Board.	5139ZZ. Orange County Juvenile Board.
5139O. Titus County Juvenile Board.	5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards.
5139P. Jefferson County Juvenile Board.	5139BBB. Nueces County Juvenile Board.
5139Q. Midland County Juvenile Board.	5139CCC. Johnson County Juvenile Board.
5139R. Panola County Juvenile Board.	5139DDD. Deaf Smith County Juvenile Board.
5139S. Hamilton County Juvenile Board.	5139EEE. Northeast Texas Juvenile Board.
5139T. Juvenile Boards in Angelina, Cherokee and Nacogdoches Counties.	5139FFF. Eastland County Juvenile Board.
	5139GGG. Greg County Juvenile Board.
	5139HHH. Collin County Juvenile Board.
	5139III. Hill County Juvenile Board.
	5139JJJ. Webb County Juvenile Board.
	5139KKK. East Texas Juvenile Board.
	5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards.
	5139MMM. Rockwall County Juvenile Board.
	5139NNN. Somervell County Juvenile Board.
	5139OOO. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties.
	5139PPP. Galveston County Juvenile Board.
	5139PPP-1. Galveston County Juvenile Board.
	5139QQQ. Grayson County Juvenile Board.
	5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards.
	5139SSS. Brazoria, Fort Bend, Matagorda, and Wharton Counties Juvenile Boards.



- Art.
- 5139TTT. Brewster, Crockett, Jeff Davis, Pecos, Presidio, Reagan, Sutton, and Upton Counties Juvenile Boards.
- 5139UUU. Dallas County Juvenile Board, Juvenile Probation Department, and Court Services Department.
- 5139VVV. Palo Pinto County Juvenile Board.
- 5139WWW. Dallam County Juvenile Board.
- 5139XXX. Sherman County Juvenile Board.
- 5139YYY. Hartley County Juvenile Board.
- 5139ZZZ. Bailey and Farmer Counties; Juvenile Board.
- 5139AAAA. Castro, Hale, and Swisher Counties; Juvenile Board.
- 5139BBBB. 110th Judicial District Juvenile Board.
- 5139CCCC. Milam, Robertson, Falls Counties Juvenile Board.
- 5139DDDD. Culberson-Hudspeth Counties Juvenile Board.
- 5139EEEE. Upshur County Juvenile Board.
- 5139FFFF. Wood County Juvenile Board.
- 5139GGGG. Crosby County Juvenile Board.
- 5139HHHH. Ellis County Juvenile Board.
- 5139IIII. 132nd Judicial District Juvenile Board.
- 5139JJJJ. Jones County Juvenile Board.
- 5139KKKK. Denton County Juvenile Board.
- 5139LLLL. Hansford County Juvenile Board.
- 5139MMMM. Brooks, Kenedy, Kleberg, and Willacy Counties; Juvenile Boards.
- 5139NNNN. Chambers County Juvenile Board.
- 5139OOOO. Garza County Juvenile Board.
- 5139PPPP. Lynn County Juvenile Board.
- 5139QQQQ. Terry County Juvenile Board.
- 5139RRRR. Yoakum County Juvenile Board.
- 5139SSSS. Blanco, Burnet, Llano, Mason and San Saba Counties; Juvenile Boards.
- 5139TTTT. Kimble and Menard Counties; Juvenile Boards.
- 5139UUUU. McCulloch County Juvenile Board.
- 5139VVVV. Ward County Juvenile Board.
- 5139WWWW. Denton County Juvenile Board.
- 5139XXXX. Lampasas County Juvenile Board.
- 5139YYYY. Parker County Juvenile Board.
- 5139ZZZZ. Cooke County Juvenile Board.
- 5139AAAAA. Jack and Wise Counties; Juvenile Boards.
- 5139BBBBB. Williamson County Juvenile Board.
- 5139CCCCC. Lamb County Juvenile Board.
- 5139DDDDD. Navarro County Juvenile Board.
- 5139EEEEE. Brazos County Juvenile Board.
- 5139FFFFF. Cochran County Juvenile Board.
- 5139GGGGG. 118th Judicial District Juvenile Board.
- 5139HHHHH. Shackelford County Juvenile Board.
- 5139IIIII. 46th Judicial District Juvenile Board.
- 5139JJJJJ. 50th Judicial District Juvenile Board.
- 5139KKKKK. Camp, Marion, Morris, and Titus Counties Juvenile Board.
- 5139LLLLL. Randall County Juvenile Board; Composition and Compensation.
- 5139MMMMM. Starr County Juvenile Board.
- 5139NNNNN. Throckmorton County Juvenile Board.
- 5139OOOOO. Haskell County Juvenile Board.
- 5140. Powers of Board.
- 5141. Sessions of Board.
- 5142. Qualifications, Duties, Appointment, Salaries and Removal.
- 5142a. Probation Officers—Counties of 350,000 Population.
- 5142a-1. Domestic Relations Offices.
- 5142a-2. Wichita County Family Court Services Department.

- Art.
- 5142a-3. Child Support Collection and Contempt Fees in Nueces County.
- 5142a-4. Child Support Services Department in Bexar County.
- 5142b. Juvenile Officers in Counties of 225,000 to 390,000.
- 5142c. Juvenile Officers in Counties of 190,000 to 224,000.
- 5142c-1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts.
- 5142c-2. Juvenile Probation Officers in Counties of Over 500,000.
- 5142c-3. Juvenile Officer for Counties Within 69th Judicial District.
- 5142c-4. Juvenile Officer for Grayson County.
- 5142d. Salaries of Juvenile or Probation Officers; How Fixed; Automobile or Allowance.
- 5143, 5143a. Repealed.
- 5143b. Clothing, Money and Transportation Furnished on Release from Gatesville and Gainesville Training Schools.
- 5143c to 5143f. Repealed.
- 5143g. Missing Children Investigations by Law Enforcement Agencies.

**Art. 5119. Repealed by Acts 1983, 68th Leg., p.1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5119a. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(1), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5119a-1. Transfer of Gatesville State School for Boys to Department of Corrections**

Sec. 1. In consideration of the benefit to the public health, safety, and welfare, and the benefit to the state of relieving congested facilities in the Texas Department of Corrections, the chairman of the Texas Youth Council, on behalf of the Texas Youth Council, shall transfer and convey title to the land, buildings, and facilities of the Gatesville State School for Boys to the Texas Board of Corrections for the use and benefit of the Texas Department of Corrections, effective September 1, 1979.

Sec. 2. The Texas Department of Corrections is hereby authorized to take possession, for the purposes of renovation, alteration, and construction, of the buildings and facilities of the Gatesville State School for Boys, according to the following schedule:

(a) On the effective date of this Act, the Texas Department of Corrections shall take possession of the Valley, Riverside, and Live Oak units of the Gatesville State School for Boys.

(b) On June 1, 1979, the Texas Department of Corrections shall take possession of the Terrace and Sycamore units of the Gatesville State School for Boys.

(c) On September 1, 1979, the Texas Department of Corrections shall take possession of the Hackberry and Hilltop units, the administration buildings, and all other land, buildings, and facilities of the Gatesville State School for Boys.

Sec. 3. From funds appropriated to the Texas Youth Council for the Gatesville State School Building and Repair Program for the biennium ending August 31, 1979, the sum of \$571,000 is hereby transferred and appropriated to the Texas Department of Corrections for renovation, remodeling, and alteration of buildings and facilities of the Gatesville State School for Boys as required to house adult inmates. From funds appropriated for the same biennium for operation of the Gatesville State School for Boys, the Texas Youth Council may transfer to the Texas Department of Corrections for the same purpose an amount determined by agreement between the Texas Youth Council and the Texas Board of Corrections.

Sec. 4. The Texas Youth Council and the Texas Board of Corrections by agreement shall provide for the transfer or retention by the Texas Youth Council of all items of state property now located at the Gatesville State School for Boys, including furniture, equipment, vehicles, tools, supplies, linens, machinery, utensils, livestock, and agricultural implements. The Texas Youth Council and the Texas Board of Corrections shall inform the State Board of Control of the disposition made of all such property on or before September 1, 1979.

[Acts 1978, 65th Leg., 2nd C.S., p. 10, ch. 4, §§ 1-4, eff. Aug. 14, 1978.]

**Art. 5119b. Repealed by Acts 1983, 68th Leg., p.1021, ch. 235, art. 4, § 5(2), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Arts. 5120 to 5124. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5125. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6**

**Art. 5126. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5127. Escape and Apprehension**

If any inmate of said school shall escape therefrom, or if on leave of probation or furlough and is ordered returned and the employer of said furloughed person fails or refuses to return him it shall be the duty of the superintendent of said institution or any officer or employe of same, or any peace officer to apprehend him. Any person may lawfully apprehend such escaped inmate and forthwith deliver him to any peace officer. Any such escaped inmate shall be returned to said school by any furlough, probation or peace officer. The cost of his return shall be paid by the county from which said inmate was committed.

[Acts 1925, S.B. 84.]

**Arts. 5128 to 5130. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5131. Repealed by Acts 1927, 40th Leg., p. 233, ch. 159, § 1**

**Art. 5132. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6**

**Arts. 5133, 5134. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5135. Repealed by Acts 1937, 45th Leg., p. 1328, ch. 492, § 6**

**Arts. 5136, 5137. Repealed by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 4, § 5(3), eff. Sept. 1, 1983**

Section 5 of art. 4 of the 1983 repealing act stated that it was expressly repealing named statutes that had been impliedly repealed or executed.

**Art. 5138. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979**

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Human Resources Code.

**Art. 5138a. Parental Homes and Schools for Delinquents in Certain Counties**

**Establishment—Commitments**

Sec. 1. Counties having a population of not less than three hundred ninety thousand (390,000) and not more than five hundred thousand (500,000) according to the last preceding Federal Census, and containing a city having a population of not less than two hundred ninety thousand (290,000) and not more than three hundred fifty thousand (350,000),

according to the last preceding Federal Census, shall be jointly empowered and authorized with said city to establish, own and operate a parental home and school for the training of dependent and delinquent youth resident of that county or city. All juveniles of the county who may be declared to be dependent by any of the District Courts of the county, or found to be delinquent by any of the District Courts or the County Court of the county may be committed to the parental home owned and operated by the city and county, or to any home, school, institution or reformatory as now provided by law. The commitment of any dependent child to said parental home shall be in the manner now provided in Title 43 of the Revised Civil Statutes of 1925.<sup>1</sup> The commitment of any delinquent child to said parental home shall be in the manner now provided in Title 16 of the Code of Criminal Procedure of 1925.<sup>2</sup>

<sup>1</sup> Article 2330 et seq. (see, now, Family Code).

<sup>2</sup> Code of Criminal Procedure, arts. 1083 to 1093 (repealed).

#### **Purchase, Establishment, Building, Equipment and Maintenance**

Sec. 2. The Commissioners' Court shall have authority to cooperate with and join the proper authority of the city in the purchase, establishment, building, equipment, and maintenance of a parental home and school for the care and training of dependent and delinquent youth, and it shall be lawful for the Commissioners' Court to appropriate from the General Fund of the county such sum as may be necessary to purchase, establish, equip, and maintain such home and school.

#### **Bond Issue**

Sec. 3. Unless adequate funds for the building of said home and school can be derived from the current funds of the county, available for such purpose, issuance of county warrants and scrip, the Commissioners' Court may submit either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the purpose of building and equipping such a home and school. The Commissioners' Court shall be required to submit said proposition of the issuance of bonds upon petition of five hundred (500) qualified taxpaying voters of said county. The Commissioners' Court is hereby authorized to assess, levy, and collect such taxes upon real and personal property situated in the county as it may deem necessary to provide the funds for the erection and maintenance of said home and school and for such other necessary expenditures therefor.

#### **Board of Managers**

Sec. 4. Upon the establishment of said home and school, the authorities of the city and the County Commissioners' Court, at a joint meeting, shall select a board of managers of five (5) citizens of the county who shall serve for the period of two years. Said board of managers will have authority to receive all funds provided by the city and county for

the establishment and maintenance of said home and school, and shall have the general management and control of said home and school, the grounds, buildings, offices, and employees thereof, of the inmates therein and of all matters relating to the government, discipline, and conduct thereof, and make such rules and regulations as may seem to be necessary for carrying out the purpose of said home and school.

#### **Acceptance of Grants, Devises and Donations**

Sec. 5. Subject to the approval of the authorities of the city and the Commissioners' Court, said board shall have power and authority to accept and hold in trust for said home and school any grant or devise of land or any gift or bequest of money or other personal property, or any donation to be applied for the benefit of said home and school and to apply same in accordance with the terms of such gift.

#### **Instructional or Educational Work**

Sec. 6. The board of managers of said home and school shall have authority to arrange with the Board of Education of the city for instructional work in said home and school, and it shall be the duty of the Board of Education of the city to cooperate with said board of managers in carrying out the purpose of said home and school, and said Board of Education of the city is hereby authorized to appropriate such funds as may be necessary for employing teachers and carrying on the necessary educational work in said home and school, whether the same is located within the limits of the independent school district of the city or outside the limits of the independent school district of the city.

#### **Validation of Bonds**

Sec. 7. Any city which has heretofore authorized bonds to be issued for such a home or institution are hereby validated.

[Acts 1931, 42nd Leg., Spec.Laws, p. 189, ch. 88. Amended by Acts 1941, 47th Leg., p. 372, ch. 209, § 1; Acts 1941, 47th Leg., p. 1340, ch. 606, § 1.]

### **Art. 5138b. Parental Homes and Schools for Delinquents in Counties of 900,000 or More**

#### **Board of Managers; Term; Powers and Duties**

Sec. 1. In all counties of this state having a population of nine hundred thousand (900,000) or more, according to the last preceding Federal Census, in which a parental home and school for dependent and delinquent children shall have been established under the provisions of Article 5138a of the Revised Civil Statutes of Texas, the Commissioners Court of said county may appoint a board of managers of five citizens of the county who shall serve for a period of two years. Said board of managers will have the authority to receive all funds provided by the county for the maintenance

of said home and school and shall have the general management and control of said home and school, the grounds, buildings, offices, and employees thereof, of the inmates therein and of all matters relating to the government, discipline and conduct thereof, and shall make such rules and regulations as may seem to be necessary for carrying out the purposes of said home and school.

#### Operation and Maintenance

Sec. 2. The Commissioners Court shall have the authority to provide funds for the operation and maintenance of said home and school, and it shall be lawful for the Commissioners Court to appropriate from the General Fund of the county such sum as may be necessary to operate and maintain such home and school.

#### Acceptance of Grants, Devises and Donations

Sec. 3. Subject to the approval of the County Commissioners Court, said board shall have power and authority to accept and hold in trust for said home and school any grant or devise of land or any gift or bequest of money or other personal property, or any donation to be applied for the benefit of said home and school and to apply same in accordance with the terms of such gift.

#### Instructional and Educational Work

Sec. 4. The board of managers of said home and school shall have authority to arrange with the Board of Education of the county for instructional work in said home and school, and it shall be the duty of the Board of Education of the county to cooperate with said board of managers in carrying out the purpose of said home and school, and said Board of Education of the county is hereby authorized to appropriate such funds as may be necessary for employing teachers and carrying on the necessary educational work in said home and school.

[Acts 1961, 57th Leg., p. 91, ch. 53.]

#### Art. 5138c. Certificates of Indebtedness for Homes and Schools for Delinquents in Counties of 900,000 or More Inhabitants

Sec. 1. Any county having a population in excess of 900,000, according to the most recent Federal Census, is authorized, subject to the limitations contained in this Act, to issue certificates of indebtedness for the purpose of constructing, enlarging, furnishing, equipping and repairing buildings to provide homes and schools for dependent or delinquent boys and girls or for either, and the acquisition of sites therefor.

Sec. 2. Such certificates shall be authorized by order of the Commissioners Court, shall mature in not to exceed thirty-five (35) years from their date, and bear interest at a rate not to exceed five per cent (5%). Interest may be evidenced by coupons. Said certificates shall be sold for cash, and they shall be fully negotiable. Said certificates shall be

signed by the County Judge and attested by the County Clerk. Facsimile signatures of the County Judge and the County Clerk may be printed or lithographed on the interest coupons. In lieu of manually signing said certificates, the facsimile signatures of either or both of said officials may be lithographed or printed thereon as provided in Chapter 204, Acts of the 57th Legislature, Regular Session.<sup>1</sup> Said certificates shall be sold for not less than par and accrued interest to the bidder who offers to purchase the same at the lowest net interest cost to the county. Certificates shall not be issued under this Act in excess of \$300,000, and no such certificates shall be issued after two years after the effective date of this Act.

Sec. 3. When such certificates are issued, it shall be the duty of the Commissioners Court to levy and have assessed and collected a tax under Article VIII, Section 9 of the Constitution, sufficient to pay the principal of and the interest on the certificates as such principal and interest become due.

Sec. 4. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination and if they have been issued in accordance with the Constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, who shall endorse his certificate of registration thereon, and thereafter they shall be incontestable.

Sec. 5. The certificates of indebtedness shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, savings and loan associations, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas, and of any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions of the State of Texas; and such certificates shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is the smaller, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1967, 60th Leg., p. 1013, ch. 443, eff. June 12, 1967.]

<sup>1</sup> See, now, article 717j-1.

#### Art. 5138d. Establishment of Juvenile Probation Departments in All Counties

(a) "Juvenile probation services" means services performed under the direction of a juvenile court including protective services, prevention of delinquent conduct and conduct indicating a need for supervision, diversion, informal adjustment, foster care, diagnostic, supervision, counseling, correctional, and educational services if provided by or under

the direction of a juvenile probation officer in response to orders issued by the juvenile court and also including services provided by juvenile probation departments and related to the operation of juvenile detention facilities.

(b) In all Texas counties, the juvenile board or, if there is none, the juvenile court may, with the advice and consent of the commissioners court, employ and designate the titles and fix the salaries of probation officers and of administrative, supervisory, stenographic, and other clerical personnel who are necessary to provide juvenile probation services according to the standards established by the Texas Juvenile Probation Commission and the needs of the local jurisdiction as determined by the juvenile board or, if there is none, the juvenile court. This determination, if inconsistent with salaries established by laws governing the creation of a juvenile probation department for a particular jurisdiction, supersedes and controls over those statutory provisions.

(c) In Texas counties with insufficient case loads to justify a juvenile probation department, the juvenile board or juvenile judge may contract with the county adult probation department to provide juvenile probation services, or may contract with surrounding counties to form a multicounty juvenile probation department.

[Acts 1981, 67th Leg., p. 2425, ch. 453, § 3, eff. Sept. 1, 1981.]

#### Art. 5139. County Juvenile Board

In any county of this State which comprises a part of two Judicial Districts, each of which Districts consists of four and the same four counties, and which four counties have a combined population of not less than one hundred sixteen thousand (116,000) inhabitants according to the last preceding or any future Federal Census, the Judges of the District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Three Hundred (\$300.00) Dollars per annum, nor more than Twelve Hundred (\$1200.00) Dollars per annum, which shall be paid in twelve equal monthly installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of less than seventy thousand (70,000) inhabitants according to the last preceding Federal Census, which county is included in, and forms a part of a Judicial District of seven or more counties having a combined population of more than fifty-two thousand (52,000) inhabitants, or which county is included in and forms a part of a Judicial District of five or more counties having a combined population of more than seventy-two thousand (72,000) and less than ninety-five thousand (95,000) inhabitants according to the last

preceding Federal Census, or which county is included in and forms a part of a Judicial District of five or more counties, in one or more of which counties the civil and criminal jurisdiction vesting by General Law in the County Court has been, or hereinafter shall be, transferred to the exclusive jurisdiction of the District Court of such county or counties, and having a combined population in such Judicial District of more than thirty-five thousand (35,000) inhabitants, according to the last preceding Federal Census; or which county is included in and forms a part of a Judicial District composed of four counties having a combined population of not more than sixty-two thousand (62,000) inhabitants according to such last preceding Federal Census, one or more counties in which districts border on the International Boundary between the United States and the Republic of Mexico; the Judge of such Judicial District, together with the County Judge of such county are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in each such county shall each be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum, and not more than Three Hundred (\$300.00) Dollars per annum, which shall be paid in twelve equal installments out of either the General Fund or the jury fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of more than seventy thousand (70,000) inhabitants and less than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Six Hundred (\$600.00) Dollars per annum, nor more than One Thousand, Two Hundred (\$1,200.00) Dollars per annum, which shall be paid in twelve equal installments out of the General Fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of one hundred thousand (100,000) inhabitants or over, according to the preceding Federal Census, the Judges of the several District and Criminal District Courts of such county, together with the County Judge of each county, are hereby constituted a Juvenile Board of such county. The annual salary of each of the Judges of the Civil and Criminal District Courts of such county as members of said Board shall be One Thousand, Five Hundred (\$1,500.00) Dollars in addition to that paid the other District Judges of the State, said additional salary to be paid monthly out of the General Fund of such county, upon the order of the Commissioners Court.

In any county having a population of more than eighty thousand (80,000) inhabitants and less than eighty-four thousand (84,000) inhabitants according

to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in such county shall each be allowed additional compensation of not less than Six Hundred (\$600.00) Dollars per annum nor more than Twenty-five Hundred (\$2500.00) Dollars per annum, which shall be paid in twelve equal installments out of the general fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

In any county having a population of one hundred thousand (100,000) inhabitants or over, according to the preceding Federal Census, and which said counties border on the Gulf of Mexico, the members composing such Juvenile Board in such county, including the County Judge as a member of said Board, shall each be allowed additional compensation in the amount of One Thousand, Five Hundred (\$1,500.00) Dollars per annum, which shall be paid in twelve equal installments out of the General Fund of such county upon the order of the Commissioners Court. Compensation herein provided shall be in addition to the salary paid District Judges and County Judges of the State and county.

[Acts 1925, S.B. 84. Amended by Acts 1945, 49th Leg., p. 422, ch. 268, § 1; Acts 1947, 50th Leg., p. 560, ch. 326, § 1; Acts 1949, 51st Leg., p. 63, ch. 33, § 1; Acts 1949, 51st Leg., p. 381, ch. 202, § 1; Acts 1949, 51st Leg., p. 699, ch. 366, § 1; Acts 1953, 53rd Leg., p. 58, ch. 47, § 1.]

#### Savings Provisions

*See arts. 3912e-4d, § 11; 5139D, § 2; 6819a-3, § 2; 6819a-5, § 2; 6819a-8, § 2.*

#### Art. 5139.1. Juvenile Boards in Counties Where None Established by Statute or Joint Boards in Two or More Counties

##### County Juvenile Boards

Sec. 1. The juvenile board is composed of the judge(s) of the district court(s) having jurisdiction in the county (counties), the county judge, and the judge(s) of any statutory court(s) in the county designated as the juvenile court.

##### Joint Operations

Sec. 2. The juvenile boards of two or more counties adjacent to or in close proximity to each other may agree to work together for the purposes of this Act.

##### Chairman

Sec. 3. Unless otherwise provided by law, the juvenile board of each county shall select a member to act as chairman.

##### Duties

Sec. 4. (a) The duties of the juvenile boards of this state include but are not limited to the duties

specified in Subsections (b) through (h) of this section.

(b) For the purpose of providing adequate probation services, each juvenile board in this state or juvenile boards working together as provided in Section 2 of this Act shall establish a juvenile probation department and employ in accordance with standards set by the Texas Juvenile Probation Commission personnel necessary to conduct probation services to youth within the juvenile justice system under the Family Code.

(c) Where more than one juvenile probation officer is required, the juvenile board or boards shall appoint a chief juvenile probation officer or director who with their approval shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the juvenile board.

(d) The juvenile board shall designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 54-10, Family Code, as amended.

(e) The juvenile board or boards shall personally inspect the detention facilities of the county or counties on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children, as provided by Section 51.12, Family Code.

(f) The juvenile board or boards shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements.

(g) The juvenile board or boards shall operate or supervise juvenile services at the county level, including the making of recommendations as to the need for and purchase of such services.

(h) The juvenile board or boards shall perform all other duties provided by law for juvenile boards.

##### Financial Officer

Sec. 5. (a) The juvenile board of each county in this state shall appoint a financial officer to receive and disburse the funds of the juvenile board for juvenile probation.

(b) Two or more boards functioning together for the purposes of this Act may appoint a single financial officer for receiving and disbursing funds.

##### Finances, Employee Compensation, Expenses

Sec. 6. (a) Juvenile probation officers shall be furnished transportation by the juvenile board or alternatively shall be entitled to an automobile allowance for use of a personal automobile on official business.

(b) The salaries of juvenile personnel and other expenses as required for the adequate facilitation of youth served by the probation officers and juvenile

boards shall be paid by the juvenile board from the juvenile board fund to the extent of the state aid received in the fund. Other salaries and expenses essential to the adequate facilitation of youth served by the probation officers shall be set by the juvenile board with the advice and consent of the commissioners court and paid by the county. The juvenile board is authorized to accept state aid and grants or gifts from the other political subdivisions of this state or from associations for the sole purpose of financing adequate and effective probation programs. For the purposes of this Act, an incorporated city, town, or village may grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments or juvenile boards for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be administered and accounted for separately from other public funds of the county. This Act does not disallow any program of local enrichment of juvenile services funded by any source.

#### Compensation of Board Members

Sec. 7. (a) A judge's service on the juvenile board is an additional duty of office.

(b) Members of a juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties.

(c) The commissioners court of each county may pay the members of a juvenile board the sums that will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law. However, nothing in this section shall be construed to reduce compensation or expenses now paid to juvenile boards as provided by previous enactment.

#### Advisory Council

Sec. 8. The juvenile board shall appoint an advisory council consisting of not more than nine citizen members. Members of the council will hold office for terms of two years with two members' terms expiring January 31 of each even-numbered year and three members' terms expiring January 31 of each odd-numbered year. In making its initial appointments, the juvenile board shall designate which council members' terms are to terminate on the even-numbered years. The juvenile board shall fill any vacancies on the advisory council.

#### Applicability

Sec. 9. This Act is cumulative of all provisions of the law relating to juvenile boards in existence on the effective date of this Act. This Act applies only in a county that does not have a juvenile board created by statute on the effective date of this Act, except that it does not apply in a county served by a

juvenile board created by special law after the effective date of this Act.

[Acts 1983, 68th Leg., p. 289, ch. 59, eff. Aug. 29, 1983.]

#### Art. 5139A. Juvenile Board in Certain Counties

In all counties having a population of less than forty-five thousand (45,000) inhabitants according to the last preceding Federal Census which are included in and form a judicial district of five (5) or more counties having a combined total population of not less than sixty-eight thousand (68,000) inhabitants according to the last preceding Federal Census, the judge of the judicial district and the county judge of each county are hereby constituted as a juvenile board for each county within the judicial district. The members composing each county juvenile board within the judicial district may each be allowed additional compensation of not more than Twelve Hundred Dollars (\$1200) per annum which shall be paid in twelve (12) equal installments out of the general funds of each county, such additional compensation to each member of the board to be fixed by the Commissioners Court of each county.

[Acts 1951, 52nd Leg., p. 283, ch. 165, § 1. Amended by Acts 1957, 55th Leg., p. 701, ch. 296, § 1.]

#### Art. 5139B. Counties Over 100,000 Inhabitants Bordering on Mexico

In all counties having a population of more than one hundred thousand (100,000) inhabitants, according to the last preceding Federal Census, and bordering on the Republic of Mexico, the Judges of the District Courts and the County Judges are hereby constituted a County Juvenile Board. The members of the County Juvenile Board shall each be allowed additional compensation in the amount of Fifteen Hundred (\$1500.00) Dollars per annum which shall be paid in twelve (12) equal installments out of the general funds of the county. Provided, however, that no member of such Board shall receive more than Fifteen Hundred (\$1500.00) Dollars per annum as compensation for services on such Board.

[Acts 1951, 52nd Leg., p. 543, ch. 319, § 1.]

#### Art. 5139C. Laws Saved From Repeal; County Judges' Compensation Not Counted as Fees

It is expressly declared that nothing in this Act<sup>1</sup> shall be construed to repeal Article 6819a, Acts of the Forty-ninth Legislature, Chapter 200, page 271, nor any law fixing other compensation for the Judges of the District Courts or County Judges, and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1947, 50th Leg., p. 560, ch. 326, § 2.]

<sup>1</sup> Amending art. 5139.

**Art. 5139D. Juvenile Board in Certain Counties in District Bordering on Mexico**

Sec. 1. In any county having a population of less than 70,000 inhabitants according to the last preceding Federal Census, which county is included in and forms a part of a Judicial District, in which four or more of the counties composing same border on the International Boundary between the United States and the Republic of Mexico, the Judge of such Judicial District together with the County Judge of such county are hereby constituted a Juvenile Board for such county. The members composing such Juvenile Board in each such county shall each be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum and not more than Three Hundred (\$300.00) Dollars per annum, which shall be paid in twelve equal installments out of the General Fund of such county, such additional compensation to be fixed by the Commissioners Court of such county.

Sec. 2. It is expressly declared that nothing in this Act shall be construed to repeal Article 6819a, except insofar as the same conflicts with this Act, Acts of the 49th Legislature, Chapter 200, page 271,<sup>1</sup> nor Article 5139 of the Revised Civil Statutes of Texas, 1925, as amended by Act of the 50th Legislature, Chapter 326, page 560, nor any law fixing other compensation for the Judges of the District Courts or County Judges; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1949, 51st Leg., p. 243, ch. 138.]

<sup>1</sup> Article 6819a-3.

**Art. 5139E. Juvenile Boards in Certain Counties**

(1) At the effective date of this Act there is hereby established and constituted a three-member Juvenile Board in each of the counties of this State coming within the purview of the provisions of Paragraph (2) hereof, to be composed of the county judge of the county and the district judges of the judicial districts therein. The county judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) The Juvenile Board created in the foregoing Section is established and constituted in each county wherein there are two (2) district courts, one of which is composed of one (1) county only, the other of which is composed of two (2) counties, and in such one-county judicial district there is located a city with a population of more than twenty-four thousand (24,000) according to the last preceding Federal Census.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may, if approved by the Commissioners Court of the County, be compensated by an annual salary not to exceed Twenty-four Hun-

dred Dollars (\$2400) payable in twelve (12) monthly equal installments; and such compensation shall be in addition to all other compensation now provided for or allowed county and district judges by law, and shall be paid out of the general fund of the county.

[Acts 1950, 51st Leg., 1st C.S., p. 99, ch. 35, § 1. Amended by Acts 1951, 52nd Leg., p. 373, ch. 237, § 1.]

**Art. 5139E-1. Smith County Juvenile Board**

[Sec. 1.] (1) There is established a Juvenile Board in Smith County to be composed of the County Judge of the county, the District Judges of the Judicial Districts therein and the Judge of the Court of Domestic Relations. The County Judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) Deleted by Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may be compensated by an annual salary as determined by the Commissioners Court of the county, payable in 12 equal monthly installments; and such compensation shall be in addition to all other compensation now provided for or allowed the Judges of the Domestic Relations, County, and District Courts by law, and shall be paid out of the general fund of the county.

Sec. 2. (a) The Juvenile Board of Smith County may create a child support office in the district clerk's office of the county to receive payments for the support of children made under the order of a District Court or other court having jurisdiction of a District Court. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The Juvenile Board may appoint an administrator and such assistants as in its judgment may be necessary for a term of two years and shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the Board.

(c) The administrator of the child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the



County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(d) The child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in the county to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the Judges.

(e) A service fee for receiving and disbursing payments, not to exceed \$2.50 per month, shall be assessed by the court against each payor or payee of child support that is ordered by a court to be paid to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. Except as prescribed by this subsection, the service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. A payor or a payee whose annual income is equal to or less than the federal poverty income guideline in effect when the support order is made is not required to pay the service fee authorized by this subsection. The service fee shall be collected by the child support office from the payor or payee annually in advance and shall be paid to the County Treasurer on the last day of each calendar month, to be kept in a separate account to be known as the child support fund. This fund shall be administered by the Juvenile Board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to commence payments for child support and thereafter on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The child support fund is subject to

regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

[Acts 1961, 57th Leg., 1st C.S., p. 201, ch. 61, § 1. Amended by Acts 1969, 61st Leg., p. 1872, ch. 625, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1851, ch. 542, § 135, eff. Sept. 1, 1971; Acts 1975, 64th Leg., p. 1970, ch. 653, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2094, ch. 484, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5725, ch. 1093, § 1, eff. Aug. 29, 1983.]

**Art. 5139E-2. Appointment of Judge of Court of Domestic Relations as Juvenile Board Member in Counties of 99,400 to 100,000**

In any county having a population of not less than 99,400 and not more than 100,000 according to the last preceding federal census, the Commissioners Court may name the judge of the court of domestic relations as an additional member of the juvenile board and may pay him for his services on the board in an amount not to exceed the additional compensation allowed other members of the county juvenile board.

[Acts 1965, 59th Leg., p. 1002, ch. 489, eff. June 16, 1965. Amended by Acts 1971, 62nd Leg., p. 1837, ch. 542, § 84, eff. Sept. 1, 1971; Acts 1981, 67th Leg., p. 590, ch. 237, § 120, eff. Sept. 1, 1981.]

**Art. 5139F. Juvenile Board in Counties of 121,000 to 128,000 or 155,000 to 160,000**

Sec. 1. In any county having a population of more than one hundred twenty-one thousand (121,000) inhabitants and less than one hundred twenty-eight thousand (128,000) inhabitants or more than one hundred fifty-five thousand (155,000) inhabitants and less than one hundred sixty thousand (160,000) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. Subject to the approval of the Commissioners Court, the members composing such Juvenile Board in such county may each be allowed additional compensation in an amount which shall be designated by the County Commissioners and which shall be paid in twelve (12) equal installments out of the general fund of such county.

Sec. 2. If any portion of this Act is held to be unconstitutional the remaining portion shall, nevertheless, be valid.

Sec. 3. This Act shall be cumulative of existing law and shall not be construed as repealing any law fixing the compensation of the Judge of the District Courts or of County Judges.

[Acts 1951, 52nd Leg., p. 108, ch. 64. Amended by Acts 1955, 54th Leg., p. 1162, ch. 445, § 1; Acts 1957, 55th Leg., p. 851, ch. 369, § 1; Acts 1975, 64th Leg., p. 331, ch. 138, § 1, eff. May 8, 1975; Acts 1981, 67th Leg., p. 590, ch. 237, § 121, eff. Sept. 1, 1981.]

**Art. 5139G. Juvenile Board in Counties Comprising 9th, Second 9th, and 221st Judicial District**

Sec. 1. In each county comprising the 9th Judicial District, the Second 9th Judicial District, and the 221st Judicial District, the judges of the district courts having jurisdiction in the county, together with the county judge of the county and the judges of the county courts at law, if there are any, shall constitute the juvenile board of such county. The members of each board shall each be allowed additional compensation not less than \$3,000 per annum nor more than \$10,000 per annum to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county courts, and county courts at law.

[Acts 1951, 52nd Leg., p. 768, ch. 419. Amended by Acts 1955, 54th Leg., p. 1162, ch. 445, § 1; Acts 1973, 63rd Leg., p. 1371, ch. 524, § 1, eff. June 14, 1973; Acts 1975, 64th Leg., p. 439, ch. 186, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 825, ch. 372, § 1, eff. June 6, 1979.]

**Art. 5139H. Juvenile Boards in Counties of 12th Judicial District**

Sec. 1. (a) In each county comprising the 12th Judicial District except Walker County, the judge of the district court together with the county judge of the county shall constitute the juvenile board of such county. The members of such board shall be allowed additional compensation of not less than One Hundred (\$100.00) Dollars per annum and not more than Three Hundred (\$300.00) Dollars per annum to be fixed by the commissioners court and paid monthly in twelve (12) equal installments out of the general fund of the county.

(b) In Walker County, the judges of the district and county courts and county courts at law having jurisdiction in Walker County shall constitute the juvenile board of that county. The members of the Walker County Juvenile Board shall receive an annual salary of Six Hundred (\$600.00) Dollars, payable in equal monthly installments out of the general fund of Walker County.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 3. If any portion of this Act is held unconstitutional by a court of competent jurisdiction, the remaining portions shall nevertheless be valid the same as if the invalid portion had not been a part hereof.

[Acts 1951, 52nd Leg., p. 769, ch. 420. Amended by Acts 1983, 68th Leg., p. 5692, ch. 1080, § 1, eff. Aug. 29, 1983.]

**Art. 5139H-1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts**

Sec. 1. In each county comprising the 38th Judicial District and in each county comprising the 63rd Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county may each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Three Thousand, Six Hundred Dollars (\$3,600) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the General Fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1955, 54th Leg., p. 963, ch. 374. Amended by Acts 1975, 64th Leg., p. 243, ch. 93, § 1, eff. April 30, 1975.]

**Art. 5139H-2. Juvenile Boards in Counties of Second 38th Judicial District**

Sec. 1. In each county comprising the Second 38th Judicial District, the Judge of the District Court together with the County Judge of the county shall constitute the juvenile board of such county. The members of the juvenile board in each such county shall each be allowed additional compensation of not less than One Hundred Dollars (\$100.00) per annum, and not more than Three Hundred Dollars (\$300.00) per annum, which shall be paid in twelve equal installments out of the general fund of the county, such additional compensation to be fixed by the Commissioners Court of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, as amended.

Sec. 2. This Act shall become effective on the effective date of House Bill No. 593, Acts of the Regular Session of the 54th Legislature, creating the Second 38th Judicial District.

[Acts 1955, 54th Leg., p. 1177, ch. 456.]

**Art. 5139H-3. Juvenile Boards in Counties of Second 38th Judicial District; Additional Compensation**

Sec. 1. In each county comprising the Second 38th Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than Six Hundred Dollars (\$600) per annum and not more than Twelve Hundred Dollars (\$1200) per

annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1957, 55th Leg., p. 169, ch. 76.]

**Art. 5139H-4. Juvenile Boards in Atascosa, Frio, LaSalle, Wilson, and Karnes Counties**

In each of the counties of Atascosa, Frio, LaSalle, Wilson, and Karnes, the Judge of each judicial district that includes the county, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county shall each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars (\$1,200) per annum and not more than Four Thousand, Eight Hundred Dollars (\$4,800) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Acts 1959, 56th Leg., p. 995, ch. 463, § 1. Amended by Acts 1977, 65th Leg., p. 1267, ch. 490, § 1, eff. Aug. 29, 1977.]

**Art. 5139H-5. Juvenile Boards in 36th and 156th Judicial Districts**

Sec. 1. In each county comprising the 36th Judicial District and in each county comprising the 156th Judicial District, the Judges of the District Courts, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members composing each County Juvenile Board within the Judicial Districts may, as compensation for the added duties imposed on members of such Juvenile Board, each be allowed additional compensation which shall be paid in twelve (12) equal installments out of the General Fund of each county, such additional compensation to each member of the Board to be fixed by the Commissioners Court of each county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office. The additional compensation for services rendered on the Juvenile Board shall not be set lower than that additional compensation was set on the effective date of this amendment and is in addition to all other compensation provided or allowed by law for County and District Judges.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1961, 57th Leg., p. 259, ch. 135. Amended by Acts 1975, 64th Leg., p. 1929, ch. 629, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2531, ch. 671, § 1, eff. Sept. 1, 1981.]

**Art. 5139H-6. Juvenile Boards in 24th and 135th Judicial Districts**

In each of the counties comprising the 24th Judicial District and the 135th Judicial District, except Victoria County, the judge of each judicial district having jurisdiction in the county and the county judge of each county constitute the juvenile board of the county. The members of the board in each of those counties may each be allowed, for additional duties as a member of the board, additional compensation in a reasonable amount to be set by the commissioners court of each county, which shall be paid in 12 equal installments out of the general funds of each county. In no event shall the additional compensation for services rendered on the juvenile board be set lower than that existing on the effective date of this Act. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges. The provisions of this Act do not apply to nor affect the Victoria County Juvenile Board.

[Acts 1977, 65th Leg., p. 1440, ch. 585, § 1, eff. Aug. 29, 1977.]

**Art. 5139I. Juvenile Board in Washington County**

Sec. 1. The county judge of Washington County and the judge of each judicial district which includes Washington County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court for Washington County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation not to exceed Six Hundred Dollars (\$600) per year, to be fixed by the Commissioners Court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1953, 53rd Leg., p. 589, ch. 231.]

**Art. 5139J. Juvenile Boards in Harrison and Rusk Counties**

Sec. 1. There is hereby established a county juvenile board in each of the Counties of Harrison and Rusk, which shall be composed of the county judge and the judge of each judicial district which includes the county, and in Rusk County the judge of the county court at law. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compen-

sation to be determined by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 3a. The juvenile board of Harrison County may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Six Thousand Dollars (\$6,000) per year, and whose allowance for expenses shall not be less than Six Hundred Dollars (\$600) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars (\$3,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. The juvenile officer shall have the powers and duties prescribed by Article 5142, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the

amount authorized to be paid to such officer by this Section.

[Acts 1955, 54th Leg., p. 385, ch. 106. Amended by Acts 1959, 56th Leg., p. 1018, ch. 470, §§ 1 to 3; Acts 1967, 60th Leg., p. 983, ch. 427, § 1, eff. June 12, 1967; Acts 1969, 61st Leg., p. 1055, ch. 348, § 1, eff. May 27, 1969; Acts 1977, 65th Leg., p. 1529, ch. 622, § 1, eff. Aug. 29, 1977; Amended by Acts 1983, 68th Leg., p. 4840, ch. 853, § 12, eff. Aug. 29, 1983.]

#### Art. 5139K. Juvenile Board in Waller County

Sec. 1. The County Judge of Waller County and the Judge of the Judicial District which includes Waller County shall constitute the Juvenile Board of that county. The Judge of the court which is designated as the Juvenile Court of Waller County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon them, the County and District Judges who are members of such Board may be allowed additional compensation not to exceed Six Hundred Dollars (\$600) per year, to be fixed by the Commissioners Court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of Judges of the District courts and County Judges.

[Acts 1955, 54th Leg., p. 735, ch. 264.]

#### Art. 5139L. Juvenile Board in Fannin County

Sec. 1. There is hereby established a Juvenile Board for Fannin County, which shall be known as the Fannin County Juvenile Board. It shall be composed of the county judge of Fannin County and the judge of each judicial district which includes Fannin County. The judge of the court which is designated as the juvenile court for Fannin County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. The commissioners court of Fannin County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Fannin County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 2A. The board may appoint a juvenile officer who shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 859, ch. 322. Amended by Acts 1971, 62nd Leg., p. 903, ch. 129, § 1, eff. May 10, 1971.]

**Art. 5139M. Juvenile Board in Bowie County**

Sec. 1. There is hereby established a County Juvenile Board in the County of Bowie which shall be composed of the County Judge and the Judge of each Judicial District which includes the County. The official title of the Board shall be the "Bowie County Juvenile Board." The Judge of the Court which is designated as the Juvenile Court of the County shall be Chairman of the Board and its Chief Administrative Officer.

Sec. 2. As compensation for the added duties imposed upon members of the Juvenile Board each member thereof may be allowed additional compensation not less than Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of the County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Juvenile Board established by this Act shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The Board may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of the County in an amount not to exceed Six Thousand Dollars (\$6,000) per year, and whose allowance for expenses shall not exceed One Thousand Dollars (\$1,000) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer.

[Acts 1955, 54th Leg., p. 897, ch. 348. Amended by Acts 1969, 61st Leg., p. 1759, ch. 584, § 1, eff. June 10, 1969.]

**Suspension**

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in*

*the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \**

*"Sec. 6. \* \* \**

*"(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See art. 5139EEE.*

**Art. 5139N. Cass County Juvenile Board**

Sec. 1. There is hereby established the Cass County Juvenile Board, which shall be composed of the County Judge of Cass County and the Judge of each Judicial District which includes Cass County. The Judge of the Court which is designated as the Juvenile Court for Cass County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1800) per year, to be fixed by the Commissioners Court of Cass County and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Cass County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a juvenile officer for Cass County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Cass County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Cass County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 1203, ch. 478.]

**Suspension**

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in*

*the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \**

"Sec. 6. \* \* \*

*"(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See art. 5139EEE.*

#### **Art. 5139O. Titus County Juvenile Board**

Sec. 1. There is hereby established the Titus County Juvenile Board, which shall be composed of the County Judge of Titus County and the Judge of each Judicial District which includes Titus County. The Judge of the Court which is designated as the Juvenile Court for Titus County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Eighteen Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of Titus County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges.

Sec. 3. The Titus County Juvenile Board shall have all the powers conferred on Juvenile Boards created under Article 5139 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. If the Juvenile Board determines that it is necessary to have a juvenile officer for Titus County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Titus County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the Juvenile Board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Titus County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1955, 54th Leg., p. 1206, ch. 480.]

#### **Suspension**

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in*

*the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \**

"Sec. 6. \* \* \*

*"(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See art. 5139EEE.*

*Acts 1983, 68th Leg., p. 5702, ch. 1083, § 10, provides:*

*"Suspension of Statutes. This Act does not repeal a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county. The effect of a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county is suspended for as long as the county is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board."*

*See art. 5139KKKKK.*

#### **Art. 5139P. Jefferson County Juvenile Board**

Sec. 1. There is hereby established a County Juvenile Board in the County of Jefferson, which shall be composed of the County Judge and the judges of the several District Courts and the Criminal District Court within such county. The judge of the court which is designated as the Juvenile Court for Jefferson County shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon the members of such Juvenile Board, each member thereof may receive annually, payable in monthly installments, an amount not to exceed Five Thousand Dollars (\$5,000.00), such compensation to be fixed by the Commissioners Court of such county, and to be paid by said county out of the general fund. Such compensation shall be for all judicial and administrative services now rendered by them and any additional judicial and administrative services hereafter to be assigned to them, in addition to all salary paid or hereafter to be paid to them by the State of Texas out of state revenues; and provided further, that no District Judge who shall be a member of such Juvenile Board shall receive from any county funds, as supplemental pay to his salary from the state, a sum in excess of Five Thousand Dollars (\$5,000.00), per annum, from the county, for judicial and administrative duties assigned to them.

Sec. 3. The Juvenile Board established by this Act shall have all the powers conferred on Juvenile Boards created under Article 5142-C of the Revised Civil Statutes of Texas, and any amendments thereto.

[Acts 1957, 55th Leg., p. 144, ch. 63.]

**Art. 5139Q. Midland County Juvenile Board**

Sec. 1. There is a county juvenile board in and for Midland County, which shall be composed of the county judge of Midland County, the judge of each judicial district which includes Midland County, the judge of the court of domestic relations in Midland County, and the judge of the county court at law of Midland County. The official title of the board shall be the Midland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon the members of the board, the Commissioners Court of the county may allow the chairman of the board additional compensation in an amount not to exceed Three Thousand Dollars (\$3000) per year, and may allow each other member of the board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1200) per year, to be paid monthly in twelve equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Six Thousand Dollars (\$6000) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 199, ch. 87. Amended by Acts 1977, 65th Leg., p. 1628, ch. 640, § 11, eff. Jan. 1, 1978.]

**Art. 5139R. Panola County Juvenile Board**

Sec. 1. There is hereby established a county juvenile board in Panola County, which shall be composed of the county judge and the judge of each judicial district which includes Panola County. The official title of the board shall be the Panola County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of the juvenile board, each

member thereof may be allowed additional compensation not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 368, ch. 173.]

**Art. 5139S. Hamilton County Juvenile Board**

Sec. 1. The County Judge of Hamilton County and the Judge of the Judicial District which includes Hamilton County shall constitute the Juvenile Board of that county. The Judge of the court which is designated as the Juvenile Court of Hamilton County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$1,200 per year, to be fixed by the commissioners court and paid monthly in twelve equal installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of Judges of the District Courts and County Judges.

[Acts 1957, 55th Leg., p. 432, ch. 207. Amended by Acts 1965, 59th Leg., p. 316, ch. 148, § 1.]

**Art. 5139T. Juvenile Boards in Angelina, Cherokee and Nacogdoches Counties**

Sec. 1. The County Commissioners Courts of Angelina, Cherokee, and Nacogdoches are hereby authorized to establish County Juvenile Boards in their respective counties. The County Juvenile Board shall be composed of the county judge and the judges of each of the judicial districts which includes the county. The official title of the Board in each county shall be the name of the county,

followed by the words "County Juvenile Board". The judge of the court which is designated as the juvenile court of the county shall be chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon the members of each Juvenile Board, each member thereof may be allowed additional compensation not to exceed Forty-eight Hundred Dollars (\$4800.00) per year, to be fixed by the Commissioners Court of the County, and paid monthly in twelve (12) equal installments out of the general fund or any available fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for County Judges and District Judges and shall not be counted as fees of office.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation for judges of district courts and county judges.

[Acts 1957, 55th Leg., p. 529, ch. 246. Amended by Acts 1971, 62nd Leg., p. 1191, ch. 290, § 1, eff. May 19, 1971.]

#### Art. 5139U. Waller County Juvenile Board

Sec. 1. The Juvenile Board of Waller County shall be composed of the Judge of the 9th Judicial District, the Judge of the County Court of Waller County and a citizen of Waller County, which citizen shall be appointed by the County Commissioners Court of Waller County for a period of two (2) years.

Sec. 2. Each member of the Juvenile Board of Waller County shall receive as compensation for his service a sum not to exceed Twelve Hundred Dollars (\$1200) per year, to be fixed by Commissioners Court and paid in twelve (12) equal installments, out of the general fund of the County.

Sec. 3. Except for provisions on membership and compensation, the Juvenile Board of Waller County shall be governed by the general laws of Texas.

[Acts 1957, 55th Leg., p. 568, ch. 267.]

#### Art. 5139V. Juvenile Boards in Hardin and Tyler Counties

Sec. 1. There is hereby established a county juvenile board in each of the Counties of Hardin and Tyler, which shall be composed of the county judge and the judge of each judicial district which includes the county. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation of not more than Five Thousand Dollars (\$5,000) per year, to be fixed by the Commissioners Court of the county and paid monthly in twelve (12)

equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200) per year, and whose allowance for expenses shall not exceed Three Hundred Dollars (\$300) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1957, 55th Leg., p. 817, ch. 347. Amended by Acts 1973, 63rd Leg., p. 241, ch. 116, § 1, eff. May 18, 1973.]

#### Art. 5139W. Lamar County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Lamar County, which shall be known as the Lamar County Juvenile Board. It shall be composed of the county judge of Lamar County and the judge of each judicial district which includes Lamar County. The judge of the court which is designated as the juvenile court of Lamar County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Two Thousand, Four Hundred Dollars (\$2,400) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. The Commissioners Court of Lamar County may allow each other member of the board additional compensation in an amount not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[Acts 1957, 55th Leg., p. 831, ch. 359. Amended by Acts 1975, 64th Leg., p. 1933, ch. 631, § 1, eff. June 19, 1975.]

#### Art. 5139X. Winkler County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Winkler County, which shall be known as



the Winkler County Juvenile Board. It shall be composed of the county judge of Winkler County and the judge of each judicial district which includes Winkler County. The judge of the court which is designated as the juvenile court for Winkler County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1,200) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Winkler County. The Commissioners Court of Winkler County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1,200) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Winkler County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1957, 55th Leg., p. 866, ch. 382.]

**Art. 5139Y. Juvenile Board in Fisher, Mitchell, and Nolan Counties**

**Establishment and Composition**

Sec. 1. (a) There is established a juvenile board in Fisher, Mitchell, and Nolan counties which shall be composed of non-salaried and ex officio members. The non-salaried members shall be appointed as follows:

- (1) two members appointed by the Nolan County Commissioners Court;
  - (2) two members appointed by the Sweetwater City Commission;
  - (3) two members appointed by the Board of Trustees of the Sweetwater Independent School District;
  - (4) three members appointed by the Mitchell County Commissioners Court; and
  - (5) two members appointed by the Fisher County Commissioners Court.
- (b) The ex officio members are the judges of the district and county courts having jurisdiction in Fisher, Mitchell, and Nolan counties and the judge of the Nolan County court at law.
- (c) The juvenile board shall annually elect, by majority vote, a chairman who shall preside over meetings to be scheduled by the board.

**Powers and Duties**

Sec. 2. (a) The juvenile board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or conferred by general law.

(b) In addition to the duties imposed by general law, the juvenile board shall:

- (1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;
- (2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;
- (3) personally inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;
- (4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and
- (5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of those services.

**Personnel**

Sec. 3. (a) The chief juvenile probation officer and assistant officers shall have all the powers and duties prescribed by Article 5142, Revised Statutes.

(b) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(c) The board shall set the salaries and allowances of the chief probation officer and other personnel with the advice and consent of the commissioners courts.

**Payment of Costs**

Sec. 4. (a) The Commissioners Court of Nolan County may enter into an agreement with the City Commission of Sweetwater and the Board of Trustees of the Sweetwater Independent School District to provide the necessary funds for the payment of the salaries of the personnel assigned to Nolan County and other expenses certified by the chairman of the juvenile board as necessary for the adequate provision of juvenile services to Nolan County. The agreement shall provide that the Commissioners Court of Nolan County, the City Commission of Sweetwater, and the Board of Trustees of the Sweetwater Independent School District each furnish equal, one-third shares of the funds neces-

sary for the payment of the salaries and necessary expenses.

(b) The commissioners courts of Fisher and Mitchell counties shall pay from the general fund of each county the salaries of the personnel assigned to that county and other expenses certified by the chairman of the juvenile board as necessary for the adequate provision of juvenile services to each county.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

[Acts 1959, 57th Leg., p. 32, ch. 20. Amended by Acts 1969, 61st Leg., p. 391, ch. 143, § 1, eff. May 6, 1969; Acts 1983, 68th Leg., p. 5721, ch. 1092, § 1, eff. Aug. 29, 1983.]

#### Art. 5139Z. Andrews County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County, the judge of each judicial district which includes Andrews County, and the county attorney of Andrews County or his successor. The judge of the court which is designated as the juvenile court for Andrews County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Twelve Hundred Dollars (\$1200.00) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. The Commissioners Court of Andrews County may allow each other member of the board additional compensation in an amount not to exceed Twelve Hundred Dollars (\$1200.00) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Andrews County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1959, 56th Leg., p. 145, ch. 86. Amended by Acts 1977, 65th Leg., p. 1789, ch. 717, § 1, eff. June 15, 1977.]

#### Art. 5139AA. Marion County Juvenile Board

Sec. 1. There is established the Marion County Juvenile Board, which shall be composed of the County Judge of Marion County and the Judge of

each judicial district that includes Marion County. The Judge of the Court which is designated as the Juvenile Court for Marion County shall be Chairman of the Board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such Juvenile Board, each member thereof may be allowed additional compensation of not less than Six Hundred Dollars (\$600) per year and not to exceed Twelve Hundred Dollars (\$1200) per year, to be fixed by the Commissioners Court of Marion County and paid monthly in twelve (12) equal installments out of the general fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Marion County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. If the Juvenile Board determines that it is necessary to have a Juvenile Officer for Marion County, it may appoint a Juvenile Officer, whose salary shall be fixed by the Commissioners Court of Marion County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The Juvenile Officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the Juvenile Officer shall be certified by the Chairman of the Juvenile Board as being necessary in the performance of the duties of the Juvenile Officer. The Commissioners Court of Marion County shall provide the necessary funds for payment of the salary and expenses of the Juvenile Officer.

[Acts 1959, 56th Leg., p. 188, ch. 106. Amended by Acts 1969, 61st Leg., p. 519, ch. 181, § 5, eff. May 9, 1969; Acts 1981, 67th Leg., p. 57, ch. 25, § 12, eff. April 8, 1981.]

#### Suspension

*Acts 1983, 68th Leg., p. 5702, ch. 1083, § 10, provides:*

*"Suspension of Statutes. This Act does not repeal a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county. The effect of a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county is suspended for as long as the county is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board."*

*See art. 5139KKKKK.*

#### Art. 5139BB. Liberty County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County, who shall act as juvenile judge if he

qualifies under the provisions of Section 51.04, Family Code, to serve as judge of the juvenile court, and two (2) or more citizens of Liberty County, which citizens shall be appointed by the county judge, with the approval of the County Commissioners Court of Liberty County, for a period of two (2) years. If the county judge is not qualified to act as juvenile judge under the Family Code, a district judge having Liberty County within his jurisdiction shall act as the juvenile judge of Liberty County. The official title of the board shall be the Liberty County Juvenile Board.

Sec. 2. As compensation for the added duties imposed upon the juvenile board, the juvenile judge shall be allowed an additional compensation in an amount to be fixed by the Commissioners Court of the County; such other members of the juvenile board shall be allowed additional compensation in an amount to be fixed by the Commissioners Court of the County. The additional compensation provided in this section shall be paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen members of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer and such assistants as may be necessary, whose salary shall be fixed by the Commissioners Court of said Liberty County, Texas. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer and his assistants shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer and his assistants. The same person may serve as the juvenile officer and as a citizen member of the Liberty County Juvenile Board; however, if a citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer. All salaries referred to in this amendment shall be effective as of January 1, 1978.

[Acts 1959, 56th Leg., p. 480, ch. 209. Amended by Acts 1977, 65th Leg., p. 1178, ch. 451, § 1, eff. Aug. 29, 1977.]

#### Art. 5139CC. Hunt County Juvenile Board

*Text of section effective until January 1, 1985*

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of the county court at law in Hunt County, the judge of

the 196th Judicial District, and three non-salaried members who are citizens of Hunt County, one to be appointed by the county judge, one by the judge of the county court at law, and one by the district judge. The terms of office of the non-salaried appointed members of the Board are for one year each. The terms of the non-salaried appointed members expire on December 31st of each year.

*Text of section effective January 1, 1985*

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of the county court at law in Hunt County, the judge of any district court having jurisdiction in the county, and three non-salaried members who are citizens of Hunt County, one to be appointed by the county judge, one by the judge of the county court at law, and one by the district judge. The terms of office of the non-salaried appointed members of the board are for one year each. The terms of the non-salaried appointed members expire on December 31st of each year.

Sec. 2. The official title of said Board shall be the "Hunt County Juvenile Board."

Sec. 3. The judge of the court which is designated as the juvenile court for Hunt County shall be chairman of the Board and its chief administrative officer. The Hunt County Juvenile Board shall have all the powers conferred upon Juvenile Boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 4. As compensation for the added duties imposed upon the judicial members of the Juvenile Board, the judges of the county court, county court at law, and district court may be allowed additional compensation not to exceed Three Thousand, Six Hundred Dollars (\$3,600) per year, and the clerk of the juvenile court may be allowed additional compensation not to exceed Eight Hundred Dollars (\$800) per year. Any additional compensation allowed shall be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation not provided or allowed by law for the county judges, district judges, judges of the county court at law, and clerk of the juvenile court and shall not be counted as fees of office. Each other member of the Board serves without compensation. This Act shall be cumulative of existing laws relating to compensation for judges of district courts, county courts, and county courts at law, and clerks of juvenile courts.

[Acts 1959, 56th Leg., p. 662, ch. 305. Amended by Acts 1967, 60th Leg., p. 950, ch. 418, § 1, eff. June 12, 1967; Acts 1977, 65th Leg., p. 1356, ch. 537, § 1, eff. June 15, 1977; Acts 1983, 68th Leg., p. 4972, ch. 889, § 20, eff. Jan. 1, 1985.]

**Art. 5139DD. Gray County Juvenile Board**

Sec. 1. There is hereby established the Gray County Juvenile Board, which shall be composed of the county judge of Gray County and the judge of each judicial district which includes Gray County. The county judge of said county shall be chairman of said Board and its chief administrative officer.

Sec. 2. Members of the juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties. The commissioners court may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law, but may not reduce the compensation or expenses below the amount paid to juvenile board members as compensation and expenses on the effective date of this Act. Each member of the juvenile board shall receive the same rate of compensation.

Sec. 3. The juvenile board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended. The board may appoint juvenile officers whose salaries shall be fixed by the juvenile board. The juvenile officers shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended. All claims for expenses of the juvenile officers shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer.

[Acts 1959, 56th Leg., p. 742, ch. 336. Amended by Acts 1979, 66th Leg., p. 1077, ch. 506, § 1, eff. June 6, 1979.]

**Art. 5139EE. Crane County Juvenile Board**

Sec. 1. There is hereby established a county juvenile board in and for Crane County, which shall be composed of the county judge and the judge of each judicial district which includes Crane County. The official title of the board shall be the Crane County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon the members of the board the Commissioners Court of the County may allow the chairman of the board additional compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200) per year, and may allow each other member of the board additional compensation in an amount not to exceed Six Hundred Dollars (\$600) per year, to be paid monthly in twelve (12) equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile

boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of the county in an amount not to exceed Five Thousand, Four Hundred Dollars (\$5,400) per year. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1959, 56th Leg., p. 919, ch. 423.]

**Art. 5139FF. Hutchinson County Juvenile Board**

Sec. 1. There is hereby established a county juvenile board in and for Hutchinson County, which shall be composed of a total of five (5) nonsalaried members, one member the Judge of the Court of Domestic Relations in and for Hutchinson County, one member the Judge of the Judicial District which includes Hutchinson County, one member the Judge of the County Court of Hutchinson County, one member appointed by the Hutchinson County Commissioners Court and one member appointed by the Borger Bar Association. The appointed members of the board shall be appointed for a term not to exceed one year. The official title of the board shall be the Hutchinson County Juvenile Board. The Judge of the Court of Domestic Relations in and for Hutchinson County shall be the chairman of the board and its chief administrative officer.

Sec. 2. The Hutchinson County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board shall appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court. The juvenile officer may be allowed his reasonable and necessary expenses, subject to such maximum amount as may be fixed by the Commissioners Court.

Sec. 3. If the board determines that it is desirable to have one or more assistant juvenile officers it may appoint such assistant juvenile officers whose salaries shall be set by the Commissioners Court. All appointments made by the Hutchinson County Juvenile Board shall be made subject to the approval of the Commissioners Court of Hutchinson County. If the Commissioners Court fails to approve within thirty (30) days any appointment made by the juvenile board, the appointee is automatically approved. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court. The juvenile officer shall have the pow-

ers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1959, 56th Leg., 2nd C.S., p. 157, ch. 37. Amended by Acts 1969, 61st Leg., p. 1758, ch. 583, § 1, eff. June 10, 1969.]

#### Art. 5139GG. Howard County Juvenile Board

Sec. 1. There is established a juvenile board for Howard County to be called the "Howard County Juvenile Board," which shall be composed of a total of seven (7) non-salaried members, the County Judge of Howard County being one (1) member and chairman of such Board, and being further composed of two (2) members appointed by the Howard County Commissioners Court, two (2) members appointed by the Big Spring City Commission, and two (2) members appointed by the Board of Trustees of the Big Spring Independent School District. The terms of office of the members of this Board appointed by the Commissioners Court, city commission, and school district shall be for alternating terms of two (2) years each. The terms of three (3) of the appointed members (one (1) each from the city, county, and school district) will expire on December 31st of each odd-numbered year, and the terms of the remaining three (3) appointed members (one (1) each from the city, county, and school district) will expire on December 31st of each even-numbered year. (It is understood that the original appointments of three (3) members will expire on December 31, 1961, and that the remaining three (3) appointments will expire on December 31, 1962.)

Sec. 2. The Howard County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the Board determines that it is desirable to have a juvenile officer and/or officers for Howard County, it may appoint a juvenile officer and/or officers for a term not to exceed two (2) years, at the end of which term, the Board may appoint another juvenile officer or officers for succeeding terms not exceeding two (2) years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling. The juvenile officer shall have all the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the Board,

and shall receive an annual allowance for expenses in an amount to be determined by the Board.

Sec. 4. The commissioners court of Howard County may enter into an agreement with the city commission of Big Spring and the Board of Trustees of the Big Spring Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department. The agreement shall provide that the commissioners court of Howard County pay forty per cent (40%); that the city commission of Big Spring pay forty per cent (40%); and that the Board of Trustees of the Big Spring Independent School District pay twenty per cent (20%) of the funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

[Acts 1961, 57th Leg., p. 102, ch. 56.]

#### Art. 5139HH. Morris County Juvenile Board

Sec. 1. There is hereby established the Morris County Juvenile Board, which shall be composed of the county judge of Morris County and the judge of each judicial district which includes Morris County. The judge of the court which is designated as the juvenile court for Morris County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon members of such juvenile board, each member thereof may be allowed additional compensation not to exceed Eighteen Hundred Dollars (\$1,800) per year, to be fixed by the Commissioners Court of Morris County and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. The Morris County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. If the juvenile board determines that it is necessary to have a juvenile officer for Morris County, it may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Morris County in an amount not to exceed Three Thousand Dollars (\$3,000) per year, and whose allowance for expenses shall not exceed Five Hundred Dollars (\$500) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 as heretofore or hereafter amended. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of Morris County shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1961, 57th Leg., p. 256, ch. 132.]

### Suspension

*Acts 1971, 62nd Leg., p. 1302, ch. 342, provides in part:*

*"Section 1. (a) The Northeast Texas Juvenile Board, having jurisdiction in the counties of Bowie, Cass, Red River, Morris, and Titus, is created. \* \* \*"*

*"Sec. 6. \* \* \**

*"(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board."*

*See art. 5139EEEE.*

*Acts 1983, 68th Leg., p. 5702, ch. 1083, § 10, provides:*

*"Suspension of Statutes. This Act does not repeal a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county. The effect of a statute creating a juvenile board in or for for Camp, Marion, Morris, or Titus county is suspended for as long as the county is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board."*

*See art. 5139KKKKK.*

### Art. 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties

Sec. 1. There are hereby established juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties, each of which shall be composed of the county judge of the county and the district judge of one of the two judicial districts comprised of these five (5) counties, as the commissioners court in each county shall determine, except that in Hays County the juvenile board shall be composed of the county judge of the county, the district judges of the two judicial districts of said county, the Hays County Attorney or his successor and the Hays County Court at Law Judge.

Sec. 2. As compensation for the added duties hereby imposed upon them, members of the juvenile boards in Comal, Hays, and Caldwell Counties may each be allowed additional compensation of not more than \$300 per annum; members of the juvenile boards of Fayette and Austin Counties may each be allowed additional compensation of not more than \$1,200 per annum. The additional compensation shall be paid monthly in twelve (12) equal installments out of the general fund or other available fund of the county concerned. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. The juvenile boards created by this Act shall have all the powers conferred upon juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[Acts 1961, 57th Leg., p. 312, ch. 163. Amended by Acts 1967, 60th Leg., p. 872, ch. 377, § 1, eff. June 8, 1967; Acts 1971, 62nd Leg., p. 1783, ch. 523, § 1, eff. June 1, 1971; Acts 1975, 64th Leg., p. 1037, ch. 401, § 1, eff. June 19, 1975.]

### Art. 5139II-1. Juvenile Placement Special Fund; Comal County

#### Creation of Fund

Sec. 1. The juvenile placement special fund is created in the general fund of Comal County. The juvenile board in Comal County shall use this special fund to assist organizations providing housing facilities or treatment programs for juveniles as authorized by this Act.

#### Fees in Civil Cases

Sec. 2. (a) For each civil suit filed in a district or statutory county court of Comal County, the clerk of the court shall collect from the person filing the suit at the time of filing a fee of \$4. The clerk of a justice court of Comal County shall collect from each person filing a civil suit in the justice court or small claims court a fee of \$1.50. A fee under this section is in addition to other fees imposed for filing a civil suit in a district, statutory county, justice, or small claims court of Comal County.

(b) The clerk collecting the fee shall keep separate records of the fees collected under this section and shall deposit the fees in the juvenile placement special fund.

#### Costs in Criminal Cases

Sec. 3. (a) A person shall pay \$4 as a court cost, in addition to other court costs, on conviction in a district or statutory county court of Comal County of a criminal offense defined by statute. A person convicted in a justice court of Comal County of a criminal offense defined by statute shall pay \$1.50 as a court cost, in addition to other court costs imposed on conviction in the justice court.

(b) A court cost under this section is collected in the same manner as other fines or costs.

(c) The officer collecting the costs in a district, statutory, county, or justice court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the juvenile placement special fund.

#### Disbursement of Funds

Sec. 4. (a) The juvenile board in Comal County may direct the county treasurer for the county to disburse money from the juvenile placement special fund to an organization if the organization:

(1) is a nonprofit organization as defined by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes);

(2) provides a temporary or permanent housing facility or treatment program for delinquent children, children in need of supervision, or children otherwise dependent, neglected, or in need of care; and

(3) is approved by the board for the provision of housing facilities or treatment programs for juveniles.

(b) The county treasurer for Comal County shall keep records of the amount of funds on deposit in and the disbursements from the juvenile placement special fund. The juvenile board in Comal County may direct the treasurer to file reports on the status of the special fund.

[Acts 1981, 67th Leg., p. 2275, ch. 554, §§ 1 to 4, eff. Sept. 1, 1981.]

Section 6 of the 1981 Act provides:

"(a) Section 2 of this Act applies only to civil cases filed in a district, statutory county, justice, or small claims court of Comal County on or after this Act's effective date.

"(b) Section 3 of this Act applies only to convictions for offenses committed on or after this Act's effective date. For purposes of this subsection, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

#### Art. 5139JJ. Victoria County Juvenile Board

Sec. 1. There is established a juvenile board in Victoria County, which shall be composed of the county judge of Victoria County, the judge of each judicial district which includes Victoria County, and the judge of each county court at law in Victoria County. The judge of the court which is designated the juvenile court for Victoria County shall be chairman of the board and its chief administrative officer. The board may designate a district court, the county court, or a county court at law with juvenile jurisdiction to be the juvenile court of the county. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 2. As compensation for the additional duties hereby imposed, each member of the juvenile board shall be allowed additional compensation, to be fixed by the Commissioners Court and paid in twelve (12) equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. The Commissioners Court of Victoria County may appoint a chief probation officer and such other personnel as may be necessary for the proper functioning of the probation department. Salaries of the personnel of the county probation department shall be fixed by the Commissioners Court. The Commissioners Court of Victoria County shall provide the necessary funds for payment of

salaries and expenses essential to the proper operation of the probation department. The Commissioners Court may also allow additional compensation to the county clerk of Victoria County for the added duties imposed upon him as clerk of the juvenile court.

[Acts 1961, 57th Leg., p. 371, ch. 187. Amended by Acts 1971, 62nd Leg., p. 1012, ch. 198, § 1, eff. May 13, § 1; Acts 1973, 63rd Leg., p. 412, ch. 183, § 8, eff. May 25, 1973; Acts 1979, 66th Leg., p. 1010, ch. 443, § 12, eff. Aug. 27, 1979.]

#### Art. 5139KK. Travis County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in and for the County of Travis, to be known as Travis County Juvenile Board, hereinafter referred to as Juvenile Board, which Juvenile Board shall be composed of the County Judge and the Judges of the several Civil District Courts, and the Criminal District Courts in and for Travis County.

Sec. 2. As compensation for the added duties imposed upon the members of the Juvenile Board, each member thereof shall receive the sum of Forty-eight Hundred Dollars (\$4800.00) annually, to be paid in equal monthly installments out of the general fund of said county. Such compensation shall be for all judicial and administrative services thereafter to be assigned to them as members of the Juvenile Board, and shall be in addition to all other compensation allowed or hereafter to be allowed by law for County Judges and District Judges.

Sec. 3. The Juvenile Board may appoint a discreet person of good moral character to serve as Chief Probation Officer. The Chief Probation Officer shall appoint assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the Juvenile Board. The number of such assistant probation officers and other assistants shall be determined by the Juvenile Board. The Juvenile Board shall fix the salaries of and allowances for the said Chief Probation Officer, assistant probation officers and other assistants, and the Commissioners Court for said county shall provide the necessary funds for the payment of such salaries and operating expenses in the amounts fixed by the Juvenile Board, subject to the approval of the Commissioners Court. All claims for expenses of the Chief Probation Officer, the assistant probation officers and other assistants, shall be certified by the Chairman of the Juvenile Board to the said County Commissioners Court as being necessary in the performance of the duties of such officers, and the Commissioners Court shall out of the general fund provide funds for the payment of all expenses necessary to carry out the duties of the Chief Probation Officer in such amounts as fixed by the Juvenile Board, as certified by the Chairman of the Juvenile Board, subject to the approval of the Commissioners Court. The Chief Probation Officer, assistant probation officers, and other assistants, may

be removed at any time by the authority appointing them.

Sec. 4. The Chief Probation Officer, in addition to his other duties, shall, if the Juvenile Board so directs, receive payments of moneys made under the orders of the several district courts and criminal district courts in said county, and/or payments made voluntarily, for the support of dependents, wives and children, and shall disburse said funds for the benefit of the wife and/or children of the person making such payment in such manner, by an order duly entered, as shall appear to the said courts to be for the best interest of said wife and/or children. The Chief Probation Officer shall enter into a bond payable to the judges of the several district courts and criminal district courts, and their successors, with a corporate surety authorized to make such a bond in the State of Texas, conditioned upon the faithful performance of the duties of his position, and further conditioned upon his proper accounting for any moneys received by him, said bond to be in such amount as may be fixed by the Juvenile Board and subject to the approval of the Commissioners Court, the premium for such bond to be paid out of the general funds of the county. The Chief Probation Officer shall cause to be kept an accurate and complete record of all receipts and disbursements of moneys received and disbursed for the benefit of dependents, wives and children, which records shall be court records and shall be open to inspection at all reasonable times by the parties, their representatives and attorneys; and certified or attested copies of such records shall be admitted and received as evidence as is provided for public records by Article 3720 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. It shall be the duty of the county auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the Juvenile Board. Subject to confirmation by the Juvenile Board, the Chief Probation Officer shall appoint such assistants as may be necessary to effect the directions of the Juvenile Board regarding his duties to receive and to disburse funds paid for the support of dependents; and such assistants may be designated by titles appropriately descriptive of their duties. Such assistants may be removed by the appointing authority at any time. The Commissioners Court of said county shall provide out of the general funds of the county, in such amounts as are recommended by the Juvenile Board, subject to the approval of the Commissioners Court, the funds necessary to employ assistants and to operate and maintain facilities for receiving and disbursing wife and child support payments.

Sec. 5. The Chief Probation Officer shall appoint the Superintendents of each county institution maintained for the detention, shelter, training, education, or correction of juveniles. Such appointment shall be confirmed by the Juvenile Board and the salary of the Superintendents and the expenses of main-

taining and operating such institutions shall be paid out of the general fund by the Commissioners Court in such amounts as recommended by the Juvenile Board, subject to the approval of the Commissioners Court. The Superintendents may be removed by the appointing authority at any time.

Sec. 6. The said Chief Probation Officer and Assistant Probation Officers shall have the authority, powers and duties authorized and required by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[Acts 1961, 57th Leg., p. 372, ch. 188.]

**Art. 5139LL. Repealed by Acts 1962, 57th Leg., 3rd C.S., p. 171, ch. 64, § 19, eff. Sept. 1, 1962**

**Art. 5139MM. Dawson County Juvenile Board**

Sec. 1. There is hereby established a juvenile board in Dawson County, which shall be composed of the county judge of Dawson County and two (2) citizens of Dawson County, one of whom shall be appointed by the Commissioners Court and the other by the chief of police of the City of Lamesa. Citizen members of the board shall serve for terms of two (2) years. The county judge shall be the chairman of the juvenile board and its chief administrative officer.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such juvenile board may be allowed additional compensation of not less than Six Hundred Dollars (\$600.) nor more than Three Thousand Dollars (\$3,000.) per annum, which shall be paid monthly in twelve (12) equal installments out of the general fund or other available fund of Dawson County. The Commissioners Court of Dawson County may allow each other member of the board compensation in an amount not to exceed One Thousand, Two Hundred Dollars (\$1,200.) per annum, to be paid monthly in twelve (12) equal installments out of the general fund or other available fund of Dawson County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by citizen members of the juvenile board.

Sec. 3. The juvenile board created by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, whose salary shall be fixed by the Commissioners Court of Dawson County in an amount not to exceed Six Thousand, Four Hundred Dollars (\$6,400.) per year. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer, and the Commissioners Court of Dawson County shall pro-



vide the necessary funds for the payment of the salary and expenses of the juvenile officer. The same person may serve as the juvenile officer and as one of the citizen members of the Dawson County Juvenile Board, but in such case he shall receive only the compensation fixed for the juvenile officer.

[Acts 1961, 57th Leg., p. 885, ch. 388. Amended by Acts 1971, 62nd Leg., p. 1627, ch. 454, § 1, eff. May 26, 1971.]

#### Art. 5139NN. Coleman County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Coleman County, which shall be known as the Coleman County Juvenile Board. It shall be composed of the county judge of Coleman County and the judge of each judicial district which includes Coleman County. The judge of the court which is designated as the juvenile court for Coleman County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount not to exceed One Thousand, Eight Hundred Dollars (\$1,800) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Coleman County. The Commissioners Court of Coleman County may allow each other member of the board additional compensation in an amount not to exceed Three Hundred Dollars (\$300) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Coleman County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 2a. The Juvenile Board of Coleman County shall, with the consent of the county commissioners court, appoint a juvenile officer for Coleman County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary as fixed by the juvenile board and approved by the county commissioners court.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1961, 57th Leg., 1st C.S., p. 196, ch. 57. Amended by Acts 1969, 61st Leg., p. 263, ch. 102, §§ 1, 2, eff. Sept. 1, 1969.]

#### Art. 5139OO. Runnels County Juvenile Board

Sec. 1. There is hereby established a juvenile board for Runnels County, which shall be known as the Runnels County Juvenile Board. The Board shall be composed of the county judge of Runnels County, and the district attorney and presiding judge of the 119th Judicial District. The judge of the court which is designated as the juvenile court

for Runnels County shall be chairman of the Board and its chief administrative officer. The Board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such Board may be allowed by the Commissioners Court additional compensation in an amount not to exceed Six Hundred Dollars (\$600) per annum, which shall be paid in twelve (12) equal installments out of the General Fund or any other available fund of Runnels County. The Commissioners Court of Runnels County may allow each other member of the Board additional compensation in an amount not to exceed Three Hundred Dollars (\$300) per annum, to be paid in twelve (12) equal installments out of the General Fund or any other available fund of Runnels County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges, district judges, and district attorneys.

Sec. 2A. The Juvenile Board of Runnels County shall, with the consent of the County Commissioners Court, appoint the Juvenile and Probation Officer of Runnels County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State, and who shall act as the Juvenile and Adult Probation Officer in Runnels County for the Juvenile Board and the Juvenile Court, for the courts of Runnels County having original jurisdiction of felony criminal actions. The juvenile and Probation Officer shall be paid a salary as fixed by the Juvenile Board and approved by the County Commissioners Court.

[Acts 1962, 57th Leg., 3rd C.S., p. 203, ch. 78. Amended by Acts 1963, 58th Leg., p. 839, ch. 319, § 1.]

#### Art. 5139PP. Bell County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Bell County, which shall be known as the Bell County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county, the county judge of Bell County, the judge of the County Court at Law of Bell County, and the judge of the County Court at Law No. 2 of Bell County. The county judge of Bell County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed upon members of such board, each member thereon may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court of the county, payable in twelve (12) equal monthly installments out of the general fund of the county. Such compensation shall be in addition to all other

compensation now provided or allowed by law for county, county court at law, and district judges.

[Acts 1963, 58th Leg., p. 322, ch. 120. Amended by Acts 1972, 62nd Leg., 4th C.S., p. 21, ch. 4, § 1, eff. Oct. 17, 1972; Acts 1975, 64th Leg., p. 79, ch. 37, § 6, eff. April 3, 1975.]

#### Art. 5139QQ. Bosque County Juvenile Board

Sec. 1. The county judge of Bosque County and the judge of the judicial district which includes Bosque County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Bosque County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$1,200 per year, to be fixed by the commissioners court and paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 315, ch. 146.]

#### Art. 5139RR. Comanche County Juvenile Board

Sec. 1. The county judge of Comanche County and the judge of the judicial district which includes Comanche County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Comanche County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$1,800 per year, to be fixed by the commissioners court and paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 315, ch. 147.]

#### Art. 5139SS. Coryell County Juvenile Board

Sec. 1. The county judge of Coryell County and the judge of the judicial district which includes Coryell County shall constitute the juvenile board of that county. The judge of the court which is designated as the Juvenile Court of Coryell County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed upon them, the county and district judges who are members of the board may be allowed additional compensation not to exceed \$2,400 per year, to be fixed by the commissioners court and

paid in twelve equal monthly installments out of the general fund of the county.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

[Acts 1965, 59th Leg., p. 317, ch. 149.]

#### Art. 5139TT. Hidalgo County Juvenile Board

##### Juvenile Board

Sec. 1. The Hidalgo County Juvenile Board is composed of the County Judge of Hidalgo County and the judge of each judicial district which includes Hidalgo County.

##### Compensation of Board Members

Sec. 2. (a) As compensation for the added duties imposed upon members of the juvenile board, each member thereof may be allowed additional compensation of not more than \$8,000 per year, to be fixed by the commissioners court of the county and paid monthly in 12 equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

(b) The commissioners court may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

##### Board Powers

Sec. 3. The juvenile board may

(1) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(2) suspend or remove any employee at any time for good cause;

(3) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(4) authorize the use of foster homes for the temporary care of delinquent, dependent, or neglected children;

(5) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made.

##### Board Duties

Sec. 4. The juvenile board shall

(1) prescribe the duties and conditions of employment of its employees;

(2) control and supervise all homes, schools, farms and other institutions or places of housing maintained and used chiefly by the county for the

training, education, detention, support or correction of juveniles;

(3) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support or correction of juveniles;

(4) designate the juvenile court in accordance with Chapter 204, Acts of the 48th Legislature, Regular Session, 1943, as amended (Article 2338-1, Vernon's Texas Civil Statutes);

(5) submit an annual proposed budget to the Hidalgo County Commissioners Court.

#### Powers of Juvenile Probation Officer

Sec. 5. The juvenile probation officer has all the powers of a peace officer for the purpose of performing his duties under this Act.

#### Duties of Juvenile Probation Officer

Sec. 6. The juvenile probation officer shall

(1) appoint assistant juvenile probation officers with the approval of the juvenile board;

(2) appoint, with the approval of the juvenile board, a minimum of one field worker for each 50,000 inhabitants of Hidalgo County according to the last preceding federal census;

(3) investigate all cases referred to him by the board;

(4) investigate all cases brought before the juvenile court;

(5) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(6) represent the interest of the juvenile before the juvenile court;

(7) furnish the board and the juvenile court any information and assistance required by them;

(8) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information which may assist the court in determining the proper disposition to be made of any juvenile;

(9) keep a record which will at all times show the names of all referrals and delinquent juveniles within Hidalgo County and the names and addresses of the persons having custody of them.

#### Salaries and Financing

Sec. 7. The commissioners court shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1965, 59th Leg., p. 383, ch. 186. Amended by Acts 1973, 63rd Leg., p. 1387, ch. 535, § 1, eff. June 14, 1973.]

#### Art. 5139UU. Ector County Juvenile Board

Sec. 1. There is established the Ector County Juvenile Board, which shall be composed of the judge of the Juvenile Court of Ector County, the county judge of Ector County, and the judges of the district courts of Ector County. The judge of the Juvenile Court of Ector County, who is also the judge of the County Court at Law of Ector County as provided by Section 1, Chapter 331, Acts of the 56th Legislature, Regular Session, 1959 (Article 2338-12, Vernon's Texas Civil Statutes), is chairman of the board.

Sec. 2. The county judge of Ector County, the judge of the County Court at Law of Ector County, and the judges of the district courts of Ector County are each entitled to additional compensation of their service on the board of not less than \$600 a year nor more than \$1,200 a year. The amount of such additional compensation shall be fixed by the commissioners court and shall be paid in 12 equal monthly installments out of the general fund of the county.

Sec. 3. The Ector County Juvenile Board has all the powers and duties prescribed for juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. The judge of the juvenile court may appoint a chief juvenile probation officer, subject to the approval of the Ector County Juvenile Board, for a term of 2 years. Subject to the approval of the judge of the juvenile court and the Ector County Juvenile Board, the chief juvenile probation officer may appoint one juvenile probation officer for each 25,000 population in the county, according to the last preceding federal census; a psychologist to serve as juvenile probation officer psychologist for the county; and such additional juvenile officers and juvenile probation officers as the Ector County Juvenile Board may determine to be necessary, each for a term of 2 years. The Ector County Juvenile Board shall recommend the salaries to be paid to the officers, without limitation as to the amount of the salary, and the commissioners court shall approve the salaries for the officers and provide the funds for their expenses. The salaries for the officers shall be paid in 12 equal monthly installments by the county.

Sec. 5. The chief juvenile probation officer and such officers as he may appoint with the approval of the Ector County Juvenile Board have the powers and duties prescribed for juvenile officers by Article 5142 of the Revised Civil Statutes of Texas, 1925, as amended. Such officers shall take the oath to perform their duties, and the oath and appointment of such officers shall be filed in the office of the county clerk. The Ector County Juvenile Board may require and approve a good and sufficient bond for the faithful performance of duty of any of such officers, payable to the treasurer of Ector County in such sum as may be determined by the Ector County Juvenile Board.

Sec. 6. Subject to the approval of the judge of the Juvenile Court of Ector County, the chief juvenile probation officer may employ one secretary, and may also employ as many additional secretaries as the Ector County Juvenile Board may determine to be necessary, at a salary not to exceed \$6,000 a year for each secretary, which salary shall be recommended by the chief juvenile probation officer and approved by the commissioners court, and paid in 12 equal monthly installments by the county.

Sec. 7. A person appointed or employed under the provisions of this Act may be removed from office by the power appointing him at any time.

Sec. 8. Nothing in this Act shall be construed to affect the status of a person serving as juvenile officer or assistant juvenile officer on the effective date of this Act or to require a new appointment of such officers during their current terms of office.

[Acts 1965, 59th Leg., p. 392, ch. 191, eff. May 17, 1965. Amended by Acts 1969, 61st Leg., p. 252, ch. 99, § 1, eff. April 26, 1969.]

**Art. 5139VV. Harris County Juvenile and Children's Protective Services Boards**

**SUBCHAPTER A. THE JUVENILE BOARD**

**Establishment**

Sec. 1. The Juvenile Board of Harris County is established.

**Composition**

Sec. 2. The juvenile board consists of the county judge, the judges of the juvenile courts, a judge selected by the judges of those district-level courts hearing primarily family law matters, a judge selected by the judges of those district-level courts hearing primarily civil matters, and a judge selected by the judges of those district-level courts hearing primarily criminal matters.

**Officers**

Sec. 3. The chairman of the board shall be selected from the members of the board at an election to be held annually at the first meeting in January.

**Meetings**

Sec. 4. (a) The board shall hold meetings once a month. It may hold other meetings at the call of the chairman or at the written request to the chairman of at least two members of the board.

(b) The board shall keep accurate and complete minutes of its meetings. The minutes are open to inspection by the public.

**Duties**

Sec. 5. (a) The Chief Probation Officer under the direction of the juvenile board shall prepare the annual budget of the probation department and of the county institutions for the care of neglected, dependent, and delinquent children. The juvenile

board then shall submit the budget it approves to the Commissioners Court for final approval in the same manner as prescribed by law for the other agencies and departments of Harris County.

(b) The juvenile board shall make an annual written report to the Commissioners Court concerning the operations and efficiency of the probation department and of the county institutions for the care of neglected, dependent, and delinquent children; and concerning the general adequacy of juvenile services provided by the county. The board may include within its report any recommendations for improvements which it finds are needed.

(c) At the request of the judge of the juvenile court, the juvenile board shall investigate the operations of the probation department and the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board shall make a written report of the results of its investigations to the Commissioners Court. The juvenile board may make any special studies or investigations that it finds necessary to improve the operations of the probation department and the institutions under its control.

(d) The juvenile board subject to the approval of the Commissioners Court shall establish a general personnel policy for the employees of the probation department and the county institutions for the care of neglected, dependent, and delinquent children. The board shall establish and maintain an employee classification system including:

(1) an accurate statement of duties of each employee position;

(2) stated qualifications of each employee position; and

(3) a compensation plan which will insure equal pay for equal work.

(e) The board neither has, nor may it exercise, judicial power or function.

(f) The juvenile board shall direct whether the district clerk or the chief juvenile probation officer shall receive payments for the support of wives and children made under the order of the district and criminal district courts or the courts of domestic relations of Harris County.

**SUBCHAPTER B. CHIEF JUVENILE PROBATION OFFICER**

**Establishment of Office**

Sec. 6. The office of Chief Juvenile Probation Officer of Harris County is established.

**Appointment**

Sec. 7. The judge of the juvenile court shall appoint the chief juvenile probation officer. The appointment is subject to the approval of the juvenile board. The judge may remove the chief juvenile probation officer at any time subject to the approval of the Juvenile Board.

**Salary**

Sec. 8. The Commissioners Court shall pay the chief juvenile probation officer an annual salary of not less than \$12,000.

**Duties**

Sec. 9. (a) The chief juvenile probation officer is the chief administrative officer of the probation department, and the director of the county institutions for the care of neglected, dependent, and delinquent children.

(b) If the chief juvenile probation officer determines that the juvenile court should acquire formal jurisdiction of a case, he shall prepare and file in the juvenile court a petition as described in Section 7, Chapter 204, Acts of the 48th Legislature, 1943 (Article 2338-1, Vernon's Texas Civil Statutes).

**Support Payments**

Sec. 10. (a) If the juvenile board directs the chief juvenile probation officer to receive payments for the support of wives and children made under the order of the district courts, courts of domestic relations or the juvenile courts of Harris County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(b) If the juvenile board directs the district clerk to receive support payments, the clerk shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(c) In all cases in which the juvenile board directs the chief juvenile probation officer to receive support payments, he shall enter into a surety bond with some solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned upon the chief juvenile probation officer's faithful performance of the duties of his position and upon his properly accounting for any moneys entrusted to him. The Commissioners Court shall fix the amount of the bond and shall approve its terms. The Commissioners Court shall pay the premium for the bond out of the general funds of the county.

(d) The chief juvenile probation officer shall keep an accurate and complete record of all his receipts and disbursements of support payment funds. The record is open to inspection by the public. The County Auditor shall inspect the record and shall audit the accounts quarterly, making a report of his findings and recommendations to the juvenile board.

(e) If the juvenile board directs the chief juvenile probation officer to receive support payments, a fee, not to exceed One Dollar (\$1.00) per month, may be assessed for each individual transaction of receiving and disbursing each individual payment of support moneys. Such fee may be assessed, subject to the approval of the Commissioners Court, upon a deter-

mination of the juvenile board that additional funds are necessary to assist in the maintenance of a support office by the chief juvenile probation officer. The fee shall be collected by the chief juvenile probation officer from the payor annually in advance and shall be paid to the County Treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the operating expenses of the support office in the juvenile probation office.

**SUBCHAPTER C. THE PROBATION DEPARTMENT**

**Establishment**

Sec. 11. The Probation Department of Harris County is established.

**Appointment**

Sec. 12. The chief juvenile probation officer shall hire the employees of the probation department. He may remove an employee at any time. Appointments and removals of supervisors are subject to the approval of the juvenile board.

**Salaries**

Sec. 13. The Commissioners Court of Harris County shall pay the salaries and expenses of the employees of the probation department as determined by the annual budget prepared by the juvenile board and approved by the Commissioners Court.

**Duties**

Sec. 14. (a) The juvenile probation officers of Harris County shall

- (1) investigate all cases referred to them by the juvenile court or the juvenile board;
- (2) be present in the juvenile court and represent the interests of the juvenile when the case is heard;
- (3) furnish to the court and juvenile board any information or assistance required;
- (4) take charge of any child before and after the trial; and
- (5) perform other services for the child as may be required by the court.

(b) Relative to their offices, the juvenile probation officers of Harris County have the powers and authority of police officers and sheriffs.

(c) The juvenile probation officers of Harris County have all other powers granted to juvenile probation officers by General Law.

SUBCHAPTER D. COUNTY JUVENILE  
INSTITUTIONS

Appointment

Sec. 15. The chief juvenile probation officer shall hire the employees of the county institutions for the care of neglected, dependent, and delinquent children. He may remove an employee at any time. The appointment and removal of superintendents of the county institutions are subject to the approval of the juvenile board.

Salaries

Sec. 16. The Commissioners Court of Harris County shall pay the salaries and expenses of the employees of the county institutions for the care of neglected, dependent, and delinquent children as determined by the annual budget prepared by the juvenile board and approved by the Commissioners Court.

Gifts

Sec. 17. Subject to the approval of the Commissioners Court, the juvenile board may accept and hold in trust for the county juvenile institutions any grant or devise of land, any gift or bequest of money or other personal property, and any donation, which is to be applied for the benefit of the institutions.

Secs. 18, 19. [Severability and emergency clauses]

SUBCHAPTER E. HARRIS COUNTY CHILDREN'S PROTECTIVE SERVICES BOARD

Definitions

Sec. 20. In this subchapter, unless the context requires a different definition:

(1) "Board" means the Harris County Children's Protective Services Board.

(2) "Commissioners court" means the Commissioners Court of Harris County.

(3) "Children's Protective Services" means the administrative organization carrying out the functions of the Board.

(4) "Director" means the highest administrative officer of the Children's Protective Services who is responsible to the Board.

(5) "Assistant director" means one or more administrative officers who are next in authority to the Director.

(6) "Institution for the care and protection of dependent and neglected children" means one or more facilities designed for the care and protection of children described in Article 2330, Revised Civil Statutes of Texas, 1925, as amended, and does not include any institution designed primarily for holding and caring for children with severe medical, psychiatric, or other handicaps including severe mental retardation, serious abnormality, or incurable

or debilitating disease which requires hospital care or intensive specialized treatment or any institution designed primarily for receiving or holding and caring for incorrigible or delinquent children.

Authority of Board Over Certain Institutions

Sec. 21. The Board has the duties and functions for Harris County of a child welfare board created under Section 41.002, Human Resources Code, and on approval of the Commissioners Court, the Board may assume jurisdiction, management, and control over and may determine operating policies for any county owned institution for the care and protection of dependent and neglected children.

Transfer of Functions

Sec. 22. With respect to any institution for the care of dependent and neglected children over which the board has assumed control and management, the board shall perform the following functions formerly performed by the Harris County Juvenile Board and Chief Juvenile Probation Officer of Harris County:

- (1) hire and remove employees of the institutions;
- (2) establish a general personnel policy for employees of the institutions;
- (3) pay the salaries and expenses of the employees of the institutions from funds supplied by the commissioners court under the annual budget or a supplemental budget approved by the board and the commissioners court or from funds supplied by the state or other sources;
- (4) designate the Director or his specially designated assistant as the director of one or more of the institutions;
- (5) make an annual written report to the commissioners court concerning the operations and efficiency of the institutions; and
- (6) prepare an annual budget for the institutions and submit it to the commissioners court for final approval as provided by law for other agencies and departments of Harris County.

Duties

Sec. 23. (a) In addition to but not in limitation of any authority which may be delegated to the board by the commissioners court and the Texas Department of Human Resources, the board may perform the following functions:

- (1) disburse funds made available to the board from sources other than the commissioners court and the Texas Department of Human Resources to aid in the care, protection, evaluation, training, treatment, education, recreation, or benefit of dependent and neglected children and refuse to accept or return all or part of any funds considered by the board to be for a purpose which is inappropriate to, burdensome on, incompatible with, or unsuited to board policies or administration of the child care program;

(2) accept and use any gift, grant, devise, or bequest of land, money, or personal property or any beneficial interest or financial support under the terms of a trust or from any lawful source, and may hold these either directly or in trust for the use of the dependent and neglected children of the county or for institutions or services provided for the care, protection, education, or training of dependent and neglected children;

(3) accept and disburse as provided in Subdivision (1) of this subsection fees and contributions from parents, guardians, and relatives of children who are in county-supported substitute care or custody or who are being assisted by casework, day care, or homemaker service, by medical, psychological, psychiatric, dental, or other remedial help or by teaching, training, or other services;

(4) receive funds available for the support or benefit of dependent and neglected children in the board's legal custody, which funds may include social security benefits, life insurance proceeds, survivors' pension or annuity benefits, and other property or beneficial interests in property which may belong to or pass to the children;

(5) account for and expend properly funds received as fees and contributions, payments by guardians, or payments for the benefit of any child in the board's legal custody; and

(6) receive and utilize funds, grants, and assistance available to the board from any federal or state department or agency to carry out the functions and programs of the federal or state department or agency designed to aid or extend programs and operations approved by the board.

(b) The board shall designate the Director or one of his assistants to apply for letters of guardianship when necessary to carry out the purpose stated in Subdivision (4) of Subsection (a) of this section and to apply or disburse the funds collected under the subdivision for special items of support for dependent and neglected children and for general administrative expenses related to the care of dependent and neglected children or to hold the funds in trust or apply the funds for a particular or more restricted purpose required by law or the source of the funds.

#### Delegation of Authority

Sec. 24. The board may delegate to the Director or an assistant director the performance of any function and the discharge of any duty authorized or required by this Act, provided that before the annual report and annual budget are submitted to the commissioners court, the board must approve them. Any delegation made under this section is subject to periodic review by the board.

[Acts 1965, 59th Leg., p. 565, ch. 288. Amended by Acts 1971, 62nd Leg., p. 2635, ch. 866, § 1, eff. June 9, 1971; Acts 1973, 63rd Leg., p. 400, ch. 178, § 1, eff. May 25, 1973; Acts 1975, 64th Leg., p. 1177, ch. 438, § 1, eff. June 19, 1975; Acts 1983, 68th Leg., p. 5154, ch. 935, § 1, eff. Aug. 29, 1983.]

Sections 2 and 3 of the 1973 Act provided:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed to the extent of the conflict.

"Sec. 3. 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."

#### Art. 5139WW. Van Zandt County Juvenile Board

##### Board Established

Sec. 1. There is established the Van Zandt County Juvenile Board.

##### Composition of Board

Sec. 2. The board is composed of the county judge and county attorney of Van Zandt County, and the district judge of each judicial district which includes Van Zandt County.

##### Chairman

Sec. 3. The judge of the juvenile court for Van Zandt County is the chairman of the board and its chief administrative officer.

##### Juvenile Officer

Sec. 4. The board may appoint a juvenile officer.

##### Compensation

Sec. 5. (a) As compensation for the duties added by this Act, the commissioners court for Van Zandt County may pay each member of the board an amount not to exceed \$600 a year. If the commissioners court allows compensation under this Section, the compensation is paid in 12 equal monthly installments, and is paid out of money in the general fund of the County. Compensation allowed under this Section is in addition to any other compensation provided or allowed by law for the district judges, the county judge, and the county attorney.

(b) If the board appoints a juvenile officer, the commissioners court shall pay the juvenile officer a salary in the amount the commissioners court shall determine reasonable and shall allow him an amount for expenses that does not exceed \$1,800 a year. The commissioners court shall provide money for paying the salary and certified expenses of the juvenile officer. The chairman of the board shall certify to the commissioners court the expenses of the juvenile officer which are necessary for the juvenile officer to properly perform his duties.

##### Powers and Duties of the Board

Sec. 6. The board has the powers, duties, and functions prescribed for juvenile boards created under the provisions of Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

##### Powers and Duties of Juvenile Officer

Sec. 7. The juvenile officer, if one is appointed, has the powers, duties, and functions prescribed for

juvenile officers in Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any other duty or function prescribed for him by the board.

[Acts 1965, 59th Leg., p. 792, ch. 379, eff. June 9, 1965. Amended by Acts 1971, 62nd Leg., p. 2416, ch. 765, § 1, eff. Aug. 30, 1971.]

#### Art. 5139XX. Kaufman County Juvenile Board

##### Board Established

Sec. 1. The Kaufman County Juvenile Board is established.

##### Composition of Board

Sec. 2. The board is composed of the county judge and county attorney of Kaufman County, and the district judge of each judicial district which now or in the future includes Kaufman County.

##### Chairman and Juvenile Officer

Sec. 3. (a) The judge of the juvenile court for Kaufman County is chairman of the board and its chief administrative officer.

(b) The board may appoint a juvenile officer, who serves at the pleasure of the board.

##### Compensation

Sec. 4. (a) As compensation for the extra duties imposed by this Act, the Commissioners Court of Kaufman County may pay each member of the board an amount not to exceed \$600 a year. This compensation is in addition to all other compensation paid a board member by the state or county and is payable in equal monthly installments from the general fund of the county.

(b) The juvenile officer is entitled to an annual salary in an amount fixed by the board not to exceed \$6,500 a year; he is also entitled to reimbursement for his reasonable and necessary expenses, in an amount not to exceed \$1,800 a year, incurred while performing his duties as juvenile officer. The juvenile officer's expenses are payable on voucher signed by the chairman of the board. The Commissioners Court of Kaufman County shall pay the juvenile officer's salary and expenses from the general fund.

Sec. 5. [Blank].

##### Powers and Duties of Board

Sec. 6. The board has the powers and duties prescribed for juvenile boards in Articles 5140 and 5141, Revised Civil Statutes of Texas, 1925, as amended.

##### Powers and Duties of Juvenile Officer

Sec. 7. The juvenile officer has the powers and duties prescribed for juvenile officers in Article 5142, Revised Civil Statutes of Texas, 1925, as

amended, and any other duties prescribed for him by the board.

[Acts 1967, 60th Leg., p. 374, ch. 181, eff. May 12, 1967. Amended by Acts 1969, 61st Leg., p. 1672, ch. 535, § 1, eff. Sept. 1, 1969.]

#### Art. 5139YY. Moore County Juvenile Board

Sec. 1. There is hereby established a juvenile board for Moore County to be called the Moore County Juvenile Board, which shall be composed of seven non-salaried members: The county judge of Moore County being one member; two members appointed by the Moore County Commissioners Court; two members appointed by the Dumas City Commission; and two members appointed by the board of trustees of the Dumas Independent School District. The terms of office of the appointive members of this board shall be for alternating terms of two years each. The terms of three of the appointed members, one each from the city, county, and school district, will expire on December 31st of each odd-numbered year, and the terms of the remaining three appointed members, one each from the city, county, and school district, will expire on December 31st of each even-numbered year. It is understood that the terms of three members originally appointed will expire on December 31, 1969, and that the terms of the remaining three members originally appointed will expire on December 31, 1970. The members of the board shall select a chairman from among their number.

Sec. 2. The Moore County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5140, Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer and/or officers for Moore County, it may appoint a juvenile officer and/or officers for a term not to exceed two years, at the end of which term, the board may appoint another juvenile officer or officers for succeeding terms not exceeding two years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling, and/or having such other qualifications as may be specified by the Moore County Juvenile Board. The board shall be the final judge of the qualifications for such juvenile officer or officers. The juvenile officer shall have all the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the juvenile board. The juvenile officer shall receive an annual salary to be fixed by the board, and shall receive an annual allowance for expenses in an amount to be determined by the board.

Sec. 4. The Commissioners Court of Moore County may enter into an agreement with the city



commission of Dumas and the board of trustees of the Dumas Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department. The agreement shall provide that the commissioners court pay 33- $\frac{1}{3}$  percent, the city commission of Dumas pay 33- $\frac{1}{3}$  percent, and the board of trustees of the Dumas Independent School District pay 33- $\frac{1}{3}$  percent of the funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

[Acts 1969, 61st Leg., p. 869, ch. 288, §§ 1 to 4, eff. May 22, 1969.]

#### Art. 5139ZZ. Orange County Juvenile Board

Sec. 1. The Orange County Juvenile Board is composed of the County Judge of Orange County, and the District Judges of Orange County.

Sec. 2. (a) The commissioners court may authorize and pay each member of the juvenile board an annual sum as compensation for serving as a member of the juvenile board.

(b) The commissioners court may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems.

Sec. 3. The juvenile board may

(1) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(2) suspend or remove any employee at any time for good cause;

(3) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(4) authorize the use of foster homes for the temporary care of delinquent children, predelinquent children, children in need of supervision, or status offenders; and

(5) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made.

Sec. 4. The juvenile board shall

(1) prescribe the duties and conditions of employment of its employees;

(2) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(3) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(4) designate the juvenile court in accordance with Section 51.04 of the Family Code;

(5) submit an annual proposed budget to the Orange County Commissioners Court; and

(6) set all fees and costs related to the functions of those programs and services administered by the board.

Sec. 5. The juvenile probation officer has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer shall

(1) appoint assistant juvenile probation officers with the approval of the juvenile board;

(2) appoint, with the approval of the juvenile board, a minimum of one field worker for each 50,000 inhabitants of Orange County according to the last preceding federal census;

(3) investigate all cases referred to him by the board;

(4) investigate all cases brought before the juvenile court;

(5) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(6) represent the interest of the juvenile before the juvenile court;

(7) furnish the board and the juvenile court any information and assistance required by them;

(8) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information which may assist the court in determining the proper disposition to be made of any juvenile; and

(9) keep a record which will at all times show the names of all referrals and delinquent juveniles within Orange County and the names and addresses of the persons having custody of them.

Sec. 7. The commissioners court shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

Sec. 8. (a) For the purpose of maintaining a child support collection function within Orange County, the juvenile board shall establish an Orange County Child Support Office and appoint a child support collector charged with the duty of collecting and dispersing child support payments as ordered by the judicial courts of Orange County. To assist in the financial maintenance of the child support office, there shall be taxed, collected, and paid as other costs the minimum sum of \$5 in each divorce case hereafter filed in a proper court of jurisdiction of Orange County. Such costs shall be collected by

the district clerk and when collected shall be paid to the treasurer of Orange County to be kept in a separate fund known as the "Child Support Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of assisting in paying the costs of maintaining the child support office, including payment of salaries and other expenses of the collector of child support and his assistants, including the purchase of supplies and equipment and all other necessary expenses of the office. This fund shall be supplemented out of the general fund or other available funds of the county where necessary.

(b) Each month for which a person has been ordered by a court of Orange County to pay child support, alimony, or separate maintenance into the Orange County Child Support Office, the payor of such child support, alimony, or separate maintenance shall pay into the Orange County Child Support Office a child support service fee in the minimum sum of \$1 per month payable annually in advance, or monthly, as ordered by the court; provided, however, that in those instances where the payor of child support, alimony, or separate maintenance is a member of the armed services and where such child support, alimony, or separate maintenance is paid into the Orange County Child Support Office by government check in behalf of such military personnel, and wherein the monthly payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Orange County Child Support Office.

(c) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by a court of Orange County to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary, or each succeeding month, or as otherwise ordered in the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check, or monthly, or as otherwise ordered by the court, so long as the payor is a member of the armed services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(d) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the child support office authorized by the Orange County Juvenile Board.

(e) A record shall be kept of all child support service fees collected and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Orange County.

(f) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(g) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

Sec. 8a. (a) For purposes of providing legal services, court costs, and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed costs of court, as designated by the district clerk, in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges.

(b) Such costs of court shall be paid into the Orange County District Clerk's Office by the person initiating such contempt proceedings, but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) Receipts of all disbursements of moneys paid into the child support office for matters involving actions of contempt shall be kept on file and all such funds received by the child support office shall be deposited to the child support account. This fund shall be administered by the Orange County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

(d) The costs of court prescribed by this section shall not be collected from any person who qualifies as, proclaims to be, and is adjudged a pauper and files an affidavit in support thereof.

Sec. 9. For the purpose of maintaining adoption investigation services, there shall be taxed, collected, and paid as other costs the minimum sum of \$25 in each adoption case hereafter filed in any court of Orange County. Such cost shall be collected by the district clerk, and when collected, shall be placed in a separate fund known as the "Adoption Investigation Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of maintaining the costs of adoption investigation services. This fund shall be supplemented out of the general fund or other available funds of the county where necessary.

Sec. 10. Repealed by Acts 1981, 67th Leg., p. 398, ch. 160, § 2, eff. Aug. 31, 1981.

Sec. 11. It shall be the duty of the chief probation officer to keep a record which will at all times show the names of all children in Orange County determined to be delinquent, predelinquent, children in need of supervision, or status offenders, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the juvenile board, and a written report shall be made to the judge of the juvenile court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the court in determining the proper disposition to be made of any juvenile.

[Acts 1969, 61st Leg., p. 1010, ch. 325, §§ 1 to 11, eff. May 27, 1969. Amended by Acts 1981, 67th Leg., p. 395, ch. 160, §§ 1, 2, eff. Aug. 31, 1981.]

**Art. 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards**

Sec. 1. (a) The Juvenile Board of Anderson County is created. The board consists of the County Judge of Anderson County, the judges of the district courts in Anderson County, the District Attorneys for the district courts in Anderson County, and the County Attorney of Anderson County. The commissioners court by order may add the judge of the County Court at Law of Anderson County as a member of the juvenile board. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed by service on the juvenile board, each member shall be paid by the county an amount not less than \$50 per month nor more than \$250 per month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for county and district judges and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

(d) The Juvenile Board of Anderson County shall appoint a juvenile officer for Anderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Anderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

(e) The County Attorney of Anderson County has the duty to file, prosecute, and try on behalf of the state all juvenile cases in the Juvenile Court of

Anderson County. In the event the county attorney is ill or unable for any reason to perform that duty, the District Attorney for the 3rd Judicial District or the District Attorney for the 173rd Judicial District shall perform the duty when called on by the Judge of the Juvenile Court of Anderson County.

Sec. 2. (a) The Juvenile Board of Henderson County is created. The board consists of the County Judge of Henderson County, the judge of the 3rd Judicial District, the judge of the 173rd Judicial District, and the County Attorney of Henderson County. The judge of the 173rd Judicial District shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed on the judge of the juvenile court, the judge shall be paid by the county an amount not less than \$750 a month, to be determined by the commissioners court. As compensation for the added duties imposed by service on the juvenile board, each other member shall be paid by the county an amount not less than \$250 a month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for judges and county attorneys and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

(d) This section takes effect January 1, 1971.

(e) The Juvenile Board of Henderson County shall appoint a juvenile officer for Henderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Henderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

(f) The County Attorney of Henderson County has the duty to file, prosecute, and try on behalf of the state all juvenile cases in the juvenile court of Henderson County. In the event the county attorney is ill or unable for any reason to perform that duty, the District Attorney for the 173rd Judicial District shall perform the duty when called on by the judge of the juvenile court of Henderson County.

(g) The 173rd District Court is designated the juvenile court of Henderson County.

Sec. 3. (a) The Juvenile Board of Houston County is created. The board consists of the County Judge of Houston County, the judges of the district courts in Houston County, and the county attorney. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

(b) As compensation for the added duties imposed by service on the juvenile board, each member shall be paid by the county an amount not less than \$50 per month nor more than \$250 per month, to be determined by the commissioners court. The compensation shall be in addition to all other compensation provided or allowed by law for county and district judges and shall not be counted as fees of office.

(c) This Act is cumulative of existing laws relating to compensation for district and county judges.

(d) This section takes effect January 1, 1971.

(e) The county attorney of Houston County has the duty to file, prosecute, and try, on behalf of the state, all juvenile cases in the juvenile court of Houston County. If the county attorney is ill, absent, or otherwise unable to perform these duties, the district attorney shall act for the county attorney.

[Acts 1969, 61st Leg., p. 1636, ch. 508, § 1, eff. Sept. 1, 1969, §§ 2, 3, eff. Jan. 1, 1971. Amended by Acts 1972, 62nd Leg., 4th C.S., p. 27, ch. 10, § 1, eff. Oct. 24, 1972; Acts 1975, 64th Leg., p. 336, ch. 142, §§ 1 to 3, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 1192, ch. 449, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2086, ch. 476, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2497, ch. 656 § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4971, ch. 889, §§ 18, 19, eff. Jan. 1, 1984; Acts 1983, 68th Leg., p. 5470, ch. 1032, §§ 1 to 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5631, ch. 1066, § 1, eff. Aug. 29, 1983.]

#### Art. 5139BBB. Nueces County Juvenile Board

##### Creation

Sec. 1. The Juvenile Board of Nueces County is created.

##### Composition of Board

Sec. 2. The juvenile board is composed of the judges of the district courts having jurisdiction in Nueces County and the county judge of Nueces County.

##### Chief Probation Officer and Assistants; Appointment

Sec. 3. There shall be one chief probation officer who shall be appointed by the juvenile board. The chief probation officer shall appoint assistant probation officers, subject to confirmation by the juvenile board. The number of assistant probation officers shall be determined by the juvenile board, subject to the approval of the commissioners court.

##### Term of Office; Suspension or Removal

Sec. 4. The term of office of the chief probation officer and assistant probation officers shall be for a period of two years. The juvenile board may at any time, for good cause, suspend or remove any juvenile officer, whether chief or assistant.

##### Compensation of Probation Officers

Sec. 5. The compensation of all probation officers shall be fixed by the juvenile board, subject to the approval of the commissioners court.

##### Control over Juvenile Officers by Board; Rules and Regulations

Sec. 6. The juvenile board shall have direction and control over all juvenile officers and may make rules and regulations to implement that direction and control.

##### Supervision of Institutions; Appointment of Superintendents, Confirmation by Board, Term, Salary and Suspension or Removal

Sec. 7. All homes, schools, farms, and any other institutions or places of housing maintained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of the juvenile board. The superintendent of each institution shall be appointed by the chief probation officer for a term of two years, and each appointment shall be confirmed by the juvenile board. The salary of each superintendent shall be fixed by the commissioners court. Each superintendent may at any time, for good cause, be suspended or removed by the appointing authority.

##### Records, Visitations and Reports of Probation Officers

Sec. 8. A probation officer shall keep a record which will, at all times, show the names of all dependent or delinquent juveniles within the county and the names and addresses of the persons having custody of the juveniles. Visitations by the officers shall be made at such reasonable times as may be directed by the juvenile board, and written reports shall be made to the juvenile board showing such facts relating to the environment, treatment, education, and welfare of the minors as directed by the juvenile board.

##### Change in Custody of Juveniles; Court Order

Sec. 9. No person or institution, having legal custody of a dependent or delinquent juvenile, may deliver the juvenile to the custody of another person without an order of a court of competent jurisdiction within the county, sitting as a juvenile court, authorizing the change in custody. A copy of an order effecting change in custody shall be transmitted to the juvenile officers of the county.

##### Visitation of Institutions; Orders or Regulations, Compliance, Entry in Book, Delivery of Copy to Superintendent; Reports

Sec. 10. The members of the juvenile board shall make visitations, at reasonable intervals, to the institutions in the county in which dependent or delinquent juveniles are kept, maintained, or educated. The juvenile board may adopt any order or regulation, pertaining to the welfare of the juveniles, found necessary or for the welfare of the

juveniles. Any person having in legal custody a dependent or delinquent juvenile shall comply with the orders and regulations of the juvenile board. Any order or regulation shall be entered of record by the chief probation officer in a book kept for the purpose and shall be open for public inspection. A copy of any order or regulation certified by the probation officer shall be delivered to the superintendent, or person in charge or control, of any institution in which dependent or delinquent juveniles are kept, maintained, or educated. The juvenile board may, by order or regulation, require of the superintendent or person in charge reports giving the board such information relating to the juveniles or institutions as may be required by the juvenile board.

**Suspension or Termination of Assistants; Notice and Hearing**

Sec. 11. The chief probation officer may at any time, with the approval of the juvenile board, for good cause shown, suspend or terminate the employment and service of any assistant after the assistant has been duly notified and afforded an opportunity to be heard by the board.

**Surety Bonds; Juvenile Officers and Superintendents**

Sec. 12. The juvenile board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any juvenile officer or superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by the board.

**Investigation and Report to Board on Welfare of Minor; Receipts and Disbursements, Entry in Book and Audit**

Sec. 13. The juvenile board, or any member, may at any time require any probation officer to make an investigation and report the facts relating to the welfare of any minor or any child abandonment or desertion cases or proceedings. The board may require the officer to receive and disburse, under orders of the board, for the benefit of any such minor, any sums of money required to be paid into court for the maintenance of the minor. The officer shall enter all such receipts and disbursements in a well-bound book kept for the purpose in the probation office subject to public inspection, showing all such receipts and disbursements. The book shall be audited by the county auditor.

**Child Abandonment and Desertion Cases; Assignment of Assistant District Attorney to Represent Board and Probation Officers**

Sec. 14. The district attorney shall assign an assistant district attorney in his office for the special duty of representing the juvenile board and the probation officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

**Compensation of Board Members; Payment**

Sec. 15. The members of the Nueces County Juvenile Board, in consideration of the additional duties imposed upon them, shall receive additional annual compensation of not less than \$4,200 nor more than \$12,000, as determined by the commissioners court. The compensation provided for in this section shall be paid by the commissioners court and is in addition to all other compensation allowed by law to such officers; provided that the compensation herein provided shall be the sole and only compensation which may be paid to members of the juvenile board in consideration of their services on such Board, such compensation to be in lieu of any compensation for such services which may be provided by other statutory provisions concerning juvenile boards.

**Probation Officers; Automobiles; Expenses; Office**

Sec. 16. The commissioners court may furnish automobiles to the probation officers to be used in the official work of the probation department and may provide for the maintenance and operation of the automobiles. If the commissioners court does not furnish automobiles to the probation officers in the discharging of their duties, it shall allow them such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles. The commissioners court shall allow the probation officers such other expenses incurred in the discharge of their duties as it deems reasonable and proper, subject to the approval of the county auditor; it shall allow necessary funds to maintain and operate the office of the probation department.

**Effect of Act on Current Juvenile Officers**

Sec. 17. Nothing in this Act shall be construed to affect the status of a person serving as juvenile officer or assistant juvenile officer on the effective date of this Act or to require a new appointment of the officers during their current terms of office. [Acts 1971, 62nd Leg., p. 679, ch. 64, eff. April 20, 1971. Amended by Acts 1977, 65th Leg., p. 1758, ch. 706, § 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4486, ch. 723, § 1, eff. Aug. 29, 1983.]

Sections 2 and 3 of the 1977 Act provided as follows:

"Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 3. This Act shall be effective on and after September 1, 1977."

**Art. 5139CCC. Johnson County Juvenile Board**

Sec. 1. The county judge of Johnson County and the judge of the judicial district which includes Johnson County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Johnson County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district

judges who are members of the board shall each be allowed additional compensation payable in 12 equal monthly installments out of the general fund or any other available fund of Johnson County. The compensation shall be set by the Commissioners Court of Johnson County.

Sec. 2A. (a) The Juvenile Board of Johnson County may appoint the clerk of the district courts in Johnson County to administer support payments for Johnson County. Each month for which a person has been ordered by a district court of Johnson County to pay child support, temporary spousal support, or separate maintenance to the clerk of the district courts of Johnson County, the obligor (payor) of the support payment shall pay to the clerk a service fee of \$1. The fee shall be added by the clerk to the first support payment each month.

(b) All service fees collected by the district clerk shall be paid over to the county treasurer on the last day of each calendar month. The county treasurer shall deposit all of the fees to the credit of the general fund of Johnson County.

(c) The service fees authorized by Subsection (a) of this section apply to all child support, spousal support, and separate maintenance payments ordered after September 1, 1983, and to all other of these kinds of payments when the person ordered to make the payments has defaulted and has been cited for contempt of court. The service fee becomes due and payable for each month following the hearing on the contempt citation.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Johnson County shall appoint a juvenile officer for Johnson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State. The juvenile officer shall be paid a salary as fixed by the Commissioners Court, to be paid out of the general fund or any other available fund of Johnson County. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court.

[Acts 1971, 62nd Leg., p. 885, ch. 116, eff. May 10, 1971. Amended by Acts 1979, 66th Leg., p. 386, ch. 176, § 1, eff. May 15, 1979; Acts 1983, 68th Leg., p. 5572, ch. 1048, § 1, eff. Sept. 1, 1983.]

#### Art. 5139DDD. Deaf Smith County Juvenile Board

Sec. 1. The Commissioners Court of Deaf Smith County is hereby authorized to establish a Juvenile Board for Deaf Smith County to be called the Deaf Smith County Juvenile Board, which shall be composed of seven nonsalaried members; the county judge of Deaf Smith County being one member, two members appointed by the Hereford City Commission; two members appointed by the Deaf Smith County Commissioners Court; and two members

appointed by the Board of Trustees of the Hereford Independent School District. The terms of office of the appointive members of this board shall be for alternating terms of two years each. The terms of three of the appointed members, one each from the city, county, and school district, will expire on December 31 of each odd-numbered year, and the terms of the remaining three appointed members, one each from the city, county, and school district, will expire on December 31 of each even-numbered year. It is understood that the terms of three members originally appointed will expire on December 31, 1971, and that the terms of the remaining three members originally appointed will expire on December 31, 1972. The members of the board shall select a chairman from among their number.

Sec. 2. The Deaf Smith County Juvenile Board shall have all the powers conferred on juvenile boards created under Article 5140, Revised Civil Statutes of Texas, 1925, and any amendments thereto. If the board determines that it is desirable to have a juvenile officer and/or officers for Deaf Smith County, it may appoint a juvenile officer and/or officers for a term not to exceed two years, at the end of which term, the board may appoint another juvenile officer or officers for succeeding terms not exceeding two years for each term. No person or persons shall be disqualified from serving as juvenile officer for the reason that he has previously served in that capacity.

Sec. 3. The person or persons appointed as juvenile officer shall be a person trained, qualified, and experienced in the field of juvenile and parental counseling, and/or having such other qualifications as may be specified by the Deaf Smith County Board. The board shall be the final judge of the qualifications for such juvenile officer or officers. The juvenile officer shall have all the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, and any amendments thereto, and shall be directly accountable to the Juvenile Board. The juvenile officer or officers shall receive an annual salary and shall receive an annual allowance for expenses in amounts to be fixed by the Commissioners Court of Deaf Smith County.

Sec. 4. The Commissioners Court of Deaf Smith County may enter into an agreement with the city commission of Hereford and the board of trustees of the Hereford Independent School District to provide the necessary funds for payment of the salary and expenses of the juvenile department, such agreement to extend for such period of time as the three governing bodies may determine from time to time. The agreement shall provide that Deaf Smith County pay 33⅓ percent, the City of Hereford pay 33⅓ percent, and the Hereford Independent School District pay 33⅓ percent of funds necessary for the payment of the salary or salaries and other expenses of the juvenile department.

Sec. 5. The City of Hereford and the Hereford Independent School District are hereby authorized

to appropriate and expend the necessary funds for implementation of this statute.

[Acts 1971, 62nd Leg., p. 891, ch. 120, eff. May 10, 1971.]

**Art. 5139EEE. Northeast Texas Juvenile Board**

Sec. 1. (a) The Northeast Texas Juvenile Board has jurisdiction in the counties of Bowie, Cass, and Red River.

(b) The board is composed of the county judges of Bowie, Cass, and Red River Counties and the judges of each district court having jurisdiction in any of those counties.

Sec. 2. (a) As compensation for the added duties imposed upon members of the Northeast Texas Juvenile Board, each member may be allowed additional annual compensation of not less than \$1,200, to be fixed by the commissioners courts of the participating counties and paid monthly in 12 equal installments out of the general funds of the counties on a pro rata basis according to the population of each county in the last preceding federal census.

(b) The commissioners court of each county may reimburse any judge of a juvenile court in that county for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable to any juvenile judge under this subsection is limited to a maximum of \$600 per year.

Sec. 3. The board has all the powers and duties prescribed for juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. (a) The judges of the juvenile courts within the area of jurisdiction of the board shall appoint, by a decision of a majority of the judges, a chief juvenile probation officer. The appointment is subject to the approval of the juvenile board. The judges may remove the chief juvenile probation officer at any time, subject to the approval of the board. The commissioners courts shall pay the chief juvenile probation officer an annual salary of not less than \$8,400. The salary shall be paid on a pro rata basis according to the population of each county in the last preceding federal census. Subject to the approval of the judges of the juvenile courts and the Northeast Texas Juvenile Board, the chief juvenile probation officer may appoint one juvenile probation officer for each 30,000 population in each county, according to the last preceding federal census and additional juvenile probation officers as the board determines to be necessary. The board shall fix the salaries of the juvenile probation officers, subject to the approval of the commissioners courts. The commissioners court of each county shall provide the fund for the salaries and reasonable expenses of the officers.

(b) Subject to the approval of the judges of the juvenile courts, the chief juvenile probation officer may employ one secretary and may employ as many

additional secretaries as the board determines to be necessary, at a salary not to exceed \$6,000 for each secretary, which salary shall be recommended by the chief juvenile probation officer.

(c) A person appointed or employed under the provisions of this Act may be removed from office at any time by the power appointing him.

Sec. 5. (a) The juvenile probation officers of Bowie, Cass, and Red River Counties shall:

(1) investigate all cases referred to them by the juvenile courts or the juvenile board;

(2) be present in the juvenile court and represent the interests of the juvenile when the case is heard;

(3) furnish to the court and juvenile board any information or assistance required;

(4) take charge of any child before and after the trial; and

(5) perform other services for the child as may be required by the court.

(b) The juvenile probation officers of Bowie, Cass, and Red River Counties have the powers granted to juvenile probation officers by general law.

Sec. 6. (a) Nothing in this Act may be construed to affect the status of a person serving as a juvenile officer on the effective date of this Act or to require a new appointment of the officers.

(b) Nothing in this Act repeals existing statutes creating juvenile boards in the counties within the jurisdiction of the Northeast Texas Juvenile Board, but the effect of those statutes shall be suspended for as long as a county is within the jurisdiction of the Northeast Texas Juvenile Board.

[Acts 1971, 62nd Leg., p. 1302, ch. 342, eff. May 24, 1971. Amended by Acts 1983, 68th Leg., p. 5702, ch. 1083, § 9, eff. Aug. 29, 1983.]

Section 10 of the 1983 amendatory act provides:

"Suspension of Statutes. This Act does not repeal a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county. The effect of a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county is suspended for as long as the county is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board."

**Art. 5139FFF. Eastland County Juvenile Board**

Sec. 1. There is established a county juvenile board in Eastland County. The board is composed of the county judge, the judge of the 91st district court, the county attorney, and the sheriff. The official title of the board shall be the Eastland County Juvenile Board. The judge of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

Sec. 2. For the added duties hereby imposed on the members of the board, the commissioners court of the county may allow the members of the board compensation from the county general fund. This compensation shall be in addition to any other salary received by the members of the board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. The juvenile board of Eastland County, with the consent of the commissioners court, may appoint a juvenile officer for Eastland County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary as fixed by the juvenile board and approved by the commissioners court.

[Acts 1971, 62nd Leg., p. 1576, ch. 426, eff. Aug. 30, 1971.]

#### Art. 5139GGG. Gregg County Juvenile Board

Sec. 1. There is hereby established a juvenile board for Gregg County, which shall be known as the Gregg County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county and the county judge of Gregg County. The county judge of Gregg County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, and any amendments thereto.

Sec. 2. As compensation for the added duties hereby imposed on members of such board, each member thereon may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court of the county, payable in 12 equal monthly installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

[Acts 1973, 63rd Leg., p. 231, ch. 107, §§ 1, 2, eff. May 18, 1973.]

#### Art. 5139HHH. Collin County Juvenile Board

Sec. 1. The county judge of Collin County, the judges of the district courts having jurisdiction in Collin County, and the judges of the county courts at law shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county, county court at law, and district judges who are members of the board may each receive additional compensation of not more than \$6,000.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Collin County.

Sec. 2A. (a) The Juvenile Board of Collin County may appoint the district court clerk in Collin County to administer support payments for Collin County. Each month for which a person has been ordered by a district court of Collin County to pay child support, temporary spousal support, or sepa-

rate maintenance to the clerk of the district courts of Collin County, the obligor (payor) of the support payment shall pay to the clerk a service fee of an amount set by the juvenile board but not more than \$2.50. The fee shall be added by the clerk to the first support payment each month.

(b) All service fees collected by the district clerk shall be paid over to the county treasurer on the last day of each calendar month. The county treasurer shall deposit all of the fees to the credit of the general fund of Collin County.

(c) The service fees authorized by Subsection (a) of this section apply to all child support, spousal support, and separate maintenance payments ordered after September 1, 1983, and to all other of these kinds of payments when the person ordered to make the payments has defaulted and has been cited for contempt of court. The service fee becomes due and payable for each month following the hearing on the contempt citation.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county judges, and county court at law judges.

Sec. 4. The Juvenile Board of Collin County shall appoint a juvenile officer for Collin County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this State. The juvenile officer shall be paid a salary as fixed by the Commissioners Court, to be paid out of the general fund or any other available fund of Collin County. The juvenile board by majority vote shall have the power to discharge any appointee and such discharge need not be approved by the Commissioners Court.

[Acts 1973, 63rd Leg., p. 819, ch. 370, eff. June 12, 1973. Amended by Acts 1975, 64th Leg., p. 375, ch. 166, § 8, eff. Jan. 1, 1975; Acts 1979, 66th Leg., p. 839, ch. 375, § 9, eff. Jan. 1, 1981; Acts 1983, 68th Leg., p. 5660, ch. 1072, § 1, eff. Sept. 1, 1983.]

#### Art. 5139III. Hill County Juvenile Board

Sec. 1. The County Judge of Hill County and the judge of any judicial district which includes Hill County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Hill County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the county and district judges who are members of the board shall each be allowed additional compensation of not more than \$2,400 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Hill County. The compensation shall be set by the Commissioners Court of Hill County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.



Sec. 4. The Juvenile Board of Hill County shall appoint a juvenile officer for Hill County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court, to be paid out of the general fund or any other available fund of Hill County. The juvenile board by majority vote may discharge any appointee and such discharge need not be approved by the commissioners court.

[Acts 1973, 63rd Leg., p. 1720, ch. 624, eff. June 15, 1973.]

#### Art. 5139JJJ. Webb County Juvenile Board

Sec. 1. The Webb County Juvenile Board is composed of the County Judge of Webb County, the judge of the County Court at Law of Webb County, and the judge of each judicial district that includes Webb County.

Sec. 2. The Webb County Juvenile Board may:

(a) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(b) suspend or remove any employee at any time for good cause;

(c) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(d) authorize the use of foster homes for the temporary care of children charged with engaging in delinquent conduct or children deemed to be in need of supervision; and

(e) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made, for the use and benefit of the juvenile justice system.

Sec. 3. The Webb County Juvenile Board shall:

(a) prescribe the duties and conditions of employment of its employees;

(b) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(c) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(d) designate the juvenile court in Webb County in accordance with Section 51.04, Family Code; and

(e) submit an annual proposed budget to the Webb County Commissioners Court.

Sec. 4. (a) As compensation for the added duties imposed on members of the Webb County Juvenile Board, each member thereof may be allowed additional compensation of not more than \$4,800 per

year, to be fixed by the commissioners court of the county and paid monthly in 12 equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

(b) The Commissioners Court of Webb County may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of \$600 per year.

Sec. 5. The juvenile probation officer for Webb County has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer for Webb County shall:

(a) appoint assistant juvenile probation officers with the advice and consent of the juvenile board;

(b) investigate all cases referred to him by the board;

(c) investigate all cases brought before the juvenile court;

(d) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(e) in carrying out the duties required in this Act, act in the best interest of the juvenile;

(f) furnish the board and the juvenile court any information and assistance required by them;

(g) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information that may assist the court in determining the proper disposition to be made of any juvenile; and

(h) keep a record that will at all times show the names of all referrals and delinquent juveniles within Webb County and the names and addresses of the persons having custody of them.

Sec. 7. The Commissioners Court of Webb County shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 1, eff. March 13, 1975. Amended by Acts 1977, 65th Leg., p. 670, ch. 252, § 1, eff. May 25, 1977.]

#### Art. 5139KKK. East Texas Juvenile Board

Sec. 1. (a) The East Texas Juvenile Board, having jurisdiction in the counties of Jasper, Newton, Sabine, and San Augustine, is created.

(b) The board is composed of the county judges of Jasper, Newton, Sabine, and San Augustine coun-

ties and the judge of each district court having jurisdiction in any of those counties.

(c) The District Judge of the First Judicial District is chairman of the board and its chief administrative officer. The board shall elect a vice-chairman from among its members who are county judges.

Sec. 2. Within the area of jurisdiction of the East Texas Juvenile Board, the board may designate the juvenile courts, provide a juvenile probation program, and perform all powers and duties prescribed by law for juvenile boards.

Sec. 3. As compensation for the added duties imposed on the members of the East Texas Juvenile Board, each member who is a district judge may be allowed additional compensation to be fixed by a majority of the county commissioners of the participating counties and paid monthly in 12 equal installments out of the general fund or any available fund of the counties on a pro rata basis according to the population of each county in the last preceding federal census, and each member who is a county judge may be allowed additional compensation to be fixed by the commissioners court of his county and paid monthly in 12 equal installments out of the general fund or any available fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for county judges and district judges.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 2, eff. March 13, 1975.]

**Art. 5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards**

Sec. 1. There is hereby established a county juvenile board in each of the counties of Colorado, Lavaca, Gonzales, and Guadalupe, which shall be composed of the county judge and the judge of each judicial district that includes the county; provided, however, that the County Judge of Guadalupe County, at his option, from time to time, can substitute the Judge of the County Court at Law of Guadalupe County for himself, or provide that both the County Judge and the Judge of the County Court at Law of Guadalupe County shall serve. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court that is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed on members of each juvenile board, each member shall be allowed additional compensation of not less than \$100 per month and not more than \$400 per month, to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or

allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, with the concurrence of the commissioners court, whose salary shall be fixed by the commissioners court of the county. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1975, 64th Leg., p. 850, ch. 324, eff. May 29, 1975.]

**Art. 5139MMM. Rockwall County Juvenile Board**

Sec. 1. There is established a juvenile board for Rockwall County to be known as the Rockwall County Juvenile Board. It is composed of the judges of the district courts having jurisdiction in Rockwall County and the county judge of Rockwall County. The judge of the court which is designated as the juvenile court of Rockwall County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the judges who are members of the board may each receive additional compensation, as determined by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Rockwall County. This Act is cumulative of all other laws relating to compensation of judges of the district and county courts.

Sec. 3. The Rockwall County Juvenile Board may appoint a juvenile probation officer for Rockwall County, who shall meet all the qualifications and perform all the duties of a juvenile probation officer as prescribed by the laws of this state. The juvenile probation officer shall be paid a salary as fixed by the commissioners court, to be paid out of the general fund or any other available fund of Rockwall County. The juvenile board may discharge an appointee and the discharge need not be approved by the commissioners court.

[Acts 1975, 64th Leg., p. 1363, ch. 519, eff. Sept. 1, 1975.]

**Art. 5139NNN. Somervell County Juvenile Board**

Sec. 1. The county judge of Somervell County and the judge of the judicial district which includes Somervell County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Somervell Coun-

ty shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judge or judges who are members of the board may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Somervell County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Somervell County shall appoint a juvenile officer for Somervell County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Somervell County. The juvenile board by majority vote shall have the power to hire and discharge any appointee and such action need not be approved by the commissioners court.

[Acts 1977, 65th Leg., p. 890, ch. 334, §§ 1 to 4, eff. Aug. 29, 1977.]

**Art. 5139000. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties**

Sec. 1. There is hereby established a county juvenile board in Carson County, Childress County, Collingsworth County, Donley County, and Hall County, which shall be composed of the county judge and the judge of the judicial district which includes the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the duties imposed on members of each juvenile board, each member shall be paid compensation of not less than \$50 per month and not more than \$150 per month to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. Each board may, with the concurrence of the commissioners court, appoint a juvenile officer whose salary shall be fixed by the commissioners court. The juvenile officer shall

have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. All claims for expenses of the juvenile officer in each county shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of that juvenile officer. Providing funding for the payment of the salary and expenses of the juvenile officer shall be within the discretion of the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1239, ch. 478, §§ 1 to 3, eff. June 15, 1977.]

**Art. 5139PPP. Galveston County Juvenile Board**

**Juvenile Board**

Sec. 1. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

**Duties**

Sec. 2. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer and juvenile officers and to consider any other matters concerning juveniles and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duty of the officer. The appointment of the chief juvenile officer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

**Compensation**

Sec. 3. The members of the juvenile board shall receive no compensation for their services on the board.

**Advisory Board**

Sec. 4. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at least 15 interested citizens to consult with the Galveston County Juvenile Board and the commission-

ers court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 782, ch. 345, §§ 1 to 4, eff. Aug. 27, 1979.]

*For similar provisions, see art. 5139PPP-1*

**Art. 5139PPP-1. Galveston County Juvenile Board**

- Sec. 1. [Amends § 1(b) of art. 1970-357]  
 Sec. 2. [Adds §§ 12a and 12b to art. 1970-110.3]  
 Sec. 3. [Repeals § 13 of art. 1970-110a]  
 Sec. 4. [Amends art. 3883i-2]  
 Sec. 5. [Enacts art. 3883i-3]

**Juvenile Board**

Sec. 6. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

**Duties**

Sec. 7. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer, juveniles, and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duty of the officer. The appointment of the chief juvenile officer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

**Compensation**

Sec. 8. The members of the juvenile board shall receive no compensation for their services on the board.

**Advisory Board**

Sec. 9. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at

least 15 interested citizens to consult with the Galveston County Juvenile Board and the commissioners court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 1640, ch. 686, §§ 6 to 9, eff. Aug. 27, 1979.]

*For similar provisions, see art. 5139PPP*

**Art. 5139QQQ. Grayson County Juvenile Board**

**Composition of Board**

Sec. 1. The county judge of Grayson County and the judges of the district courts having jurisdiction in Grayson County constitute the Juvenile Board of Grayson County. The judge of the court which is designated as the juvenile court of Grayson County is chairman of the board and its chief administrative officer.

**Compensation**

Sec. 2. As compensation for the additional duties imposed on them, the county judge and the district judges who are members of the board may each receive additional compensation in an amount to be fixed by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Grayson County.

**Cumulative Effect**

Sec. 3. This Act is cumulative of existing laws relating to compensation of the judges of the district courts and the county judge.

[Acts 1979, 66th Leg., p. 916, ch. 423, §§ 1 to 3, eff. Aug. 27, 1979.]

**Art. 5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards**

**County Juvenile Boards**

Sec. 1. There is established a juvenile board in each of the counties of Hemphill, Roberts, and Lipscomb, which shall be composed of the county judge and the judges of the judicial districts which are included in the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board."

**Chairman**

Sec. 2. Unless otherwise provided by law, the juvenile board of each county shall select a member to act as chairman.

**Powers**

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and conferred by general law. Each board may appoint a juvenile officer whose

salary shall be fixed by the juvenile board. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and by general law. All claims for expenses of the juvenile officer in each county shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer.

**Compensation**

Sec. 4. (a) Members of a juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties.

(b) The commissioners court of each county may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law. All board members shall receive the same rate of compensation for their services.

[Acts 1979, 66th Leg., p. 1186, ch. 577, §§ 1 to 4, eff. Aug. 27, 1979.]

**Art. 5139SSS. Brazoria, Fort Bend, Matagorda, and Wharton Counties Juvenile Boards**

In each of the Counties of Brazoria, Fort Bend, Matagorda, and Wharton, the judge of each district court of the county, the county judge of the county, and the judge of each county court at law in the county constitute a juvenile board for the county. The members composing the juvenile board in each county shall each be allowed additional compensation which shall be paid in 12 equal monthly installments out of the general fund of the county in an amount to be fixed by the commissioners court of each county.

[Acts 1981, 67th Leg., p. 54, ch. 25, § 7, eff. April 8, 1981.]

**Art. 5139TTT. Brewster, Crockett, Jeff Davis, Pecos, Presidio, Reagan, Sutton, and Upton Counties Juvenile Boards**

**County Juvenile Boards**

Sec. 1. There is established a juvenile board in each of the counties of Brewster, Crockett, Jeff Davis, Pecos, Presidio, Reagan, Sutton, and Upton, which shall be composed of the county judge and the judges of the judicial districts having jurisdiction in the county. The official title of the board for each county is the name of the county followed by the words, "County Juvenile Board."

**Chairman**

Sec. 2. The judge of the court that is designated as the juvenile court of the county is the chairman of the board and its chief administrative official.

**Powers**

Sec. 3. Each juvenile board established by this Act has all powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and conferred by general law.

**Compensation**

Sec. 4. As compensation for the added duties imposed on members of the juvenile board, each member of a juvenile board established by this Act may be compensated by an annual salary in an amount not less than \$1,200 per annum and not more than \$3,600 per annum, to be fixed by the commissioners court and paid monthly in 12 equal installments out of the general fund of the county. Such compensation is in addition to all other compensation provided or allowed by law for county judges and district judges and must be approved by the commissioners court of the county.

[Acts 1981, 67th Leg., p. 80, ch. 41, eff. April 15, 1981.]

**Art. 5139UUU. Dallas County Juvenile Board, Juvenile Probation Department, and Court Services Department**

**ARTICLE 1. JUVENILE BOARD**

**Establishment**

Sec. 1.01. The Juvenile Board of Dallas County is established.

**Composition**

Sec. 1.02. The juvenile board consists of the county judge and the judges of each district court in Dallas County whose service thereon shall constitute a portion of their judicial duties of said district and this state.

**Officers**

Sec. 1.03. The chairman of the board shall be selected from the members of the board at an election to be held annually at its first meeting in January of each year.

**Meetings**

Sec. 1.04. (a) The board shall hold regular meetings as determined by the board at its first meeting in January. It may hold other meetings at the call of the chairman or at the request to the chairman of at least two members of the board.

(b) The board shall keep accurate and complete minutes of its meetings. The minutes are open to inspection by the public.

**Executive Committee**

Sec. 1.05. The board may designate an executive committee to conduct board business, subject to review of the board. The committee shall consist of the county judge, the chairman of the board, the judges of the district courts giving preference to

juvenile cases, one judge of the district courts giving preference to family law matters, one judge from the district courts giving preference to criminal law cases, and one judge from the district courts handling civil cases, without preference to kind or character of case.

#### Duties

Sec. 1.06. (a) The director of juvenile services and chief juvenile probation officer, under the direction of the juvenile board, shall prepare the annual budget of the juvenile probation department, the court services department, and the county and other institutions for the care of neglected, dependent, and delinquent children, which are under the control of the board. The juvenile board shall approve and submit the budget to the commissioners court.

(b) The juvenile board may make an annual, written report to the commissioners court concerning the operations and efficiency of the juvenile probation department, the court services department, and the county and other institutions for the care of neglected, dependent, and delinquent children, which are under the jurisdiction and control of the board, and concerning the general adequacy of juvenile services provided by the county. The board shall include within its report any recommendations for improvements which it finds are needed.

(c) At the request of the judges of the district courts of Dallas County, the juvenile board may investigate the operations of the juvenile probation department and the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board shall make a written report of the results of its investigations to the commissioners court. The juvenile board may make any special studies or investigations that it finds necessary to improve the operations of the juvenile probation department and the institutions under its control.

(d) The juvenile board has no judicial power or function. The membership of the juvenile board being required of the judicial officers of this state, said officers shall have judicial immunity as provided by the laws of this state.

(e) The juvenile board shall determine whether the director of juvenile services and chief juvenile probation officer or the director of court services shall receive and disburse payments for the support of spouses and children made under the orders of the district courts of Dallas County.

(f) The juvenile board shall determine whether the director of juvenile services and chief juvenile probation officer and his staff or the director of court services and his staff shall perform home and adoption and other studies under the orders of the district courts of Dallas County.

(g) The juvenile board shall set policies for the juvenile probation department, court services department, and other departments and facilities under its direction and control and shall have full

authority given to juvenile boards under general law.

## ARTICLE 2. DIRECTOR OF JUVENILE SERVICES

### Establishment

Sec. 2.01. The office of director of juvenile services and chief juvenile probation officer of Dallas County is established.

### Appointment

Sec. 2.02. The juvenile board shall appoint one person who shall be the director of juvenile services and chief juvenile probation officer. The juvenile board may remove this person at any time, and the appointee shall serve at the pleasure of the juvenile board.

### Compensation

Sec. 2.03. The board shall set the salary for the director of juvenile services.

### Duties

Sec. 2.04. The director of juvenile services is the chief administrative officer for the court services department and for all programs of the juvenile probation department and of the county and other facilities which are under the direction and control of the juvenile board, as authorized by the board.

### Support Payments

Sec. 2.05. (a) If the juvenile board determines that the director of juvenile services shall receive payments for the support of spouses and children made under the orders of the district courts of Dallas County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interest of the parties involved in each case. A fee for this service shall be collected as provided by this Act.

(b) In all cases in which the juvenile board determines that the director of juvenile services shall receive support payments, the director may enter into a surety bond with a solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned on the officer's faithful performance of the duties of the position and on the officer properly accounting for any money entrusted to him. The commissioners court shall fix the amount of the bond and shall approve its terms. The commissioners court shall pay the premium for the bond out of the general funds of the county.

(c) In all cases in which the juvenile board determines that the director of juvenile services shall receive and disburse support payments, the director shall keep an accurate and complete record of all the receipts and disbursements of support payment funds. The record is open to inspection by the public. The county auditor shall inspect the records and shall audit the accounts at least annually, mak-

ing a report of his findings and recommendations to the juvenile board.

### ARTICLE 3. JUVENILE PROBATION DEPARTMENT

#### Establishment

Sec. 3.01. The Juvenile Probation Department of Dallas County is established.

#### Employees

Sec. 3.02. The director of juvenile services shall hire the employees of the juvenile probation department and may remove an employee at any time.

#### Compensation

Sec. 3.03. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the juvenile probation department as determined by the annual budget prepared by the juvenile board.

#### Duties

Sec. 3.04. (a) The juvenile probation officers of Dallas County shall:

- (1) investigate all cases referred to them by the courts;
- (2) furnish to the courts and the juvenile board any information or assistance required; and
- (3) perform such other duties as may be assigned by the director of juvenile services.

(b) The juvenile probation officers of Dallas County shall have all other powers granted to juvenile probation officers by general law.

### ARTICLE 4. COUNTY JUVENILE INSTITUTIONS

#### Employees

Sec. 4.01. The director of juvenile services shall hire the employees of the county institutions and other facilities which are under the direction and control of the juvenile board.

#### Compensation

Sec. 4.02. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the county and other facilities under the direction and control of the juvenile board as determined by the annual budget prepared by the juvenile board.

#### Gifts and Grants

Sec. 4.03. The juvenile board may apply for, accept, hold in trust, spend, and use for the county juvenile facilities and institutions any gift, grant, or devise of land, money, or other personal property and any donation that is to be applied for the benefit of the juvenile facilities and institutions from any governmental, corporate, personal, or other source.

### ARTICLE 5. DIRECTOR OF COURT SERVICES

#### Establishment

Sec. 5.01. The office of director of court services of Dallas County may be established by the juvenile board. The director of juvenile services shall also be the director of court services, unless the juvenile board directs that this position be held by another person, in which case the director of court services shall be under the direction and control of the director of juvenile services.

#### Appointment

Sec. 5.02. The juvenile board shall appoint the director of court services, who shall serve at the pleasure of the board.

#### Compensation

Sec. 5.03. The juvenile board shall set the annual salary of the director of court services.

#### Duties

Sec. 5.04. The director of court services is the chief administrative officer of the court services department. The director shall have supervision and control of the Dallas County Child Support Office and family court counselors and shall supervise the other duties, functions, and personnel of the court services department that the juvenile board may authorize.

#### Support Payments

Sec. 5.05. (a) When the juvenile board determines that the director of court services or the director of juvenile services shall receive payments for the support of spouses and children made under the order of the district courts of Dallas County or any other court of competent jurisdiction, the director shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case. A fee for this service shall be collected as provided by this Act.

(b) If the juvenile board determines that the director of court services shall receive support payments when the position is not held by the director of juvenile services, the director of court services may enter into a surety bond with a solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned on the director's faithful performance of the duties of the position and on the director properly accounting for any funds entrusted to him. The commissioners court shall fix the amount of the bond and shall pay the premium for the bond out of the general funds of the county.

(c) The director of court services shall keep an accurate and complete record of all the receipts and disbursements of support payment funds. The record is open to inspection by the public. The county auditor shall inspect the record and shall audit the accounts at least annually, making a re-

port of his findings and recommendations to the juvenile board.

(d) When the juvenile board determines that the director of juvenile services or the director of court services shall receive spouse and child support payments, the juvenile board shall direct how the fee for this service shall be assessed against the payor or the payee of the support payments.

(e) If the juvenile board directs that the fee shall be assessed against the payee or the payor, the director or agent of the director shall attempt, in a cost-effective manner, to collect annually and in advance from the payee or the payor a fee set by the board in an amount not to exceed \$3 per month, unless the fee is specifically waived by order of a district court as to a particular payor or payee. The first such fee shall be due on the date the payor or payee of spouse and child support has been ordered by the district court, or any court of competent jurisdiction, to commence payments of spouse or child support, or both, and thereafter, the fee shall be paid on each succeeding annual anniversary of the original court order for payment, unless the juvenile board establishes a different method and manner of receiving the fees.

(f) Failure or refusal of a person to pay the fees on the date due and in the amount ordered by the court shall make the person subject and susceptible to an action for contempt of court, which may be brought on the court's own motion or as otherwise provided by law.

(g) An annual fee payment that is unpaid for five years from its due date shall be barred from collection. This limitation shall not be construed to apply to spouse and child support payments, which shall be governed by general law.

(h) The juvenile board may exempt from payment of the fee provided by this Act spouse and child support payments made by virtue of interstate pacts, fees involving payments in cases arising through the Texas Department of Human Resources, and other classes of payments when it appears to the juvenile board that collection of the fee in such cases would not be practical or in the interests of justice.

(i) All records concerning spouse and child support and the fees authorized by this Act may be kept, maintained, used, and stored by computer, on microfilm, or other methods of record keeping authorized by the juvenile board. The board may authorize a fee, not to exceed \$2 per page, to be collected for copies of the records furnished to payors or payees or to persons authorized to receive copies by any payee or payor. The courts are authorized to take judicial notice of spouse and child support and fee records kept under the provisions of this Act.

(j) The juvenile board may direct that the fee shall be assessed against the payee of spouse and child support payments and may set the fee percent-

age, not to exceed four percent of the support payment funds collected. The director designated to do so by the juvenile board shall collect the fee from each and every payment made through the court services department, unless the payment is specifically waived by court order as to a particular payor or payee.

(k) The judges of the district courts of Dallas County giving preference to family law matters and juvenile matters may assess a fee, not to exceed \$100 per case, for adoption, family, and home study investigations ordered by the judge regarding cases pending before the judge, when the investigation is done by the court services department or other county funded department or agency, and shall set the manner and method of payment which shall be assessed against the parties to the suit.

(l) All such fees and other fees provided for by this Act, including fees for adoption, family, and home studies made by the court services department or other county agency, shall be paid to the county treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board for the purpose of assisting in the payment of the operating expenses of the court services department and of the court masters and referees in the district courts giving preference to juvenile matters and family law matters of Dallas County.

(m) The director of court services shall keep an accurate and complete record of all fees collected and uncollected. The record is open to inspection by the public. The county auditor shall inspect the records and shall audit the fee accounts, making a report of his findings and recommendations to the juvenile board and commissioners court.

## ARTICLE 6. COURT SERVICES DEPARTMENT

### Establishment

Sec. 6.01. The Court Services Department of Dallas County is established.

### Employees

Sec. 6.02. The director of court services shall hire the employees of the court services department, subject to the approval of the director of juvenile services and the juvenile board, and may remove an employee at any time, subject to approval of the director of juvenile services.

### Compensation

Sec. 6.03. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the court services department as determined by the annual budget prepared by the juvenile board and approved by the commissioners court.

### Duties

Sec. 6.04. The employees of the court services department may:



(1) initiate contempt and civil legal actions to establish or enforce, or both, court orders for child support, including attorney's fees and court costs, and to collect the fees authorized by this Act, including attorney's fees and court costs, under the direction of the director of court services, which provision is cumulative of other laws and does not diminish the right, power, and authority of other persons or agencies of government to initiate contempt and legal actions to establish and enforce orders for child support and to collect fees provided by general law;

(2) perform case studies and report the findings and recommendations to the court when requested by the judge of a district court of Dallas County;

(3) perform the other duties that are assigned by the director of court services, the director of juvenile services, or the juvenile board; and

(4) collect, receive, and disburse support payments ordered by any court of competent jurisdiction and to collect, receive, and deposit any and all fees authorized by this Act.

[Acts 1981, 67th Leg., p. 868, ch. 311, eff. June 8, 1981.]

**Art. 5139VVV. Palo Pinto County Juvenile Board**

**Juvenile Board**

Sec. 1. The county judge of Palo Pinto County and the judge of each judicial district that includes Palo Pinto County shall constitute the Palo Pinto County Juvenile Board. The judge of the court that is designated as the juvenile court of Palo Pinto County shall be chairman of the board and its chief administrative officer.

**Compensation**

Sec. 2. As compensation for the additional duties imposed on them, the county and district judge or judges who are members of the juvenile board may, if approved by the commissioners court, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Palo Pinto County. The compensation authorized by this section shall be in addition to all other compensation provided or allowed by law for county and district judges.

**Juvenile Officer**

Sec. 3. The Palo Pinto County Juvenile Board shall appoint a juvenile officer for Palo Pinto County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Palo Pinto County. The juvenile board by majority vote has the power to hire and

discharge any appointee without the approval of the commissioners court.

[Acts 1981, 67th Leg., p. 2498, ch. 658, eff. June 15, 1981.]

**Art. 5139WWW. Dallam County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Dallam County. The official name of the board is the Dallam County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Dallam County, the judges of any statutory courts that are designated as juvenile courts in the county, and one member of the general public appointed by the Commissioners Court of Dallam County. The public member serves a two-year term. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

**Cooperation With Other Boards**

Sec. 4. The juvenile board may cooperate with other juvenile boards to provide adequate services.

**Powers**

Sec. 5. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, and conferred by general law.

**Compensation**

Sec. 6. In addition to the reimbursement provided by Section 11 of this Act, the members of the juvenile board may be compensated by a salary in an amount to be determined by the commissioners court. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 7. The juvenile board shall designate a person as the board's fiscal officer.

**Duties**

Sec. 8. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code, as amended;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 9. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) With the advice and consent of the commissioners court, the board shall determine the salaries and allowances of juvenile probation personnel and other necessary expenses. The board shall use the juvenile probation fund to pay as much of the salaries, allowances, and other necessary expenses as possible. The remaining salaries, allowances, and other necessary expenses shall be set by the juvenile board with the advice and consent of the commissioners court and paid from the general funds or other available funds of the county.

#### Funds

Sec. 10. (a) The board may accept aid, grants, and gifts from the state, other political subdivisions of the state, and associations for the sole purpose of financing adequate and effective probation programs.

(b) If the governing body approves the expenditure, an incorporated city or town may grant and allocate money to the county government or to the juvenile board for the support and maintenance of juvenile programs.

(c) The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, as amended, into a special fund to be used solely for juvenile probation services and shall deposit all other funds received under this section in another special account.

#### Expenses

Sec. 11. If the commissioners court approves, the county shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel,

lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Dallam County.

[Acts 1983, 68th leg., p. 577, ch. 119, eff. Aug. 29, 1983.]

### Art. 5139XXX. Sherman County Juvenile Board

#### Establishment

Sec. 1. There is established a juvenile board in Sherman County. The official name of the board is the Sherman County Juvenile Board.

#### Composition Chairman

Sec. 2. (a) The juvenile board consists of the judges of the county and district courts having jurisdiction in Sherman County and the judge of any statutory court in the county designated as the juvenile court.

(b) At the beginning of each year the juvenile board shall elect one of its members as chairman.

#### Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and special meetings at the call of the chairman.

#### Cooperation With Other Boards

Sec. 4. The juvenile board may cooperate with other juvenile boards to provide adequate probation services.

#### Compensation

Sec. 5. Except for reimbursement of expenses as prescribed by Section 10 of this Act, the members receive no compensation.

#### Fiscal Officer

Sec. 6. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

#### Powers

Sec. 7. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other general law.

#### Duties

Sec. 8. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one juvenile officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 9. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as essential to the facilitation of youth served by the probation officers and juvenile board out of the general fund of the county.

(b) Juvenile probation officers serve at the pleasure of the appointing authority.

**Expenses**

Sec. 10. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Sherman County.

[Acts 1983, 68th Leg., p. 589, ch. 123, eff. Aug. 29, 1983.]

**Art. 5139YYY. Hartley County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Hartley County. The official name of the board is the Hartley County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Hartley County and the judges of any statutory courts that are designated as juvenile courts in the county. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

**Cooperation With Other Boards**

Sec. 4. The juvenile board may cooperate with other juvenile boards to provide adequate services.

**Powers**

Sec. 5. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, and conferred by general law.

**Compensation**

Sec. 6. In addition to the reimbursement provided by Section 11 of this Act, the members of the juvenile board may be compensated by a salary in an amount to be determined by the commissioners court. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 7. The juvenile board shall designate a person as the board's fiscal officer.

**Duties**

Sec. 8. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish, with the advice and consent of the commissioners court, a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 9. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) With the advice and consent of the commissioners court, the board shall determine the salaries

and allowances of juvenile probation personnel and other necessary expenses. The board shall use the juvenile probation fund to pay as much of the salaries, allowances, and other necessary expenses as possible. The remaining salaries, allowances, and other necessary expenses shall be set by the juvenile board with the advice and consent of the commissioners court and paid from the general funds or other available funds of the county.

#### Funds

Sec. 10. (a) The board may accept aid, grants, and gifts from the state, other political subdivisions of the state, and associations for the sole purpose of financing adequate and effective probation programs.

(b) If the governing body approves the expenditure, an incorporated city or town may grant and allocate money to the county government or to the juvenile board for the support and maintenance of juvenile programs.

(c) The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services and shall deposit all other funds received under this section in another special account.

#### Expenses

Sec. 11. If the commissioners court approves, the county shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Hartley County.

[Acts 1983, 68th Leg., p. 603, ch. 127, eff. Aug. 29, 1983.]

### Art. 5139ZZZ. Bailey and Parmer Counties; Juvenile Board

#### Establishment

Sec. 1. There is established a juvenile board in Bailey and Parmer counties.

#### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Bailey and Parmer counties and the judge of each statutory court designated as a juvenile court in the counties. The juvenile board shall elect one of its members as chairman.

#### Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

#### Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the

juvenile board shall receive an annual salary set by the commissioners courts in a total amount of not more than \$1,800, payable in equal monthly installments out of the general fund of the counties. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge. Each county shall apportion and pay the compensation according to the same ratio used to pay the expenses of the courts of the 287th Judicial District.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

#### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

#### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners courts shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the counties.

**Expenses**

Sec. 9. The commissioners courts shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general funds or any other available funds of the counties.

**Payment of Costs**

Sec. 10. Unless the counties agree on another method of allocating the costs, other than the compensation for the judges, the counties shall apportion and pay the costs of the juvenile board in accordance with the ratio used to pay the expenses of the courts of the 287th Judicial District.

[Acts 1983, 68th Leg., p. 607, ch. 129, eff. Aug. 29, 1983.]

**Art. 5139AAAA. Castro, Hale, and Swisher Counties; Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board composed of Castro, Hale, and Swisher counties.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Castro, Hale, and Swisher counties and the judge of each statutory court designated as a juvenile court in the counties. The juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners courts in a total amount of not more than \$1,200, payable in equal monthly installments out of the general funds of the counties. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge. Each county shall apportion and pay the compensation according to the same ratio used to pay the expenses of the courts of the 64th and 242nd Judicial Districts.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer

shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one juvenile officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may with the approval of the board appoint necessary personnel.

(b) The board shall set the salaries and allowances of juvenile probation personnel.

(c) The salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as essential to the facilitation of youth served by the probation officers and juvenile board shall be paid by the commissioners courts from the general funds or any other available funds of the counties.

(d) Juvenile probation officers serve at the pleasure of the appointing authority.

**Expenses**

Sec. 9. The commissioners courts shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the

general funds or any other available funds of Castro, Hale, and Swisher counties.

#### Payment of Costs

Sec. 10. Unless the counties agree on another method of allocating the costs, other than the compensation for the judges, the counties shall apportion and pay the costs according to the same ratio used to pay the expenses of the courts of the 64th and 242nd Judicial Districts.

#### Advisory Council

Sec. 11. The juvenile board may appoint an advisory council consisting of five citizens from different parts of Castro, Hale, and Swisher counties. Council members serve at the pleasure of the juvenile board.

[Acts 1983, 68th Leg., p. 610, ch. 130, eff. Aug. 29, 1983.]

#### Art. 5139BBBB. 110th Judicial District Juvenile Board

##### Establishment

Sec. 1. There is established a juvenile board composed of Briscoe, Dickens, Floyd, and Motley Counties. The official name of the board is the 110th Judicial District Juvenile Board.

##### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Briscoe, Dickens, Floyd, and Motley counties, and the judge of any juvenile court in the counties. The juvenile board shall elect one of its members as chairman.

##### Meetings

Sec. 3. The juvenile board shall hold regular meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

##### Compensation

Sec. 4. Except for reimbursement of expenses as prescribed by Section 9 of this Act, the members receive no compensation.

##### Fiscal Officer

Sec. 5. The juvenile board shall designate the treasurer or auditor of one county in the district as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

##### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other general law.

#### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as essential to the facilitation of youth served by the probation officers and juvenile board shall be paid by the juvenile board from the juvenile board fund to the extent of state aid received in the fund.

(b) Juvenile probation officers serve at the pleasure of the juvenile board.

#### Expenses

Sec. 9. The commissioners court may reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Briscoe, Dickens, Floyd, and Motley counties.

#### Advisory Council

Sec. 10. The juvenile board may appoint an advisory council consisting of a citizen from each county in the 110th Judicial District. Council members serve at the pleasure of the juvenile board.

[Acts 1983, 68th Leg., p. 625, ch. 137, eff. May 17, 1983.]

#### Art. 5139CCCC. Milam, Robertson, Falls Counties Juvenile Board

##### Establishment

Sec. 1. The Milam, Robertson, Falls Counties Juvenile Board is established.

**Composition**

Sec. 2. The juvenile board is composed of the judges of the district courts having jurisdiction in Milam, Robertson, and Falls counties, the county judges of Milam, Robertson, and Falls counties, and the judges of any statutory courts in Milam, Robertson, and Falls counties designated as the juvenile court. The juvenile board may appoint and designate five citizen members by unanimous vote of the juvenile board. The five citizens shall serve without compensation for a period not to exceed two years with staggered terms of office as set by the juvenile board.

**Chairman**

Sec. 3. At the beginning of each calendar year, the members of the Milam, Robertson, Falls Counties Juvenile Board shall select one of its members as the board's chairman.

**Meetings**

Sec. 4. The Milam, Robertson, Falls Counties Juvenile Board shall hold biannual meetings each year on dates fixed by the board and special meetings at the call of the chairman.

**Compensation of Board Members**

Sec. 5. (a) A judge's service on the juvenile board is an additional duty of office.

(b) Members of the board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties.

(c) The commissioners court of each county may pay the members of the juvenile board the sums that will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law. However, nothing in this section shall be construed to reduce compensation or expenses now paid to juvenile boards as provided by previous enactment.

**Duties**

Sec. 6. The juvenile board of Milam, Robertson, and Falls counties has the powers and duties conferred by this Act and conferred by general law on juvenile boards and for the purpose of providing adequate juvenile services shall:

(1) establish a juvenile probation department and employ in accordance with standards set by the Texas Juvenile Probation Commission personnel necessary to conduct juvenile services to youth within the juvenile justice system under the Family Code;

(2) designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 54.10 of the Family Code;

(3) personally inspect the detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operat-

ing and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as provided by Section 51.12 of the Family Code; and

(4) report in writing annually to the commissioners courts of Milam, Robertson, and Falls counties on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements.

**Fiscal Officer**

Sec. 7. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code to be used solely by the Milam, Robertson, Falls Counties Juvenile Board for the provision of juvenile probation services.

**Records and Reports**

Sec. 8. The Milam, Robertson, Falls Counties Juvenile Board shall assure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records that the Texas Juvenile Probation Commission deems necessary;

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission; and

(3) submit periodic financial and statistical reports to Milam, Robertson and Falls counties commissioners courts.

**Personnel**

Sec. 9. The juvenile board shall appoint a person eligible for such appointment under the standards provided for by the Texas Juvenile Probation Commission to serve as chief juvenile probation officer. With the approval of the juvenile board, the chief juvenile probation officer shall appoint qualified juvenile probation officers, other assistants, and support personnel whose services are necessary in the performance of his duties. The number of such juvenile probation officers, assistants, and support personnel may be determined by the chief juvenile probation officer, subject to approval by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support staff. To the extent of county funds, an annual request for expenditure of county funds shall be certified by the chairman of the juvenile board to the commissioners court of each respective county. The commissioners court of each respective county shall act upon such request in the same manner as it acts upon requests from any other county office. All claims for expenses of the juvenile probation department shall be made to the chairman of the juvenile board. The chairman shall then certify to the fiscal officer those expenses that are to be paid from state funds and to the respective county commissioners court those ex-

penses to be paid from county funds. The chief juvenile probation officer, juvenile probation officers, and support personnel may be removed at any time by the authority appointing them or by the juvenile board.

#### Employee Compensation, Finances

Sec. 10. (a) The juvenile board of Milam, Robertson, and Falls counties shall provide transportation for the chief juvenile probation officer and his assistants, or alternatively, he shall be entitled to an automobile allowance for use of a personal automobile on official business.

(b) The juvenile board is authorized to accept state aid and grants or gifts from the other political subdivisions of this state or from associations for the purpose of financing adequate and effective juvenile services. For the purposes of this Act an incorporated city, town, or village may grant and allocate such sums of money as their respective governing bodies may approve to the Milam, Robertson, Falls Counties Juvenile Board for the support and maintenance of effective juvenile services. All grants, gifts, and allocations of the character and purpose described in this section shall be administered and accounted for separately from other public funds. This Act does not disallow any program of local enrichment of juvenile services funded by any services.

[Acts 1983, 68th Leg., p. 663, ch. 150, eff. Aug. 29, 1983.]

#### Art. 5139DDDD. Culberson-Hudspeth Counties Juvenile Board

##### Establishment

Sec. 1. There is established a juvenile board in Culberson and Hudspeth counties. The official name of the board is the Culberson-Hudspeth Counties Juvenile Board.

##### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Culberson and Hudspeth counties. At the beginning of each year the juvenile board shall elect one of its members as chairman.

##### Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

##### Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners courts in a total amount of not less than \$1,200, payable in equal monthly installments out of the general fund or any other available fund of the counties. The compensation authorized

by this section is in addition to all other compensation provided or allowed by law for a judge.

##### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

##### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other law.

##### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code, as amended;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

##### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners courts shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the counties.

##### Expenses

Sec. 9. (a) The commissioners courts shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable ex-



penses include travel, lodging, training, and educational activities.

(b) If the expenses are approved by the juvenile board, the commissioners courts shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(c) All expenses are paid from the general fund or any other available fund of the counties.

#### Payment of Costs

Sec. 10. Unless the counties agree on another method of allocating the costs, the counties shall bear the costs of the juvenile board in accordance with the ratio that the population of each county bears to the total population of the two counties.

[Acts 1983, 68th Leg., p. 738, ch. 174, eff. Aug. 29, 1983.]

#### Art. 5139EEEE. Upshur County Juvenile Board

##### Definition

Sec. 1. "Advice and consent" as used in this Act is to have the meaning of approval of the commissioners court.

##### Establishment

Sec. 2. There is established a juvenile board in Upshur County. The official name of the board is the Upshur County Juvenile Board.

##### Composition

Sec. 3. The Upshur County Juvenile Board is composed of the county judge, the district judge of each judicial district that includes Upshur County, and the judge of any statutory court in the county designated as a juvenile court.

##### Chairman

Sec. 4. At the first regular meeting of the Upshur County Juvenile Board each calendar year, the members shall select one of its members as chairman.

##### Meetings

Sec. 5. The juvenile board shall hold meetings each year on dates fixed by the board, and special meetings at the call of the chairman.

##### Compensation of Board Members

Sec. 6. (a) A judge's service on the juvenile board is an additional duty of office.

(b) Members of the juvenile board are entitled to be reimbursed by Upshur County for the members' actual and necessary expenses incurred in the performance of their duties out of funds allocated or received from any source including, but not limited to, this state and Upshur County. These reimbursements shall be at the rate set by the Commissioners Court of Upshur County.

(c) Members of the juvenile board are also entitled to receive an annual salary of not less than \$1,200, or a greater sum as may be set and determined by the Commissioners Court of Upshur County, paid in equal monthly installments out of the general fund of the county or any other funds available to Upshur County or the juvenile board. This compensation is in addition to all other compensation provided or allowed by law for a judge.

##### Fiscal Officer

Sec. 7. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75, Human Resources Code, or from any other source into a special fund to be used solely by the juvenile board for juvenile probation services.

##### Records and Reports

Sec. 8. The juvenile board shall:

(1) keep the financial and statistical records the Texas Juvenile Probation Commission deems necessary;

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission; and

(3) make the financial and statistical records and reports available to the Commissioners Court of Upshur County.

##### Duties

Sec. 9. (a) The juvenile board has the powers and duties conferred on it by this Act and general law.

(b) For the purpose of providing adequate probation service, the juvenile board:

(1) shall establish a juvenile probation department and employ, in accordance with the standards set by the Texas Juvenile Probation Commission and with the advice and consent of the Commissioners Court of Upshur County, personnel necessary to provide probation service to youth within the juvenile justice system under the Family Code;

(2) may, with the advice and consent of the Commissioners Court of Upshur County, appoint a chief juvenile probation officer, a juvenile probation officer or officers, and other personnel for the purpose of carrying out the duties of the board and the juvenile department established by the board in accordance with the qualifications set out or referred to in this Act;

(3) shall designate one or more courts as the juvenile court;

(4) shall personally inspect the detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the de-

tention of children, as provided by Section 51.12, Family Code;

(5) shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(6) shall establish policies and procedures that will ensure the provision of adequate juvenile probation services and the efficient operation of the juvenile probation department.

#### Personnel

Sec. 10. All employees must meet the qualifications, and shall perform all the duties, as prescribed by the general laws of this state, by this Act, or by the Juvenile Board of Upshur County. The juvenile officer or officers and any other personnel employed under the authority of this Act shall be paid a salary fixed by the juvenile board, subject to the advice and consent of the Commissioners Court of Upshur County, to be paid out of the general fund or any other available funds of Upshur County or the juvenile board. The juvenile board, with the advice and consent of the commissioners court, may discharge an appointee or employee of the board. Annual increases in salary of all the officers and employees of the juvenile board shall be fixed by the commissioners court at either the same rate of increase given to other employees of Upshur County or at the same rate of increase given state employees. If those two rates are different, the commissioners court may use either rate or a rate between those rates. In reaching this decision, the court may consider the source of the funds, the duties involved, the work load, the effect of their decision on other county employees, or other factors they consider appropriate.

#### Finances and Employee Expenses

Sec. 11. (a) The juvenile board or the department shall provide juvenile probation officers or other employees of the juvenile board or department with transportation or alternatively, an automobile allowance for use of a personal automobile and other travel expenses as may be approved by the board with the advice and consent of the commissioners court.

(b) The juvenile board shall pay the salaries of juvenile probation department personnel and other expenses as required for the adequate facilitation of youth served by the department from the juvenile board fund to the extent of the state aid received in the fund. Other expenses essential to the adequate facilitation of youth served by the department shall be set by the juvenile board, with the advice and consent of the commissioners court, and paid by the county. The juvenile board may accept state aid and grants or gifts from other political entities, school districts, private citizens, and public or pri-

vate organizations for the purpose of financing adequate and effective probation programs.

[Acts 1983, 68th Leg., p. 951, ch. 223, eff. May 24, 1983.]

#### Art. 5139FFFF. Wood County Juvenile Board

##### Establishment

Sec. 1. There is established a Wood County Juvenile Board.

##### Composition

Sec. 2. The juvenile board is composed of the judges of the county and district courts having jurisdiction in Wood County, and the judge of any statutory court in the county designated as a juvenile court. At the first regular meeting of each calendar year, the board shall elect one of its members as chairman.

##### Joint Operations

Sec. 3. The juvenile board may agree to join together with the juvenile board of another county or counties to provide services and to receive and disburse funds under this Act.

##### Meetings

Sec. 4. The juvenile board shall hold meetings each year on dates fixed by the board, and special meetings at the call of the chairman.

##### Compensation of Board Members

Sec. 5. (a) A judge's service on the juvenile board is an additional duty of office.

(b) The county shall reimburse board members for the members' actual and necessary expenses incurred in the performance of the members' duties from funds allocated or received from any source. The commissioners court shall set the rate of reimbursement.

(c) In addition to reimbursement provided by Subsection (b) of this section, the members of the juvenile board shall receive an annual salary of not less than \$1,200 a year payable in equal monthly installments from any funds available to Wood County or to the juvenile board. The compensation authorized by this subsection is in addition to other compensation provided or allowed by law for a judge.

##### Powers

Sec. 6. The juvenile board has all the powers conferred on a juvenile board created under Article 5139, Revised Statutes, or by other law.

##### Fiscal Officer

Sec. 7. The juvenile board shall designate a person as fiscal officer.

##### Records and Reports

Sec. 8. The juvenile board shall:

- (1) keep the financial and statistical records required by the Texas Juvenile Probation Commission;
- (2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission; and
- (3) make the financial and statistical records and reports available to the commissioners court.

**Duties**

Sec. 9. In addition to the duties imposed by general law, the juvenile board shall:

- (1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;
- (2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;
- (3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;
- (4) report annually to the commissioners court on the suitability of the quarters and facilities for the juvenile court and make recommendations for improvements; and
- (5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 10. (a) The juvenile board may appoint necessary personnel with the advice and consent of the commissioners court. The juvenile board may discharge employees with the advice and consent of the commissioners court.

(b) The board shall provide each juvenile probation officer with an automobile or an automobile allowance for use of a personal automobile on official business.

(c) With the advice and consent of the commissioners court, the board shall determine the salaries and allowances of juvenile probation personnel and other necessary expenses. The board shall use the juvenile probation fund to pay as much of the salaries, allowances, and other necessary expenses as possible. The commissioners court shall pay the remaining salaries, allowances, and other necessary expenses from the general funds or other available funds of the county.

(d) The commissioners court shall set the annual rate of increase in salaries at the rate of increase given to other Wood County employees or at the rate of increase given to state employees. If the

rates are different, the commissioners court may choose one of the rates or choose any rate between the two rates. In choosing a rate of increase, the commissioners court may consider the source of the funds, the duties and work load of the employees, the effect on other county employees, and any other relevant factor.

**Funds**

Sec. 11. (a) The board may accept aid, grants, and gifts from the state, other political subdivisions of the state, and associations for the sole purpose of financing adequate and effective probation programs.

(b) The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services and shall deposit all other funds received under this section in another special account.

[Acts 1983, 68th Leg., p. 1244, ch. 269, eff. May 27, 1983.]

**Art. 5139GGGG. Crosby County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Crosby County. The official name of the board is the Crosby County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Crosby County, and one citizen member appointed by the board for a two-year term. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. Except for the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive no additional compensation.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Crosby County. [Acts 1983, 68th Leg., p. 1557, ch. 299, eff. June 14, 1983.]

**Art. 5139HHHH. Ellis County Juvenile Board****Establishment**

Sec. 1. There is established a juvenile board in Ellis County. The official name of the board is the Ellis County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Ellis County, and the judge of any statutory

court in the county. The juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the compensation prescribed by Section 9 of this Act, the members of the juvenile board shall receive an annual salary in an amount of not less than \$3,600, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other general law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

Personnel

Sec. 8. (a) The salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as essential to the facilitation of youth served by the probation officers and juvenile board shall be paid by the commissioners court out of the general fund of the county.

(b) Juvenile probation officers serve at the pleasure of the juvenile board.

Expenses

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Ellis County. [Acts 1983, 68th Leg., p. 2500, ch. 438, eff. June 17, 1983.]

Art. 5139IIII. 132nd Judicial District Juvenile Board

Establishment

Sec. 1. There is established a juvenile board composed of Scurry and Borden counties. The official name of the board is the 132nd Judicial District Juvenile Board.

Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Scurry and Borden counties. The juvenile board shall elect one of its members as chairman.

Meetings

Sec. 3. The juvenile board shall hold regular meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

Compensation

Sec. 4. Each member of the juvenile board shall receive supplemental compensation of \$2,400 annually. Such compensation shall be paid from the general fund or any other available fund of Scurry and Borden counties.

Fiscal Officer

Sec. 5. The juvenile board shall designate the treasurer or auditor of one county in the district as the board's fiscal officer. The fiscal officer shall deposit state aid received for the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, as amended, into a special fund to be used solely for juvenile probation services.

Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other general law.

Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code, as amended;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

Personnel

Sec. 8. (a) The salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as essential to the facilitation of youth served by the probation officers and juvenile board shall be paid by the juvenile board from the juvenile board fund to the extent of state aid received in the fund.

(b) Juvenile probation officers serve at the pleasure of the juvenile board.

Expenses

Sec. 9. The commissioners court may reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Scurry and Borden counties.

Advisory Council

Sec. 10. The juvenile board may appoint an advisory council consisting of a citizen from each county in the 132nd Judicial District. Council members serve at the pleasure of the juvenile board. [Acts 1983, 68th Leg., p. 4178, ch. 660, eff. Aug. 29, 1983.]

Art. 5139JJJJ. Jones County Juvenile Board

Establishment

Sec. 1. There is established a juvenile board in Jones County. The official name of the board is the Jones County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Jones County and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint one citizen member to serve on the board without salary for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$5,000, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Jones County. [Acts 1983, 68th Leg., p. 4180, ch. 661, eff. Aug. 29, 1983.]

**Art. 5139KKKK. Denton County Juvenile Board****Establishment**

Sec. 1. The Denton County Juvenile Board is established.

**Composition**

Sec. 2. The juvenile board of Denton County is composed of the county judge and the judges of the district courts and the statutory courts now or hereafter having jurisdiction in the county.

**Chairman**

Sec. 3. At the beginning of each calendar year, the members of the Denton County Juvenile Board shall select one of its members as the board's chairman.

**Meetings**

Sec. 4. The Denton County Juvenile Board shall hold regular quarterly meetings each year on dates fixed by the board and special meetings at the call of the chairman.

**Compensation**

Sec. 5. A judge's service on the juvenile board is an additional duty of office. As compensation for their service on the juvenile board and the additional duties imposed on them, the judges who are members of the board shall receive additional compensation of not less than \$1,500 per year, payable in 12 equal monthly installments to be paid out of the general fund of the county. Such compensation

shall be in addition to all other compensation provided or allowed by law for district, county court-at-law, or county judges.

**Fiscal Officer**

Sec. 6. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code into a special fund to be used solely by the Denton County Juvenile Board for the provision of juvenile probation services.

**Records and Reports**

Sec. 7. The Denton County Juvenile Board shall:

(1) keep the financial and statistical records that the Texas Juvenile Probation Commission deems necessary; and

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission.

**Personnel**

Sec. 8. The juvenile board may appoint a person eligible for such appointment under the standards provided for in Chapter 75, Human Resources Code, to serve as chief probation officer. The chief probation officer shall appoint qualified assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the juvenile board. The number of such assistant probation officers and other assistants shall be determined by the juvenile board. The juvenile board shall fix the salaries of and allowance for the chief probation officer, assistant probation officers, and other assistants, and the commissioners court shall provide the necessary funds for the payment of the salaries and operating expenses in the amounts fixed by the juvenile board. All claims for expenses of the chief probation officer, the assistant probation officers, and other assistants shall be certified by the chairman of the juvenile board to the county commissioners court as being necessary in the performance of the duties of such officers, and the commissioners court shall, out of the general fund, provide funds for the payment of all expenses necessary to carry out the duties of the chief probation officer in the amounts fixed by the juvenile board and certified by the chairman of the juvenile board. The chief probation officer, assistant probation officers, and other assistants may be removed at any time by the authority appointing them.

**Duties**

Sec. 9. (a) The Denton County Juvenile Board has the powers and duties conferred by this Act and conferred by general law on juvenile boards.

(b) For the purpose of providing adequate probation services, the Denton County Juvenile Board shall:

(1) establish a juvenile probation department and employ, in accordance with standards set by the

Texas Juvenile Probation Commission, personnel necessary to conduct probation services to youth within the juvenile justice system under the Family Code;

(2) appoint a chief juvenile probation officer where more than one juvenile probation officer is required who with the board's approval may appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the juvenile board;

(3) designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 54.10 of the Family Code;

(4) personally inspect the detention facilities of the county or counties on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as provided by Section 51.12 of the Family Code;

(5) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements;

(6) operate or supervise juvenile services at the county level, including the making of recommendations as to the need for and purchase of such services.

**Expenses**

Sec. 10. (a) If approved by the juvenile board, the Commissioners Court of Denton County shall reimburse the designated judge of the juvenile court for the actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The expenses shall be paid out of the county's general fund or any other available fund of Denton County.

(b) The commissioners court shall reimburse the members of the juvenile board of Denton County for the reasonable and necessary expenses that are incurred in discharging their duties. Such expenses will include but not be limited to money expended for travel, lodging, training, and educational activities. All such expenses shall be paid out of the county's general fund or any other available fund of Denton County.

(c) The expenses provided for in this section are in addition to the compensation provided for in Section 5 of this Act.

[Acts 1983, 68th Leg., p. 4194, ch. 665, eff. Aug. 29, 1983.]

**Art. 5139LLLL. Hansford County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Hansford County. The official name of the board is the Hansford County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Hansford County and the judges of any statutory courts that are designated as juvenile courts in the county.

**Meetings**

Sec. 3. The juvenile board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

**Cooperation With Other Boards**

Sec. 4. The juvenile board may cooperate with other juvenile boards to provide adequate services.

**Powers**

Sec. 5. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, and conferred by general law.

**Compensation**

Sec. 6. In addition to the reimbursement provided by Section 11 of this Act, the members of the juvenile board may be compensated by a salary in an amount to be determined by the commissioners court. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 7. The county auditor shall serve as the board's fiscal officer.

**Duties**

Sec. 8. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code, as amended;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 9. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) With the advice and consent of the commissioners court, the board shall determine the salaries and allowances of juvenile probation personnel and other necessary expenses. The board shall use the juvenile probation fund to pay as much of the salaries, allowances, and other necessary expenses as possible. The remaining salaries, allowances, and other necessary expenses shall be set by the juvenile board with the advice and consent of the commissioners court and paid from the general funds or other available funds of the county.

**Funds**

Sec. 10. (a) The board may accept aid, grants, and gifts from the state, other political subdivisions of the state, and associations for the sole purpose of financing adequate and effective probation programs.

(b) If the governing body approves the expenditure, an incorporated city or town may grant and allocate money to the county government or to the juvenile board for the support and maintenance of juvenile programs.

(c) The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, as amended, into a special fund to be used solely for juvenile probation services and shall deposit all other funds received under this section in another special account.

**Expenses**

Sec. 11. If the commissioners court approves, the county shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Hansford County.

[Acts 1983, 68th Leg., p. 4331, ch. 692, eff. Aug. 29, 1983.]

**Art. 5139MMMM. Brooks, Kenedy, Kleberg, and Willacy Counties; Juvenile Boards**

**Establishment**

Sec. 1. There is established a juvenile board in each of the counties of Brooks, Kenedy, Kleberg, and Willacy.



**Composition**

Sec. 2. The juvenile board for each county consists of the judges of the county and district courts having jurisdiction in that county. Each juvenile board must contain not less than three or more than five members. If necessary, the judges of the county and district courts having jurisdiction in that county may appoint citizen members to serve on the board without salary to satisfy the requirement prescribed by this section. The chairman of each juvenile board determines the number of citizen members to be appointed to that juvenile board.

**Chairman**

Sec. 3. The chairman of each juvenile board is the county court judge in that county.

**Meetings**

Sec. 4. Each juvenile board shall hold biannual meetings each year on dates fixed by the board and special meetings at the call of the chairman.

**Compensation of Board Members**

Sec. 5. (a) A judge's service on the juvenile board is an additional duty of office.

(b) Each county shall reimburse the members of the board in that county for the members' actual and necessary expenses incurred in the performance of their duties.

(c) The judges on each juvenile board shall receive an annual salary set by the commissioners court of that county in an amount of not more than \$6,000, payable in equal monthly installments out of the general fund or any other available fund of that county. The compensation authorized by this subsection is in addition to all other compensation provided or allowed by law for a judge.

**Powers**

Sec. 6. Each juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, each juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) personally inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the

facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code, as amended;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Fiscal Officer**

Sec. 8. Each juvenile board shall designate a person as fiscal officer for the board. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code to be used solely by each juvenile board for the provision of juvenile probation services in that county.

**Records and Reports**

Sec. 9. Each juvenile board shall assure that the board's chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records the Texas Juvenile Probation Commission considers necessary;

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission; and

(3) submit periodic financial and statistical reports to the commissioners court in that county.

**Personnel and Expenses**

Sec. 10. With the approval of the juvenile board in that county, each chief juvenile probation officer shall appoint qualified juvenile probation officers, assistants, and support personnel whose services are necessary in the performance of the chief juvenile probation officer's duties. Each chief juvenile probation officer shall determine the number of juvenile probation officers, assistants, and support personnel subject to approval by the juvenile board in that county. Each chief juvenile probation officer shall recommend to the juvenile board in that county the salaries of and allowances for juvenile probation officers, assistants, and support personnel. To the extent of county funds, an annual request for expenditure of county funds shall be certified by the chairman of each juvenile board to the commissioners court of that county. The commissioners court of each county shall act on the request in the same manner as it acts on requests from another county office. All claims for expenses of each juvenile probation department shall be made to the chairman of that juvenile board. Each chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners court in his or her county the expenses to be paid from county funds. The chief juvenile probation officer, juvenile probation officers, and support personnel of each county may be

removed at any time by the authority appointing them or by the juvenile board of the county.

#### Employee Compensation, Finances

Sec. 11. (a) Each juvenile board shall provide the chief juvenile probation officer and his assistants in the county with transportation or an automobile allowance for use of a personal automobile on official business.

(b) Each juvenile board may accept aid, grants, and gifts from the state, other political subdivisions of this state, and associations for the purpose of financing adequate and effective juvenile services. If the governing body approves the expenditure, an incorporated city, town, or village may grant and allocate money to each juvenile board for the support and maintenance of effective juvenile services. All grants, gifts, and allocations shall be administered and accounted for separately from other public funds. This Act does not affect a program of local enrichment of juvenile services funded by a service.

#### Advisory Council

Sec. 12. Each juvenile board may appoint an advisory council of not more than five members. Advisory council members serve a two-year term.

[Acts 1983, 68th Leg., p. 4389, ch. 705, eff. Aug. 29, 1983.]

### Art. 5139NNNN. Chambers County Juvenile Board

#### Establishment

Sec. 1. The Chambers County Juvenile Board is established.

#### Composition

Sec. 2. The juvenile board is composed of the judge(s) of the district court(s) in Chambers County, the county judge, and the judge(s) of any statutory court(s) in the county designated as the juvenile court.

#### Advisory Council

Sec. 3. The juvenile board of Chambers County may appoint an advisory council consisting of citizen members, the number of which and terms of office to be set by the Chambers County Juvenile Board. Vacancies among the appointed members of the council shall be filled in the same manner as the original appointments are made.

#### Chairman

Sec. 4. At the beginning of each calendar year, the members of the Chambers County Juvenile Board shall select one of its members as the board's chairman.

#### Meetings

Sec. 5. The Chambers County Juvenile Board shall hold regular quarterly meetings each year on

dates fixed by the board and special meetings at the call of the chairman.

#### Compensation

Sec. 6. A judge's service on the juvenile board is an additional duty of office. As compensation for their service on the juvenile board and the additional duties imposed on them, the judges who are members of the board may receive additional compensation in an amount set by the commissioners court, payable in 12 equal monthly installments to be paid out of the general revenue fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for district, county court-at-law, or county judges.

#### Fiscal Officer

Sec. 7. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code into a special fund to be used solely by the Chambers County Juvenile Board for the provision of juvenile probation services.

#### Records and Reports

Sec. 8. The Chambers County Juvenile Board shall:

(1) keep the financial and statistical records that the Texas Juvenile Probation Commission deems necessary; and

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission.

#### Personnel

Sec. 9. The juvenile board may appoint a person eligible for such appointment under the standards provided for in Chapter 75, Human Resources Code, to serve as chief probation officer. The chief probation officer shall appoint qualified assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the juvenile board. The number of such assistant probation officers and other assistants shall be determined by the juvenile board. The juvenile board shall fix the salaries of and allowance for the chief probation officer, assistant probation officers, and other assistants, and the commissioners court shall provide the necessary funds for the payment of the salaries and operating expenses in the amounts fixed by the juvenile board. All claims for expenses of the chief probation officer, the assistant probation officers, and other assistants shall be certified by the chairman of the juvenile board to the county commissioners court as being necessary in the performance of the duties of such officers, and the commissioners court shall, out of the general fund, provide funds for the payment of all expenses necessary to carry out the duties of the chief probation officer in the amounts fixed by the juvenile board and certified by the chairman of the juvenile board. The chief probation

officer, assistant probation officers, and other assistants may be removed at any time by the authority appointing them.

Duties

Sec. 10. (a) The Chambers County Juvenile Board has the powers and duties conferred by this Act and conferred by general law on juvenile boards.

(b) For the purpose of providing adequate probation services the Chambers County Juvenile Board shall:

(1) establish a juvenile probation department and employ, in accordance with standards set by the Texas Juvenile Probation Commission, personnel necessary to conduct probation services to youth within the juvenile justice system under the Family Code;

(2) appoint a chief juvenile probation officer where more than one juvenile probation officer is required who, with the board's approval, may appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the juvenile board;

(3) designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 51.10 of the Family Code, as amended;

(4) personally inspect the detention facilities of the county or counties on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children, as provided by Section 51.12 of the Family Code;

(5) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements;

(6) operate or supervise juvenile services at the county level, including the making of recommendations as to the need for and purchase of such services.

Expenses

Sec. 11. (a) If approved by the juvenile board, the Commissioners Court of Chambers County shall reimburse the designated judge of the juvenile court for the actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The expenses shall be paid out of the county's general fund or any other available fund of Chambers County.

(b) The commissioners court shall reimburse the members of the juvenile board of Chambers County for the reasonable and necessary expenses that are incurred in discharging their duties. Such expenses will include but not be limited to money expended

for travel, lodging, training, and educational activities. All such expenses shall be paid out of the county's general fund or any other available fund of Chambers County.

(c) The expenses provided for in this section are in addition to the compensation provided for in Section 4 of this Act.

[Acts 1983, 68th Leg., p. 4402, ch. 708, eff. June 19, 1983.]

Art. 51390000. Garza County Juvenile Board Establishment

Sec. 1. There is established a juvenile board in Garza County. The official name of the board is the Garza County Juvenile Board.

Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Garza County and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint five citizen members to serve on the board without salary for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$120, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other law.

Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

#### Expenses

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Garza County. [Acts 1983, 68th Leg., p. 4406, ch. 709, eff. Aug. 29, 1983.]

### Art. 5139PPPP. Lynn County Juvenile Board

#### Establishment

Sec. 1. There is established a juvenile board in Lynn County. The name of the board is the Lynn County Juvenile Board.

#### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Lynn County and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint three citizen members to serve on the board without salary for a period determined by the juvenile court judge. At

the beginning of each year the juvenile board shall elect one of its members as chairman.

#### Meetings

Sec. 3. The juvenile board shall hold regular annual meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

#### Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, each of the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$1,200, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

#### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other law.

#### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the juvenile board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) With the advice and consent of the commissioners court, the juvenile board shall set the salaries and allowances of juvenile probation personnel.

(c) The commissioners court shall pay from the general fund of the county the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary, and approved by the commissioners court.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Lynn County. [Acts 1983, 68th Leg., p. 4455, ch. 718, eff. Aug. 29, 1983.]

**Art. 5139QQQQ. Terry County Juvenile Board**

**Establishment**

Sec. 1. The Terry County Juvenile Board is established.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Terry County, the judge of any juvenile court in the county, the Brownfield city manager, the superintendent of Brownfield Independent School District, and one at-large member from Terry County appointed by the board chairman. The juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. As compensation for their service on the juvenile board and the additional duties imposed on them, the judges who are members of the board shall receive an annual salary of not more than \$1,200, payable in quarterly installments out of the general fund of the county. This compensation is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has the powers conferred by this Act and the powers conferred by general law on juvenile boards.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendation for improvement; and

(5) operate and supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The juvenile board may appoint a person eligible for appointment under the standards prescribed by Chapter 75, Human Resources Code, to serve as chief probation officer. The chief probation officer shall appoint qualified assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the juvenile board. The juvenile board shall determine the number of assistant probation officers and other assistants.

(b) The juvenile board shall fix the salaries and allowance of the chief probation officer, assistant probation officers, and other assistants, and the commissioners court shall provide the necessary funds for the payment of the salaries and operating expenses in the amounts fixed by the juvenile board.

(c) All claims for expenses of the chief probation officer, assistant probation officers, and other assistants shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duties of the officers, and the commissioners court shall, out of the general fund, provide funds for the payment of all expenses necessary to carry out the duties of the chief probation officer in the amounts fixed by the juvenile board and certified by the chairman of the juvenile board.

(d) The chief probation officer, assistant probation officers, and other assistants may be removed at any time by the authority appointing them.

**Expenses**

Sec. 9. If approved by the juvenile board, the commissioners court shall reimburse the members of the juvenile board and all probation officers and staff for reasonable and necessary job-related expenses, including but not limited to travel, lodging, training, and educational activities. All expenses shall be paid from the general fund or any other available fund of Terry County.

[Acts 1983, 68th Leg., p. 4490, ch. 725, eff. Aug. 29, 1983.]

**Art. 5139RRRR. Yoakum County Juvenile Board****Establishment**

Sec. 1. There is established a juvenile board in Yoakum County. The official name of the board is the Yoakum County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Yoakum County and the judge of any statutory court in the county designated as the juvenile court. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$1,200, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, as amended, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code, as amended;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Yoakum County.

[Acts 1983, 68th Leg., p. 4493, ch. 726, eff. Aug. 29, 1983.]

**Art. 5139SSSS. Blanco, Burnet, Llano, Mason and San Saba Counties; Juvenile Boards****County Juvenile Boards**

Sec. 1. There is established a juvenile board in each of the counties of Blanco, Burnet, Llano, Mason, and San Saba which shall be composed of the county judge and the judges of the judicial districts having jurisdiction in the county. The official title of the board for each county is the name of the county followed by the words, "County Juvenile Board."

**Chairman**

Sec. 2. The judge of the court that is designated as the juvenile court of the county is the chairman of the board and its chief administrative official.

**Powers**

Sec. 3. Each juvenile board established by this Act has all powers conferred on juvenile boards created under Article 5139, Revised Statutes, and conferred by general law.

**Compensation**

Sec. 4. As compensation for the additional duties imposed on them, the members of each juvenile board may be compensated by an annual salary in an amount of not more than \$1,200 to be determined by the commissioners court of the respective county, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for county and district judges.

[Acts 1983, 68th Leg., p. 4716, ch. 823, eff. June 19, 1983.]

**Art. 5139TTTT. Kimble and Menard Counties; Juvenile Boards**

**Establishment**

Sec. 1. There is established a juvenile board in each of the counties of Kimble and Menard. The official name of the board for each county is the name of the county followed by the words, "County Juvenile Board."

**Composition**

Sec. 2. Each juvenile board consists of the judges of the county and district courts having jurisdiction in the county. Each juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. Each juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the compensation prescribed by Section 8 of this Act, the members of each juvenile board shall receive an annual salary in an amount of not less than \$600, payable in equal monthly installments out of the general fund or any other available fund of the county. The commissioners court may increase the compensation at any time. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Powers**

Sec. 5. Each juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other general law.

**Duties**

Sec. 6. In addition to the duties imposed by general law, each juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code; and

(4) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 7. (a) Each chief juvenile probation officer may appoint necessary personnel with the approval of the board.

(b) Each board shall determine the salaries and allowances of juvenile probation personnel.

(c) Juvenile probation officers serve at the pleasure of the appointing authority.

**Expenses**

Sec. 8. The commissioners court of each county shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Kimble and Menard counties.

[Acts 1983, 68th Leg., p. 4721, ch. 826, eff. June 19, 1983.]

**Art. 5139UUUU. McCulloch County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in McCulloch County. The official name of the board is the McCulloch County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in McCulloch County. The juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the compensation prescribed by Section 8 of this Act, the members of the juvenile board shall receive an annual salary in an amount of not less than \$600, payable in equal monthly installments out of the general fund or any other available fund of the county. The commissioners court may increase the compensation at any time. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Powers**

Sec. 5. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other general law.

**Duties**

Sec. 6. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code; and

(4) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 7. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board.

(b) The board shall determine the salaries and allowances of juvenile probation personnel.

(c) Juvenile probation officers serve at the pleasure of the appointing authority.

**Expenses**

Sec. 8. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational

activities. All expenses are paid from the general fund or any other available fund of McCulloch County.

[Acts 1983, 68th Leg., p. 4866, ch. 858, eff. Aug. 29, 1983.]

**Art. 5139VVVV. Ward County Juvenile Board****Establishment**

Sec. 1. There is established a juvenile board in Ward County. The official name of the board is the Ward County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Ward County and the judge of any statutory court in the county. The juvenile board shall elect one of its members as chairman.

**Powers**

Sec. 3. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Compensation**

Sec. 4. As compensation for the additional duties imposed on them, the members of the juvenile board shall receive an annual salary set by the commissioners court in an amount of not less than \$1,200 or more than \$3,600, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for county and district judges.

[Acts 1983, 68th Leg., p. 5400, ch. 1000, eff. Aug. 29, 1983.]

**Art. 5139WWWW. Denton County Juvenile Board****Establishment**

Sec. 1. There is established a juvenile board in Denton County. The official name of the board is the Denton County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Denton County and the judge of any statutory court in the county. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.



**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in a total amount of not less than \$1,500, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The juvenile board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. (a) The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(b) If the expenses are approved by the juvenile board, the commissioners court shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(c) All expenses are paid from the general fund or any other available fund of the county.

[Acts 1983, 68th Leg., p. 5500, ch. 1036, eff. June 19, 1983.]

**Art. 5139XXXX. Lampasas County Juvenile Board**

**County Juvenile Board**

Sec. 1. There is established a juvenile board for Lampasas County which is composed of the county judge and the judge of each judicial district having jurisdiction in the county. The official title of the board is the Lampasas County Juvenile Board.

**Chairman**

Sec. 2. The judge of the court that is designated as the juvenile court of the county is the chairman of the board and its chief administrative official.

**Powers**

Sec. 3. The juvenile board established by this Act has all powers conferred on juvenile boards created under Article 5139, Revised Statutes, and conferred by general law.

**Compensation**

Sec. 4. As compensation for the added duties imposed on members of the juvenile board, each member of the juvenile board may be compensated by an annual salary in an amount not more than \$600 a year, paid monthly in 12 equal installments out of the general fund of the county. This compensation is in addition to all other compensation provided or allowed by law for county judges and district judges and must be approved by the commissioners court of the county.

[Acts 1983, 68th Leg., p. 5503, ch. 1037, eff. June 19, 1983.]

**Art. 5139YYYY. Parker County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Parker County.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Parker County. The district court judge is the chairman of the board.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the members of the juvenile board shall receive an annual salary set by the commissioners court in a total amount of not more than \$6,000, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief juvenile probation officer and other employees.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. (a) The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(b) The commissioners court shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(c) All expenses are paid from the general fund or any other available fund of the county.

[Acts 1983, 68th Leg., p. 5515, ch. 1040, eff. June 19, 1983.]

**Art. 5139ZZZZ. Cooke County Juvenile Board****Establishment**

Sec. 1. There is established a juvenile board in Cooke County. The official name of the board is the Cooke County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Cooke County and the judge of any statutory court in the county designated as the juvenile court. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$1,200, payable in equal monthly installments out of the general fund or any other available fund

of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

- (1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;
- (2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;
- (3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;
- (4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and
- (5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Cooke County. [Acts 1983, 68th Leg., p. 5517, ch. 1041, eff. June 19, 1983.]

**Art. 5139AAAAA. Jack and Wise Counties; Juvenile Boards**

**Establishment**

Sec. 1. There is established a juvenile board in Jack and Wise counties.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Jack and Wise counties and the judge of each statutory court in the counties designated as a juvenile court. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary in an amount set by the commissioners courts, payable in equal monthly installments out of the general fund or any other available fund of the counties. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

- (1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is

necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners courts shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the counties.

#### Expenses

Sec. 9. The commissioners courts shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of the counties.

#### Payment of Costs

Sec. 10. Unless the counties agree on another method of allocating the costs, the counties shall bear the costs of the juvenile board in accordance with the ratio that the population of each county bears to the total population of the two counties. [Acts 1983, 68th Leg., p. 5520, ch. 1042, eff. June 19, 1983.]

### Art. 5139BBBBB. Williamson County Juvenile Board

#### County Juvenile Board

Sec. 1. There is established a juvenile board in Williamson County. The juvenile board is composed of the judges of the county and district courts having jurisdiction in the county and the judge of

any statutory court in the county designated as the juvenile court. The judge of any district court may designate a person to represent the judge on the board.

#### Cooperation With Other Boards

Sec. 2. The juvenile board may cooperate with other juvenile boards to provide adequate services.

#### Chairman

Sec. 3. The juvenile board shall select a member to act as chairman.

#### Duties

Sec. 4. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Financial Officer

Sec. 5. The juvenile board shall appoint a financial officer to receive and disburse the funds of the juvenile board for juvenile probation.

#### Finances, Employee Compensation, Expenses

Sec. 6. (a) The juvenile board shall provide each juvenile probation officer with an automobile or an automobile allowance for use of a personal automobile on official business.

(b) The salaries of juvenile personnel and other expenses as required for the adequate facilitation of youth served by the probation officers and juvenile board shall be paid by the juvenile board from the juvenile board fund to the extent of the state aid received in the fund. Other salaries and expenses essential to the adequate facilitation of youth served by the probation officers shall be set by the juvenile board with the advice and consent of the commissioners court and paid by the county. The

juvenile board is authorized to accept state aid and grants or gifts from the other political subdivisions of this state or from associations for the sole purpose of financing adequate and effective probation programs. For the purposes of this Act, an incorporated city, town, or village may grant and allocate such sums of money as its respective governing body may approve to the appropriate county government or juvenile board for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be administered and accounted for separately from other public funds of the county. This Act does not disallow any program of local enrichment of juvenile services funded by any source.

**Compensation of Board Members**

Sec. 7. (a) A judge's service on the juvenile board is an additional duty of office.

(b) The county shall reimburse each member of the juvenile board for the member's actual and necessary expenses incurred in the performance of the member's duties.

(c) The commissioners court may pay the members of the board a salary that will reasonably compensate them for their added duties as members of the juvenile board. If a district court judge designates a person to represent the judge on the juvenile board, the judge's representative shall receive the judge's salary for serving on the juvenile board. The salary is in addition to all other compensation provided or allowed by law.

**Advisory Council**

Sec. 8. The juvenile board may appoint an advisory council.

[Acts 1983, 68th Leg., p. 5609, ch. 1058, eff. Aug. 29, 1983.]

**Art. 5139CCCC. Lamb County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Lamb County. The official name of the board is the Lamb County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Lamb County, and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint three citizen members to serve on the board without compensation for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the

board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board may receive an annual salary in an amount determined by the commissioners court payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is required, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board.

(b) The board shall determine the salaries and allowances of juvenile probation personnel.

(c) Juvenile probation officers serve at the pleasure of the appointing authority.

(d) The commissioners court shall pay from the general fund of the county the salaries and other expenses certified as necessary by the chairman of the juvenile board.

#### Expenses

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Lamb County.

[Acts 1983, 68th Leg., p. 5615, ch. 1060, eff. Aug. 29, 1983.]

### Art. 5139DDDDDD. Navarro County Juvenile Board

#### Establishment

Sec. 1. There is established a juvenile board in Navarro County.

#### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Navarro County and the criminal district attorney. The juvenile board may appoint five citizen members to serve on the board without salary for a period determined by the board. At the beginning of each year the juvenile board shall elect one of its members as chairman.

#### Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

#### Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in a total amount of not more than \$4,800, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

#### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

#### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the juvenile board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The juvenile board shall set the salaries and allowances of the chief juvenile probation officer and other personnel.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general fund of the county.

#### Expenses

Sec. 9. (a) The commissioners court may reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(b) If the expenses are approved by the juvenile board, the commissioners court may reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(c) All expenses are paid from the general fund or any other available fund of the county.

[Acts 1983, 68th Leg., p. 5618, ch. 1061, eff. Aug. 29, 1983.]

**Art. 5139EEEE. Brazos County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Brazos County. The official name of the board is the Brazos County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the district judge, the county judge, the judge of the county court at law, and one citizen member appointed by the judges to serve a two-year term. The county judge shall serve as the chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not less than \$600 or more than \$1,200, and the citizen member shall receive an annual salary set by the commissioners court of not more than \$600, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a director of juvenile services and assistant probation officers if more than one officer is needed, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The director of juvenile services may appoint necessary personnel and set their salaries and allowances with the approval of the board. The director and other juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Brazos County.

[Acts 1983, 68th Leg., p. 5621, ch. 1062, eff. Aug. 29, 1983.]

**Art. 5139FFFF. Cochran County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Cochran County. The official name of the board is the Cochran County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Cochran County, and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint five citizen members to serve on the board without compensation for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$600, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their sala-

ries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners courts shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the counties.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Cochran County.

[Acts 1983, 68th Leg., p. 5624, ch. 1063, eff. Aug. 29, 1983.]

**Art. 5139GGGGG. 118th Judicial District Juvenile Board****Establishment**

Sec. 1. The 118th Judicial District Juvenile Board is established.

**Composition**

Sec. 2. The juvenile board is composed of the judges of the county and district courts having jurisdiction in Glasscock, Howard, and Martin counties.

**Chairman**

Sec. 3. At the beginning of each calendar year, the members of the juvenile board shall select one of its members as chairman.

**Meetings**

Sec. 4. The juvenile board shall hold regular quarterly meetings at the call of the chairman.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is



necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners courts shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the counties. The proportion of the expenses each county must pay is determined by the ratio that the population of each county bears to the population of all three counties.

**Expenses**

Sec. 9. The commissioners courts shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general funds or any other available funds of the counties.

**Advisory Council**

Sec. 10. Each county judge who is a member of the board shall appoint two citizens to serve on an advisory council for a period determined by the board. Vacancies shall be filled by the county judge, or his successor, who appointed the original member.

[Acts 1983, 68th Leg., p. 5628, ch. 1065, eff. Aug. 29, 1983.]

**Art. 5139HHHHH. Shackelford County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Shackelford County. The name of the board is the Shackelford County Juvenile Board.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Shackelford County and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint one citizen member to serve on the board without salary for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, each of the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$2,500, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general funds of the county.

#### Expenses

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of Shackelford County.

[Acts 1983, 68th Leg., p. 5681, ch. 1077, eff. Aug. 29, 1983.]

### Art. 5139IIII. 46th Judicial District Juvenile Board

#### Establishment and Composition

Sec. 1. There is established a juvenile board for the 46th Judicial District, Wilbarger, Foard, and Hardeman counties, which shall be composed of the county judges, the judge of the judicial district which is included in the counties, and two citizen members who shall be appointed by the judicial member of the board. The citizen members shall serve annual terms. The official title of the board shall be the 46th Judicial District Juvenile Board.

#### Chairman

Sec. 2. The judge of the judicial district shall serve as the board's chairman.

#### Meetings

Sec. 3. The juvenile board of the 46th Judicial District shall hold regular quarterly meetings each

year on dates fixed by the board and special meetings at the call of the chairman.

#### Compensation

Sec. 4. A judge's service on the juvenile board is an additional duty of office. As compensation for their service on the juvenile board and the additional duties imposed on them, the judges who are members of the board shall receive additional compensation of not more than \$1,200 per year, payable in 12 equal monthly installments to be paid out of the general fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for district, county court at law, or county judges.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code into a special fund to be used solely by the juvenile board in the 46th Judicial District for the provision of juvenile probation services.

#### Records and Reports

Sec. 6. The juvenile board shall:

(1) keep the financial and statistical records that the Texas Juvenile Probation Commission deems necessary; and

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission.

#### Personnel

Sec. 7. The juvenile board may appoint a person eligible for such appointment under the standards provided for in Chapter 75, Human Resources Code, to serve as chief probation officer. The chief probation officer shall appoint qualified assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the juvenile board. The number of such assistant probation officers and other assistants shall be determined by the juvenile board. The juvenile boards shall fix the salaries of and allowance for the chief probation officer, assistant probation officers, and other assistants, and the commissioners courts shall provide the necessary funds for the payment of the salaries and operating expenses in the amounts fixed by the juvenile board. All claims for expenses of the chief probation officer, the assistant probation officers, and other assistants shall be certified by the chairman of the juvenile board to the county commissioners courts as being necessary in the performance of the duties of such officers, and the commissioners courts shall, out of the general funds, provide funds for the payment of all expenses necessary to carry out the duties of the chief probation officer in the amounts fixed by the juvenile board and certified by the chairman of the juvenile board. The chief pro-

bation officer, assistant probation officers, and other assistants may be removed at any time by the authority appointing them.

**Duties**

Sec. 8. (a) The juvenile board has the powers and duties conferred by this Act and conferred by general law on juvenile boards.

(b) For the purpose of providing adequate probation services the juvenile board shall:

(1) establish a juvenile probation department and employ, in accordance with standards set by the Texas Juvenile Probation Commission, personnel necessary to conduct probation services to youth within the juvenile justice system under the Family Code;

(2) appoint a chief juvenile probation officer where more than one juvenile probation officer is required who, with the board's approval, may appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the juvenile board;

(3) designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 54.10 of the Family Code;

(4) personally inspect the detention facilities of the county or counties on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children, as provided by Section 51.12 of the Family Code;

(5) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(6) operate or supervise juvenile services at the county level, including the making of recommendations as to the need for and purchase of such services.

**Expenses**

Sec. 9. (a) If approved by the juvenile board, the commissioners court of each county shall reimburse the designated judge of the juvenile court for the actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The expenses shall be paid out of the county's general fund or any other available fund of each county.

(b) The commissioners courts shall reimburse the members of the juvenile board of each county for the reasonable and necessary expenses that are incurred in discharging their duties. Such expenses will include but not be limited to money expended for travel, lodging, training, and educational activities. All such expenses shall be paid out of the

county's general fund or any other available fund of each county.

(c) The expenses provided for in this section are in addition to the compensation provided for in Section 4 of this Act.

[Acts 1983, 68th Leg., p. 5684, ch. 1078, eff. Aug. 29, 1983.]

**Art. 5139JJJJ. 50th Judicial District Juvenile Board**

**Establishment**

Sec. 1. The 50th Judicial District Juvenile Board is established.

**Composition**

Sec. 2. The juvenile board is composed of the judge of the district court having jurisdiction in the 50th Judicial District and the county judges of each county. The juvenile court judge in his sole discretion, may appoint and designate two citizen members to serve without compensation on the 50th Judicial District Juvenile Board, for a period of time to be set by the juvenile court judge.

**Chairman**

Sec. 3. At the beginning of each calendar year, the members of the 50th Judicial District Juvenile Board shall select one of its members as the board's chairman.

**Meetings**

Sec. 4. The 50th Judicial District Juvenile Board shall hold regular quarterly meetings each year on dates fixed by the board and special meetings at the call of the chairman.

**Compensation**

Sec. 5. A judge's service on the juvenile board is an additional duty of office. As compensation for their service on the juvenile board and additional duties imposed on them, the judges who are members of the board shall receive additional compensation of not more than \$1,200 per year, payable in 12 equal monthly installments to be paid out of the general fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for district, county court-at-law, or county judges.

**Fiscal Officer**

Sec. 6. The juvenile board shall designate a person as fiscal officer. The fiscal officer shall deposit all state aid received under Chapter 75 of the Human Resources Code into a special fund to be used solely by the 50th Judicial District Juvenile Board for the provision of the juvenile probation services.

**Records and Reports**

Sec. 7. The 50th Judicial District Juvenile Board shall:

(1) keep the financial and statistical records that the Texas Juvenile Probation Commission deems necessary; and

(2) submit periodic financial and statistical reports to the Texas Juvenile Probation Commission.

#### Personnel

Sec. 8. The juvenile board may appoint a person eligible for such appointment under the standards provided for in Chapter 75, Human Resources Code, to serve as chief probation officer. The chief probation officer shall appoint qualified assistant probation officers and other assistants whose services are necessary in the performance of his official duties, subject to confirmation by the juvenile board. The number of such assistant probation officers and other assistants shall be determined by the juvenile board. The juvenile board shall fix the salaries of the allowance for the chief probation officer, and other assistants, and the commissioners courts shall provide the necessary funds for the payment of the salaries and operating expenses in the amounts fixed by the juvenile board. All claims for expenses of the chief probation officer, the assistant probation officers, and other assistants, shall be certified by the chairman of the juvenile board to the county commissioners courts as being necessary in the performance of the duties of such officers, and the commissioners courts shall, out of the general funds, provide funds for the payment of all expenses necessary to carry out the duties of the chief probation officer in the amounts fixed by the juvenile board and certified by the chairman of the juvenile board. The chief probation officer, assistant probation officers, and other assistants, may be removed at any time by the authority appointing them.

#### Duties

Sec. 9. (a) The 50th Judicial District Juvenile Board has the powers and duties conferred by this Act and conferred by general law on juvenile boards.

(b) For the purpose of providing adequate probation services, the 50th Judicial District Juvenile Board shall:

(1) establish a juvenile probation department and employ, in accordance with standards set by the Texas Juvenile Probation Commission, personnel necessary to conduct probation services to youth within the juvenile justice system under the Family Code;

(2) appoint a chief juvenile probation officer where more than one juvenile probation officer is required who, with the board's approval, may appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work on the juvenile boards;

(3) designate one or more courts as the juvenile court and may appoint referees in accordance with Sections 51.04 and 54.10 of the Family Code;

(4) personally inspect the detention facilities of the county or counties on at least an annual basis and certify in writing to the authorities responsible for operating and giving financial support to the facilities that the facilities are suitable or unsuitable for the detention of children, as provided by Section 51.12 of the Family Code;

(5) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(6) operate or supervise juvenile services at the county level, including the making of recommendations as to the need for and purchase of such services.

#### Expenses

Sec. 10. (a) If approved by the juvenile board, the commissioners court of each county shall reimburse the designated judge of the juvenile court for the actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The expenses shall be prorated and paid out of the county's general fund or any other available fund of each county.

(b) The commissioners courts shall reimburse the members of the juvenile board of the 50th Judicial District for the reasonable and necessary expenses that are incurred in discharging their duties. Such expenses will include but not be limited to money expended for travel, lodging, training, and educational activities. All such expenses shall be prorated and paid out of the county's general fund or any other available fund of each county.

(c) The expenses provided for in this section are in addition to the compensation provided for in Section 5 of this Act.

[Acts 1983, 68th Leg., p. 5688, ch. 1079, eff. Aug. 29, 1983.]

#### Art. 5139KKKKK. Camp, Marion, Morris, and Titus Counties Juvenile Board

##### Establishment

Sec. 1. The Camp, Marion, Morris, and Titus Counties Juvenile Board is established.

##### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in Camp, Marion, Morris, and Titus counties and the judge of each statutory court in the counties designated as a juvenile court. At the beginning of each year the juvenile board shall elect one of its members as chairman.

##### Meetings

Sec. 3. The juvenile board shall hold regular bi-monthly meetings on dates set by the board and

shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. As compensation for the additional duties imposed on them, the judges on the juvenile board shall receive an annual salary set by the commissioners courts in a total amount of not less than \$1,800, payable in equal monthly installments out of the general fund or any other available fund of the counties. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge. Each county shall pay an equal portion of the salaries.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the counties on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners courts on the suitability of the quarters and facilities of the juvenile courts and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The board shall set the salaries and allowances of the chief probation officer and other personnel.

(c) The juvenile board shall provide each juvenile probation officer with an automobile or an automobile allowance for use of a personal automobile on official business.

(d) The salaries of juvenile personnel and other expenses as required for the adequate facilitation of youth served by the probation officers and juvenile boards shall be paid by the juvenile board from the juvenile board fund to the extent of the state aid received in the fund. Other salaries and expenses essential to the adequate facilitation of youth served by the probation officers shall be set by the juvenile board and paid equally by the counties. The juvenile board is authorized to accept state aid and grants or gifts from the other political subdivisions of this state or from associations for the sole purpose of financing adequate and effective probation programs.

[Acts 1983, 68th Leg., p. 5699, ch. 1083, §§ 1 to 8, eff. Aug. 29, 1983.]

Section 10 of the 1983 Act provides:

"Suspension of Statutes. This Act does not repeal a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county. The effect of a statute creating a juvenile board in or for Camp, Marion, Morris, or Titus county is suspended for as long as the county is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board."

**Art. 5139LLLLL. Randall County Juvenile Board; Composition and Compensation**

The Randall County Juvenile Board consists of the judges of the county courts, county courts at law, and district courts having jurisdiction in Randall County. For the added duties imposed on them, each member of the board shall receive additional compensation in an amount otherwise prescribed by law.

[Acts 1983, 68th Leg., p. 5707, ch. 1086, § 1, eff. June 19, 1983.]

**Art. 5139MMMMM. Starr County Juvenile Board  
County Juvenile Board**

Sec. 1. There is established a juvenile board in Starr County which is composed of the county judge and the judges of the judicial districts having jurisdiction in the county. The official title of the board is the Starr County Juvenile Board.

**Chairman**

Sec. 2. The judge of the court that is designated as the juvenile court of the county is the chairman of the board and its chief administrative official.

**Powers**

Sec. 3. The juvenile board has all the powers conferred on juvenile boards created under Article

5139, Revised Statutes, and conferred by general law.

#### Compensation

Sec. 4. As compensation for the additional duties imposed on the members, each member may be compensated by an annual salary set by the commissioners court in an amount of not less than \$1,200 or more than \$3,600, payable in equal monthly installments out of the general fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a county or district judge.

#### Advisory Council

Sec. 5. The juvenile board may appoint an advisory council of not more than five members. Advisory council members serve a two-year term.

[Acts 1983, 68th Leg., p. 5711, ch. 1088, eff. Aug. 29, 1983.]

#### Art. 5139NNNNN. Throckmorton County Juvenile Board

#### Establishment

Sec. 1. There is established a juvenile board in Throckmorton County.

#### Composition

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in the county and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint two citizen members to serve on the board without a salary for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

#### Meetings

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

#### Compensation

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$1,200, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

#### Fiscal Officer

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75,

Human Resources Code, into a special fund to be used solely for juvenile probation services.

#### Powers

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or conferred by other law.

#### Duties

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

#### Personnel

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general fund of the county.

#### Expenses

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of the county.

[Acts 1983, 68th Leg., p. 5712, ch. 1089, eff. Aug. 29, 1983.]

**Art. 513900000. Haskell County Juvenile Board**

**Establishment**

Sec. 1. There is established a juvenile board in Haskell County.

**Composition**

Sec. 2. The juvenile board consists of the judges of the county and district courts having jurisdiction in the county and the judge of any statutory court in the county designated as the juvenile court. The juvenile court judge may appoint two citizen members to serve on the board without a salary for a period determined by the juvenile court judge. At the beginning of each year the juvenile board shall elect one of its members as chairman.

**Meetings**

Sec. 3. The juvenile board shall hold regular quarterly meetings each year on dates set by the board and shall hold special meetings at the call of the chairman.

**Compensation**

Sec. 4. In addition to the reimbursement prescribed by Section 9 of this Act, the judges on the juvenile board shall receive an annual salary set by the commissioners court in an amount of not more than \$1,200, payable in equal monthly installments out of the general fund or any other available fund of the county. The compensation authorized by this section is in addition to all other compensation provided or allowed by law for a judge.

**Fiscal Officer**

Sec. 5. The juvenile board shall designate a person as the board's fiscal officer. The fiscal officer shall deposit state aid received from the Texas Juvenile Probation Commission under Chapter 75, Human Resources Code, into a special fund to be used solely for juvenile probation services.

**Powers**

Sec. 6. The juvenile board has all the powers conferred on juvenile boards created under Article 5139, Revised Statutes, or conferred by other law.

**Duties**

Sec. 7. In addition to the duties imposed by general law, the juvenile board shall:

(1) establish a juvenile probation department and employ personnel, including a chief probation officer and assistant officers if more than one officer is necessary, who meet the standards set by the Texas Juvenile Probation Commission to conduct probation services;

(2) designate one or more courts as a juvenile court and appoint referees as prescribed by Sections 51.04 and 54.10, Family Code;

(3) inspect the juvenile detention facilities of the county on at least an annual basis and certify in writing to the authorities responsible for operating and providing financial support to the facilities that the facilities are suitable or unsuitable for the detention of children as prescribed by Section 51.12, Family Code;

(4) report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and make recommendations for improvements; and

(5) operate or supervise juvenile services at the county level and make recommendations as to the need for and purchase of services.

**Personnel**

Sec. 8. (a) The chief juvenile probation officer may appoint necessary personnel and set their salaries and allowances with the approval of the board. Juvenile probation officers serve at the pleasure of the appointing authority.

(b) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified by the chairman of the juvenile board as necessary out of the general fund of the county.

**Expenses**

Sec. 9. The commissioners court shall reimburse a member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities. All expenses are paid from the general fund or any other available fund of the county.

[Acts 1983, 68th Leg., p. 5718, ch. 1091, eff. Aug. 29, 1983.]

**Art. 5140. Powers of Board**

Such Board shall neither have nor exercise judicial power or function. In the event such Board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said Board to file complaint against such child in some court of such county having jurisdiction to hear and determine such complaint. Such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court.

[Acts 1925, S.B. 84.]

**Art. 5141. Sessions of Board**

Such Board shall hold meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under

the jurisdiction of any of its courts. If such child has been adjudged to be dependent, neglected or delinquent by any court of such county, it may make to the court or person having custody of such child, such recommendation in writing as it may think proper as to the care and custody of such child.

[Acts 1925, S.B. 84.]

**Art. 5142. Qualifications, Duties, Appointment, Salaries and Removal**

There may be appointed, in the manner hereinafter provided, discreet persons of good moral character to serve as juvenile officers, for periods not to exceed two (2) years from date of appointment.

Such officers shall have authority and it shall be their duty to make investigations of all cases referred to them as such by such Board; to be present in court and to represent the interest of the juvenile when the case is heard, and to furnish to the court and such Board any information and assistance as such Board may require, and to take charge of any child before and after the trial and to perform such other services for the child as may be required by the court or said Board, and such juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices.

The clerk of the court shall when practicable, notify such juvenile officer when any juvenile is to be brought before the court. It shall be the duty of such juvenile officer to make investigation of any such case, to be present in court to represent the interest of the juvenile when the case is tried, to furnish to such court such information and assistance as the court may require and to take charge of any juvenile before and after the trial as the court may direct. In counties having a population of less than eighty thousand (80,000) one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion, such officer is needed who shall receive a compensation not to exceed Two Hundred Dollars (\$200) per month, and expenses not to exceed Two Hundred and Fifty Dollars (\$250) per year, provided that in counties having a population of not less than thirty-five thousand (35,000) and not more than eighty thousand (80,000) and containing a city of more than twenty-nine thousand (29,000) population, one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion the services of such officer are needed whose salary shall not exceed Two Hundred Dollars (\$200) per month and expenses not to exceed Two Hundred and Fifty Dollars (\$250) per year, and in such counties the Commissioners Court may appoint an assistant to the said juvenile officer, when in its opinion such assistant is necessary, whose salary shall not exceed One Hundred and Fifty Dollars (\$150) per month. Provided further that, in counties having a population of not less than twenty thousand (20,000) and not more than eighty thousand (80,000) as shown by the 1940 Federal Census or any future Federal Census, and which have an assessed valua-

tion of taxable property of not less than Fourteen Million, Five Hundred Thousand Dollars (\$14,500,000) and not more than Twenty-five Million Dollars (\$25,000,000), one (1) juvenile officer may be appointed by the Commissioners Court, when in its judgment such officer is needed, who shall receive a salary not to exceed Two Hundred Dollars (\$200) per month. Provided further, that in counties having a population of not less than nineteen thousand (19,000) and not more than fifty thousand (50,000) as shown by the 1940 Federal Census and which have an assessed valuation of taxable property of not less than Twenty-five Million Dollars (\$25,000,000) one (1) juvenile officer may be appointed by the Commissioners Court, whose salary may not exceed Three Hundred Dollars (\$300) per month and expenses not to exceed Six Hundred Dollars (\$600) per year.

Provided that in counties having a population of eighty thousand (80,000) and less than one hundred and fifty thousand (150,000), the county judge may appoint a juvenile officer subject to the approval of the County Juvenile Board, for a period not to exceed two (2) years from date of appointment at a salary not to exceed Two Hundred and Fifty Dollars (\$250) per month, and expenses not to exceed Four Hundred and Twenty Dollars (\$420) per year. Such juvenile officer may select assistant juvenile officers subject to the approval of the county judge and the County Juvenile Board, the number not to exceed one (1) assistant juvenile officer to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law, in Article 3902, Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses, each not to exceed Four Hundred and Twenty Dollars (\$420) per year.

Provided that in counties having a population of one hundred and fifty thousand (150,000) or more, and containing a city of one hundred thousand (100,000) or more, the county judge may appoint a juvenile officer, subject to the approval of the County Juvenile Board to serve for a period not to exceed two (2) years from the date of appointment, and whose extra duties shall be to make investigations for the Commissioners Court on applications for charity, or admittance into detention homes or orphan homes created by such counties. The salary of such juvenile officer shall not exceed Three Hundred Dollars (\$300) per month, his allowance for expenses not to exceed Two Hundred Dollars (\$200) a year. Such juvenile officer may select assistant juvenile officers, subject to the approval of the county judge and the County Juvenile Board, the number of such assistant juvenile officers not to exceed one (1) assistant to each twenty-five thousand (25,000) population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law in Article 3902 of the Revised Civil Statutes of Texas, 1925, for assistants



to other county officials. Such assistant juvenile officers may be allowed expenses not to exceed Two Hundred Dollars (\$200) per year each.

In the appointment of all juvenile officers, the county judge and the County Juvenile Board may select for such office any school attendance officer or officers of the county, or of school districts in the county, that may be authorized by law, and the salary and expense of such joint juvenile officer or officers and attendance officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Salaries of paid juvenile officers and their assistants shall be fixed by the Commissioners Court, not to exceed the sums herein mentioned, and any bill for the expenses not exceeding the sums herein provided for shall be certified by the county judge as being necessary in the performance of the duties of a juvenile officer. The Commissioners Court of the county shall provide the necessary funds for the payment of salaries and expenses of the juvenile officers provided for in this Act. The appointment of said juvenile officers shall be filed in the office of the clerk of the county court. Juvenile officers shall take the oath to perform their duties and file such oath in the office of the county clerk. As a basis for reckoning the population of any county the preceding Federal Census shall be used.

Provided that any juvenile officer appointed under the provisions of this Act may be removed from office by the power appointing him at any time.  
[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 335, ch. 228; Acts 1937, 45th Leg., p. 545, ch. 269, § 1; Acts 1945, 49th Leg., p. 282, ch. 205, § 1; Acts 1947, 50th Leg., p. 65, ch. 50, § 1; Acts 1947, 50th Leg., p. 1026, ch. 440, § 1; Acts 1949, 51st Leg., p. 447, ch. 241, § 1.]

#### Art. 5142a. Probation Officers—Counties of 350,000 Population

##### Appointment and Salary of Chief Probation Officer—Automobile—Expenses—Assistants

Sec. 1. Provided that in counties having a population of more than three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, regular or special, the County Juvenile Board shall appoint a Chief Probation Officer for a term of two (2) years at a salary fixed by the said Juvenile Board and approved by the Commissioners Court, to be paid monthly by the county. The Commissioners Court is authorized to furnish such Chief Probation Officer and Assistant Probation Officers automobiles to be used in the official work of the Probation Department, and provide for the maintenance and operation of same; or if the Commissioners Court does not furnish automobiles to the Chief Probation Officer and his assistants in the discharge of their duties, it shall allow such Chief Probation Officer and Assistant Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles.

The Commissioners Court shall allow such Probation Officers such other expenses as it may think reasonable and proper which are incurred in the discharge of their duties, subject to the approval of the County Auditor, and such funds as are necessary to maintain and operate the office of the Probation Department. Such Chief Probation Officer shall select Assistant Probation Officers subject to approval of such Board; the number of such assistants to be determined by the Juvenile Board, subject to the approval of the Commissioners Court. The salaries of such assistants shall be set by the Juvenile Board, subject to the approval of the Commissioners Court. The head of a Department need not before have served for any prescribed period of time.

##### Compensation for Additional Services

Sec. 1-a. For the additional services and duties required by this Act each District Judge in any county coming under the terms of this Act shall receive in addition to all other compensation now provided by law, the sum of Seventy-five Dollars (\$75) per month out of the General Fund of such county.

##### Record of Desertion Cases; Investigation as to Support Payments

Sec. 2. One or more probation officers out of the probation department in counties with a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census, having a County Juvenile Board as may be determined necessary by the County Juvenile Board shall keep a record of all wife and child desertion cases wherein criminal charges are pending in said county and shall immediately investigate the facts in each case and the defendant's ability to support his wife and/or children, and shall upon complaint that any payment under the order of the Court for the support of the defendant's wife and/or children make investigations into the reasons why such payments are not being made and shall make reports of all such matters immediately upon the making of such investigation to the District Attorney and/or the Court in which such case is pending.

##### Disbursement of Payments in Desertion Cases

Sec. 3. All payments made under the order of the Court in such county in wife and child desertion cases for the support of wives and children shall be paid in to either the probation officer working in said court as an officer of the court, or the district clerk, as the Juvenile Board may direct, and said probation officer or district clerk, as the case may be, shall disburse said funds for the benefit of the wife and/or children of the defendant making such payment in such manner as shall appear to the Court to be for the best interest of said wife and/or children.

#### Bond of Probation Officer

Sec. 4. In all cases where the Juvenile Board designates the probation officer to receive said payments in wife and child desertion cases for the support of wives and children, said probation officer shall make a surety bond in some solvent surety company authorized to make such bonds in Texas conditioned upon the faithful performance of the duties of his position and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the county auditor and subject to the approval of the county auditor.

#### Records of Receipts and Disbursements

Sec. 5. In all cases where the probation officer has been designated by the Juvenile Board to receive payments in wife and child desertion cases for the support of wives and children, said probation officer in such counties having at least eight (8) District Courts, at least two (2) of which are Criminal District Courts, and at least four (4) County Courts, at least two (2) of which are County Courts at Law and at least one (1) is a County Criminal Court, shall keep a complete record of all his investigations and of his receipts and disbursements of all moneys which shall be a public record open to the inspection of the public, and it shall be the duty of the county auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

#### Investigation and Report in Divorce Suits Between Parties Having Children Under 18; Supervising Head of County Institutions as Probation Officer

Sec. 6. In all suits for divorce in counties having a population in excess of three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age it shall be the duty of the Probation Department subject to the direction of the Court to make a complete and thorough examination into the merits of the claim for divorce and to report its findings to the Court in connection therewith and to make a thorough and complete investigation as to the necessities of the child or children and the disposition that should be made of such child or children and to make report thereof to the Court prior to the trial of said case, and if desired by the Court, produce such evidence as may have been developed in connection with such matters on the trial of such case. The County Juvenile Board in counties having a population of over three hundred and fifty thousand (350,000) inhabitants according to the last preceding or any future Federal Census is hereby authorized to appoint a supervising head of county institutions having to do with juveniles, delinquents and dependents of such county which said supervising head of county institu-

tions may be the county probation officer of said county who, if appointed, may receive a salary of not less than Twelve Hundred Dollars (\$1200) nor more than Twenty-four Hundred Dollars (\$2400) per annum, as such officer to be determined by the Juvenile Board, in addition to the salary paid him as county probation officer; or in the discretion of the County Juvenile Board, any person may be selected by such Board, as the supervising head of county institutions, who shall be paid a salary not in excess of Five Thousand Dollars (\$5,000) a year to be agreed upon by said Juvenile Board and the County Commissioners Court, and said County Juvenile Board is hereby authorized and required to appoint the heads of all county institutions having to do with juveniles, juvenile delinquents and juvenile dependents. Said supervising head of the county institutions is hereby authorized and required to direct the policies and conduct of such institutions under the supervision and direction of the County Juvenile Board. The heads of various institutions shall be authorized to select such other employees for their institutions as may be determined or needed by the County Juvenile Board, at such salary as may be fixed by said County Juvenile Board, and such salaries are to be subject to the approval of the County Commissioners Court.

#### Reports by Supervising Head to Juvenile Board

Sec. 7. Said supervising head of the County Institutions in such counties or other county officers under his direction, is hereby required to follow up and supervise all cases committed to such institutions as are provided or may be provided for juveniles, delinquents and dependents until they become of age, reporting to the Juvenile Board from time to time as required by it for its approval and action. The Commissioners Court shall provide the necessary funds for the operation of all such institutions.

[Acts 1931, 42nd Leg., p. 759, ch. 302. Amended by Acts 1935, 44th Leg., p. 401, ch. 156, § 1; Acts 1949, 51st Leg., p. 47, ch. 27, § 1; Acts 1949, 51st Leg., p. 530, ch. 292, § 1; Acts 1957, 55th Leg., p. 1396, ch. 481, § 1.]

#### Savings Provisions

See articles 6819a-3, § 2; 6819a-5, § 2; 6819a-8, § 2.

#### Art. 5142a-1. Domestic Relations Offices

##### Establishment by Commissioners Court

Sec. 1. The commissioners court of a county may establish a domestic relations office with the powers and duties as provided in this article.

##### Administration by Juvenile Board

Sec. 2. (a) A domestic relations office established under Section 1 of this article may be administered by the juvenile board of a county or multi-county area or otherwise as provided by the commissioners court.

(b) Any domestic relations office currently in existence by statute or tradition and which has been under the control of and governed by a juvenile board by statute or tradition shall continue to operate under the current administration as established by such statute or tradition.

#### Duties of a Domestic Relations Office

Sec. 3. A domestic relations office established prior to or in accordance with this article shall:

(1) collect court-ordered child support payments that are required by court order to be made to the office;

(2) disburse those payments to the persons entitled to receive the payments for the benefit of a child;

(3) make and keep records of payments and disbursements; and

(4) provide services to enforce orders providing for the possession of, support of, or the access to a child. Such services shall include direct legal services as well as informational, referral, and counseling services to assist parties affected by such court orders. Such services shall assist the parties in understanding, complying with, and enforcing the duties and obligations in the court order. Unless ordered by the court, a person may not be required to participate in counseling offered under this subsection.

#### Additional Services of a Domestic Relations Office

Sec. 4. A domestic relations office may, if authorized by its governing agency, provide other services, including:

(1) the preparation of social studies as requested by the court;

(2) the representation of the child as guardian ad litem in a suit in which termination of the parent-child relationship is sought or in which conservatorship of or access to a child is contested;

(3) the provision of predivorce counseling.

#### Court Ordered Payment of Child Support to Domestic Relations Office

Sec. 5. A court having proper jurisdiction may order that payments of child support be made to the domestic relations office. Courts having proper jurisdiction under this section are courts having jurisdiction of:

(1) a suit affecting the parent-child relationship;

(2) a suit for child support under the Uniform Reciprocal Enforcement of Support Act, as amended (Chapter 21, Family Code);

(3) a suit to adjudicate a child a delinquent child or a child in need of supervision under Title 3, Family Code, as amended;<sup>1</sup> or

(4) a criminal prosecution under Section 25.05, Penal Code.

#### Fees and Costs

Sec. 6. (a) If a domestic relations office is in existence prior to or is established pursuant to this article, the commissioners court may authorize one or more of the following:

(1) A fee not to exceed \$5 on the filing in the county of each suit for the dissolution of a marriage and each suit affecting the parent-child relationship. Such fee shall be paid as other costs in the suit and collected by the clerk of the court.

(2) The assessment of attorney fees and court costs incurred by the domestic relations office in enforcing an order for child support or visitation against the party found to be in violation of the order.

(3) An application fee to be charged to persons seeking services from the domestic relations office.

(4) A monthly charge of up to \$1 per month to be paid by each managing and possessory conservator for whom services are provided by the domestic relations office.

(b) Fees authorized under this article shall be sent to the county treasurer or other officer performing the duties of the county treasurer for deposit in a special fund entitled the "domestic relations office fund." This fund shall be administered by the domestic relations office and shall be used to provide services by the domestic relations office as provided in this article. County general funds may also be used to provide these services.

#### Construction and Application

Sec. 7. (a) This article does not apply to a county in which a child support collection service is specifically established by statute.

(b) This article is cumulative of other statutes relating to juvenile boards and child support collection offices.

(c) Another statute relating to funds for the operation of a child support office and providing for an additional filing fee in excess of \$5 prevails over this Act to the extent that the other statute conflicts with the maximum additional filing fee provided by this Act.

[Acts 1955, 54th Leg., p. 507, ch. 148, § 1. Amended by Acts 1983, 68th Leg., p. 2659, ch. 460, § 1, eff. June 19, 1983.]

<sup>1</sup> Family Code, § 51.01 et seq.

#### Art. 5142a-2. Wichita County Family Court Services Department

Sec. 1. There is hereby established the Wichita County Family Court Services Department.

Sec. 2. The Wichita County Juvenile Board, as heretofore established and composed of the County Judge of Wichita County and the Judge of each Judicial District which includes Wichita County, shall have all powers conferred upon the Juvenile Board created under Article 5139 of Revised Civil

Statutes of 1925 and any amendments thereto. The Wichita County Juvenile Board shall have authority to appoint an Administrator and such assistants as may be necessary, and to determine the duties to be assigned such Administrator and his assistants, and the rate of pay which shall be paid all the personnel comprising the Wichita County Family Court Services.

Sec. 3. The Wichita County Family Court Services Administrator shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. The Administrator shall appoint assistants subject to confirmation by the Juvenile Board. The number of assistants shall be determined by the Juvenile Board. The term of office of the Administrator and assistants shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove an Administrator or an assistant.

Sec. 4. All claims for expenses of the Administrator, the assistants, and administrative expenses for operation of the Family Court Services Department, including all necessary equipment and supplies, shall, before payment thereof, be approved by the Juvenile Board.

Sec. 5. Subject to the advice and consent of the Commissioners Court of Wichita County, the Wichita County Juvenile Board shall determine the funds needed for the operation of the department including payment of salaries and expenses of the Administrator and assistants. Any such funds appropriated shall be in addition to funds received by the Family Court Services Department from any other source.

Sec. 6. The Wichita County Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any assistant or employee of any institution, under the jurisdiction of the Juvenile Board, in such sum as may be determined by said Board, and paid as an expense of the Family Court Services Department.

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, detention and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the superintendent of each such institution shall be appointed by the Wichita County Family Court Services Department Administrator and each such appointment shall be confirmed by the Juvenile Board. The salaries of such superintendents and assistants shall be fixed by the Wichita County Juvenile Board and such superintendent or assistant may at any time, for good cause, be suspended or removed by the appointing authority.

Sec. 8. When, in the opinion of the Wichita County Juvenile Board, the best welfare of any child or children coming within the provisions of

Title 2<sup>1</sup> or Title 3<sup>2</sup> of the Family Code and any amendments thereto will be served by placement of said child or children in a foster home, said Juvenile Board may authorize the use of such foster home or homes for the temporary care of said child or children. The rate of pay for such foster care shall be determined by said Juvenile Board and payment of the cost of such foster care shall, when authorized by said Juvenile Board, be considered to be a necessary operating expense of the Wichita County Family Court Services Department.

Sec. 9. The Wichita County Juvenile Board shall have power and authority to accept and hold in trust for the operation of the Wichita County Family Court Services Department or any duties or functions of the Wichita County Family Court Services Department, any grant or devise of land or any gift or bequest, or any donation to be applied for the benefit of the Family Court Services Department and to apply same in accordance with the terms of such gift.

Sec. 10. (a) Each month for which a person has been ordered by a District Court of Wichita County to pay child support, alimony, or separate maintenance into the Wichita County Family Court Services Department, the payor of such child support, alimony, or separate maintenance shall also be responsible for payment of a child support service fee in the sum of \$1.50 per month, payable annually in advance. However, in those instances where the payor is a member of the Armed Services and wherein the monthly child support, alimony, or separate maintenance payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Family Court Services Department.

(b) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by the District Court to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the Armed Services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(c) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the Family Court Services Depart-

ment authorized by the Wichita County Juvenile Board.

(d) A record shall be kept of all child support service fees collected, and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Wichita County.

(e) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(f) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

Sec. 10a. (a) For purposes of providing legal services, court costs and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed the sum of Ten Dollars (\$10) in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Wichita County Family Court Services Department.

(b) Such fee of Ten Dollars (\$10) shall be paid into the Wichita County Family Court Services Department by the person initiating such contempt proceedings but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Wichita County Family Court Services Department for alleged contempt of court, the \$10 assessment shall be used, as needed, for the payment of services rendered by the office of the District Clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the \$10 assessment. In such instance, however, any unused funds over and above the \$10 assessment shall be refunded to the depositor by the Family Court Services Department.

(d) Receipts of all disbursements of moneys paid into the Family Court Services Department for matters involving actions of contempt shall be kept on file and all such funds received by the Family Court Services Department shall be deposited to the Child Support Account. This fund shall be administered by the Wichita County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

(e) The fee prescribed by this Section shall not be collected from any person who has applied for or receives public assistance under the law of this State.

Sec. 11. For the purpose of maintaining adoption investigation services, there shall be taxed, collected and paid as other costs the sum of Ten Dollars (\$10) in each adoption case hereafter filed in any District Court in Wichita County. Such cost shall be collected by the District Clerk, and when collected, shall be paid by said District Clerk to the Wichita County Family Court Services Department to be kept by that Department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This Fund shall be administered by the Juvenile Board of Wichita County for the purpose of assisting in paying the cost of maintaining adoption investigation services in the Family Court Services Department of Wichita County, including salaries and other expenses of the Adoption Investigator and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the Investigator. This Fund shall be supplemented out of the General Fund or other available funds of the County where necessary.

Sec. 12. In all suits for divorce filed in any District Court in Wichita County, where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age, it shall be the duty of the Administrator, upon order of the Court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the Court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the Court prior to the trial of said case, and if desired by the Court, to produce such evidence as may have been developed in connection with such matters.

Sec. 13. It shall be the duty of the Administrator to keep a record which will at all times show the names of all dependent, neglected or delinquent juveniles within Wichita County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the Juvenile Board, and a written report shall be made to the Judge of the Juvenile Court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the Court in determining the proper disposition to be made of any juvenile.

[Acts 1957, 55th Leg., p. 1229, ch. 405. Amended by Acts 1965, 59th Leg., p. 1337, ch. 608, §§ 1, 2; Acts 1975, 64th Leg., p. 573, ch. 232, § 1, eff. May 20, 1975; Acts 1981, 67th Leg., p. 327, ch. 131, § 1, eff. Aug. 31, 1981.]

<sup>1</sup> Family Code, § 11.01 et seq.

<sup>2</sup> Family Code, § 51.01 et seq.

**Art. 5142a-3. Child Support Collection and Contempt Fees in Nueces County**

Sec. 1. (a) The Nueces County Commissioners Court may provide by order for the collection of a child support service fee in an amount set by the commissioners court not to exceed \$3 per month. The district court or another court having district court jurisdiction may assess the fee against each person who is ordered to pay child support through the wife and child support division of the Nueces County district clerk's office. The division shall collect the fee annually in advance. The fee is due on the date that under the court order the payor is to commence the child support payments and annually on the anniversary of that date. The court may assess the fee against the payor or the payee or may specifically waive the fee as to a particular payor or payee. If the order does not assess the fee against a particular person, the fee shall be taxed against the payor.

(b) The commissioners court may provide by order for the collection of a fee, in an amount set by the commissioners court not to exceed \$10, to be assessed as costs against each person who is ordered to pay child support, who defaults in the payment, and who is cited for contempt of court.

(c) If a person fails or refuses to pay a fee as ordered by the court, the person is subject and susceptible to an action for contempt which may be brought on the court's own motion or as otherwise provided by law.

(d) The district clerk shall collect the fees and shall transfer the money collected to the county treasurer to be deposited in the general fund of the county.

[Acts 1983, 68th Leg., p. 4458, ch. 719, § 1, eff. Aug. 29, 1983.]

**Art. 5142a-4. Child Support Services Department in Bexar County****Bexar County Child Support Services Department**

Sec. 1. (a) The Bexar County Commissioners Court may create a child support services department to establish and enforce court orders providing for support or visitation rights to a child.

(b) The commissioners court shall appoint the director of child support services who serves at the pleasure of the commissioners court. The director may hire additional employees subject to approval by the commissioners court of the number and salary of the employees. An employee serves at the pleasure of the director.

(c) The department may:

(1) collect, receive, and deposit the fees authorized by this Act;

(2) initiate contempt and other civil legal actions to establish or enforce a court order for child support or visitation and to collect attorney's fees,

court costs, and the fees authorized by this Act; and

(3) perform other duties assigned by the director or by the commissioners court.

(d) To provide supplemental funding for legal services, the commissioners court may provide by order for the collection of an additional fee in an amount set by the commissioners court not to exceed \$15 on the filing of each suit for dissolution of a marriage and each suit affecting the parent-child relationship.

**Child Support Services Fee**

Sec. 2. The commissioners court may provide by order for the collection of a child support services fee in an amount set by the commissioners court not to exceed \$3 per month. The fee shall be assessed against each person who is ordered to pay child support through the child support registry of the juvenile probation department. The registry shall collect the fee annually in advance. The fee is due on the date that under the court order the payor is to commence the child support payments and annually on the anniversary of that date. The court may assess the fee against the payor or the payee or may specifically waive the fee as to a particular payor or payee. If the order does not assess the fee against a particular person, the fee shall be taxed against the payor.

**General Provisions**

Sec. 3. (a) If a person fails or refuses to pay a fee authorized by this Act, the person may be held in contempt of court.

(b) The commissioners court may exempt from payment of a fee authorized by this Act:

(1) spouse and child support payments made under an interstate pact;

(2) a case brought by the Texas Department of Human Resources; and

(3) any other type of payment or case in which the commissioners court determines that collection of a fee would not be practical or in the interest of justice.

(c) A fee collected under this Act shall be transferred to the county treasurer or other officer performing the duties of the county treasurer for deposit in a special fund. The fund may be used to assist in the payment of the operating expenses of the child support services department and the child support registry of the juvenile probation department.

(d) An accurate and complete record of the fees collected and due shall be kept. The record is open to inspection by the public. The county auditor shall inspect the records, audit the fee accounts, and make a report of his findings and recommendations to the commissioners court.

[Acts 1983, 68th Leg., p. 5715, ch. 1090, eff. Aug. 29, 1983.]

**Art. 5142b. Juvenile Officers in Counties of 225,000 to 390,000**

**Application of Law**

Sec. 1. The provisions of this Act shall apply to all counties of the State of Texas having a population of not less than two hundred twenty-five thousand (225,000) inhabitants, nor more than three hundred ninety thousand (390,000) inhabitants, according to the last preceding or any future Federal Census, general or special.

**Juvenile Board**

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

**Chief Probation Officer and Assistants; Appointment**

Sec. 3. There shall be one Chief Probation Officer who shall be appointed by the Juvenile Board. Said Chief Probation Officer shall appoint Assistant Probation Officers, subject to confirmation by the Juvenile Board. The number of such Assistant Probation Officers shall be determined by the Juvenile Board subject to the approval of the Commissioners Court, provided such power of appointment and confirmation shall become effective immediately upon final passage of this Act, and the budget shall be amended, if necessary, to provide sufficient funds for the operation of this Act.

**Terms of Office**

Sec. 4. The term of office of Chief Probation Officer and Assistant Probation Officers shall be for a period of two years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

**Compensation**

Sec. 5. The compensation of all probation officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court, which shall be not less than Three Thousand, Six Hundred Dollars (\$3,600) per annum for the Chief Probation Officer, and not less than One Thousand, Eight Hundred Dollars (\$1,800) per annum for Assistants or Deputies.

**Juvenile Board; Powers**

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

**Supervision of Institutions by Juvenile Board; Superintendents**

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of

the Juvenile Board, and the Superintendent of each such institution shall be appointed by the Chief Probation Officer for a term of two (2) years, and each such appointment shall be confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners Court. Provided, however, that any such Superintendent may at any time, for good cause, be suspended or removed by the appointing authority.

**Records and Visitation by Probation Officer**

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education and welfare of such minors as shall be directed by the Juvenile Board.

**Juvenile Court to Direct Change of Custody of Juveniles**

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the custody of another person without an order of court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

**Visitations by Juvenile Board; Orders and Regulations**

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge, of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

**Suspension of Assistants by Chief Probation Officer**

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

**Bonds of Officers**

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

**Investigations and Reports by Probation Officers;  
Record of Receipts and Expenditures**

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating to the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

**Assistant District Attorney to Represent Juvenile  
Board and Probation Officers**

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, is hereby authorized and directed, to assign an Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

**Compensation of Juvenile Board Members**

Sec. 15. The Judges of the several District and Criminal District Courts who are members of the juvenile board in such counties, on account of the additional duties imposed on them, are hereby allowed an additional compensation of Three Hundred Twenty-five Dollars (\$325.00) per month; and the County Judge in such counties, on account of the additional duties imposed on him, is hereby allowed an additional compensation of Seventy-five Dollars (\$75.00) per month. The compensation herein provided for is to be paid by the Commissioners Court in such counties and is to be in addition to all other compensation now allowed by law to such officers.

The Commissioners Court, in its discretion, may also allow each member of the juvenile board an increase in such additional compensation in an amount not to exceed One Thousand Dollars (\$1,000.00) per year, but any increase must be allowed uniformly for all members of the Board. Provided, however, that in counties coming under the provisions of this Act, the members of the juvenile board shall not receive any compensation under or by virtue of Acts of 1917, 35th Legislature, Chapter 16, page 27, (Article 5139), as amended.

**Partial Invalidity Clause**

Sec. 16. It is further enacted that if any section, clause or part of this bill is found to be unconstitutional, or invalid, it is hereby declared to be the purpose and intention of the Legislature that such fact shall not in any manner invalidate or impair the remaining portions of this Act.

It is further provided that all laws and parts of laws in conflict with the provisions of this bill be and the same are hereby repealed to the extent of such conflict only.

**Automobile or Allowance; Expenses**

Sec. 17. The Commissioners Court is authorized to furnish such Probation Officers automobiles to be used in the official work of the Probation Department, and provide for the maintenance and operation of same.

If the Commissioners Court does not furnish automobiles to the Probation Officers in the discharging of their duties, it shall allow such Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles. The Commissioners Court shall allow such Probation Officers such other expenses as it may think reasonable and proper which are incurred in the discharging of their duties subject to the approval of the County Auditor and such funds as are necessary to maintain and operate the office of the Probation Department.

[Acts 1937, 45th Leg., p. 76, ch. 46. Amended by Acts 1943, 48th Leg., p. 450, ch. 299, § 1; Acts 1945, 49th Leg., p. 251, ch. 185, §§ 1, 2; Acts 1947, 50th Leg., p. 782, ch. 389, § 1; Acts 1947, 50th Leg., p. 955, ch. 409, §§ 1, 2; Acts 1949, 51st Leg., p. 110, ch. 66, §§ 1, 2; Acts 1949, 51st Leg., p. 654, ch. 399, §§ 1, 2; Acts 1955, 54th Leg., p. 1228, ch. 490, §§ 1, 2.]

**Savings Provisions**

See article 6819a-3, § 2.

**Art. 5142c. Juvenile Officers in Counties of 190,000 to 224,000****Application of Act**

Sec. 1. The provisions of this Act shall apply to all counties of the State of Texas containing a population of not less than one hundred and ninety thousand (190,000) inhabitants, nor more than two hundred and twenty-four thousand (224,000) inhabit-



ants, according to the last preceding or any future Federal Census, general or special.

#### Composition of Board

Sec. 2. The Juvenile Board of such counties shall be composed of the Judges of the several District and Criminal District Courts, thereof, together with the County Judge thereof.

#### Probation Officers

Sec. 3. There shall be one (1) Chief Probation Officer who shall be appointed by the Juvenile Board. Said Chief Probation Officer shall appoint Assistant Probation Officers, subject to confirmation by the Juvenile Board. The number of such Assistant Probation Officers shall be determined by the Juvenile Board subject to the approval of the Commissioners Court, provided such power of appointment and confirmation shall become effective immediately upon final passage of this Act, and the budget shall be amended, if necessary, to provide sufficient funds for the operation of this Act.

#### Terms of Office

Sec. 4. The term of office of Chief Probation Officers and Assistant Probation Officers shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time for good cause, suspend or remove any Juvenile Officer, whether Chief or Assistant.

#### Compensation of Probation Officers; Expenses

Sec. 5. The compensation of all Probation Officers shall be fixed by the Juvenile Board subject to the approval of the County Commissioners Court. The Commissioners Court shall, out of the General Fund of the county, provide funds for all necessary expenses needed to properly carry out the duties of the Juvenile Officer and his assistants, in such amounts as recommended by the Juvenile Board, subject to the approval of the Commissioners Court.

#### Direction and Control; Rules and Regulations

Sec. 6. The Juvenile Board shall have direction and control over all Juvenile Officers and may make rules and regulations relating thereto.

#### Places and Institutions Subject to Control; Superintendents

Sec. 7. That all homes, schools, farms, and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, and support or correction of juveniles shall be under the control and supervision of the Juvenile Board, and the Superintendent of each institution shall be appointed by the Chief Probation Officer for a term of two (2) years, and each such appointment shall be confirmed by the Juvenile Board. The salaries of all of the Superintendents shall be fixed by the County Commissioners Court.

#### Records; Visitation and Reports

Sec. 8. It shall be the duty of the Probation Officers to keep a record which will, at all times, show the names of all dependent or delinquent juveniles within their county, and the names and addresses of the person having custody of any such juveniles; and visitations by such officers shall be made at such reasonable times as may be directed by the Juvenile Board, and written report shall be made to the Juvenile Board showing such facts relating to the environment, treatment, education, and welfare of such minors as shall be directed by the Juvenile Board.

#### Transfer of Custody

Sec. 9. It shall be unlawful for any person or institution having the lawful custody of any such juveniles to deliver such juveniles to the custody of another person without an order of court of competent jurisdiction in said county sitting as a Juvenile Court authorizing same, and a copy of such order shall be transmitted to the Juvenile Officers of such county.

#### Visitation; Orders or Regulations

Sec. 10. It shall be the duty of the members of the Juvenile Board of said county to make visitations, at reasonable intervals, to the institutions in said county in which dependent or delinquent juveniles may be kept, maintained or educated; and a majority of said Juvenile Board may adopt any order or regulation pertaining to the welfare of such juveniles which may be found necessary or for the welfare of such juveniles, and it shall be the duty of all persons having such juveniles in charge to comply with such order or regulation. Any such order or regulation shall be entered of record by the Chief Probation Officer in a book kept for such purpose, and shall be open for public inspection, and copy of any such order or regulation certified by such Probation Officer shall be delivered to the Superintendent, or person in charge, or control of any such institution; and said Board may by order or regulation require of the Superintendent, or person in charge of such juveniles in said county reports giving said Board such information relating to such juveniles or such institutions as may be required by such Juvenile Board.

#### Suspension or Termination of Employment

Sec. 11. The Chief Probation Officer may at any time, with the approval of the Juvenile Board, for good cause shown, suspend, or entirely terminate the employment and service of any assistant after such assistant has been duly notified and afforded an opportunity to be heard by said Juvenile Board.

#### Official Bonds

Sec. 12. The Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any Juvenile Officer or Superintendent of

any of the institutions enumerated in this Act, in such sum as may be determined by said Board.

#### Investigations; Disbursements

Sec. 13. The Juvenile Board, or any member thereof, may at any time require any Probation Officer to make investigation and report the facts relating the welfare of any minor, or any child abandonment or desertion cases or proceedings, and may require any such officer to receive and disburse under orders of the Board for the benefit of any such minor any sums of money required to be paid into Court for the maintenance of such minor; and such officer shall enter all such receipts and disbursements in a well-bound book kept for such purpose in the Probation Office subject to public inspection, showing all such receipts and disbursements, and the same shall be audited by the County Auditor; and the bond required to be executed under the provisions of this Act shall be liable for the faithful performance of all such duties.

#### Assistant District Attorneys

Sec. 14. The District Attorney and the Criminal District Attorney of all such counties coming under the provisions of this law, are hereby authorized and directed, to assign as Assistant District Attorney in his office for the special duty of representing the Juvenile Board and the Probation Officers in safeguarding and protecting the rights relating to the welfare of any minor or juvenile in child abandonment and desertion cases or proceedings.

#### Compensation of Members of Board

Sec. 15. The members composing said Juvenile Board in such counties, on account of the additional duties hereby imposed on them, are each hereby allowed an additional compensation of Seventy-five Dollars (\$75) per month to be paid by the Commissioners Court in such counties, and the same to be in addition to all other compensation now allowed by law to such officers.

#### Repeals; Partial Invalidity

Sec. 16. Any law or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict. If any clause, sentence, paragraph, or Section of this Act is declared invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Act shall, nevertheless, remain in full force and effect.

[Acts 1949, 51st Leg., p. 1197, ch. 608, § 1. Amended by Acts 1955, 54th Leg., p. 1158, ch. 441, § 1.]

### Art. 5142c-1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts

#### Appointment; Salary; Expenses

Sec. 1. In Brazoria, Fort Bend, Matagorda, and Wharton counties, which comprise the 23rd and 130th Judicial Districts, the District Judges of such

two judicial districts shall appoint a juvenile officer and such assistants as in their judgment may be necessary for a term of two years. The salaries of the juvenile officer and his assistants shall be fixed by the Commissioners Court of the four counties within the districts and shall be paid in equal monthly installments by such counties out of the General Fund thereof. Such juvenile officers and their assistants may be allowed such expenses as the Commissioners Court of such counties may think reasonable and proper.

#### Compensation of District Judges

Sec. 2. For the additional services and duties required by this Act, District Judges in any county coming under the terms of this Act shall receive in addition to all other compensation now provided by law, including all other compensation provided for service on Juvenile Boards, the sum of Seventy-five (\$75.00) Dollars per month out of the General Fund of such county.

#### Records, Investigations and Reports

Sec. 3. Such Juvenile Officer in such counties shall keep a record of all wife and child desertion cases wherein criminal charges are pending in said county, and shall immediately investigate the facts in each case and the defendant's ability to support his wife and/or children, and shall upon complaint that any payment for the support of the defendant's wife and/or children, has not been made as provided by order of the court, make investigation into the reasons why such payment is not being made; and shall make reports of all such matters, immediately upon the making of such investigation, to the District Attorney, the County Attorney, and Judge of the court in which such case is pending.

#### Payments for Support of Wife and Children

Sec. 4. All payments made under the order of the court in such county, for wife and child desertion cases, for the support of wives and children, shall be paid to said Juvenile Officer working in said court as an officer of the court, and said Juvenile Officer shall disburse said funds for the benefit of the wife and/or children of the defendant, making such payment in such manner as shall appear to the court to be for the best interest of said wife and/or children.

#### Bond of Juvenile Officer

Sec. 5. Each such Juvenile Officer shall make a surety bond in some solvent surety company authorized to make such bonds in Texas, conditioned upon the faithful performance of the duties of his position and further conditioned upon his properly accounting for any moneys entrusted to him; said bond to be in such amount as may be fixed by the County Auditor and subject to the approval of the County Auditor.

**Record of Investigations, Receipts and Disbursements; Audit of Accounts**

Sec. 6. Such Juvenile Officer, in each county which comes under the terms of this Act, shall keep a complete record of all his investigations and of his receipts and disbursements of all moneys, which shall be a public record open to the inspection of the public; and it shall be the duty of the County Auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

**Divorce Suits; Investigations and Reports; Evidence**

Sec. 7. In all suits for divorce, in counties which come under the terms of this Act, where it appears from the petition or otherwise that the parties to such suit have a child or children under sixteen years of age, it shall be the duty of such Juvenile Officer, subject to the discretion of the court, to make a complete and thorough examination into the merits of the claim for divorce and to report his findings to the court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children and of the disposition that should be made of such child or children, and to make report thereof to the court prior to the trial of said case, and if desired by the court, to produce such evidence as may have been developed in connection with such matters in the trial of such case.

**Child Support Office**

Sec. 7a. (a) Notwithstanding any other provision of this Act, the judges of the District Courts and Domestic Relations Courts in each of the counties of Brazoria, Fort Bend, Matagorda, and Wharton may create a child support office in the juvenile office of the county to receive payments for the support of children made under the order of a District Court or Domestic Relations Court. A child support office may serve more than one county. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The judges of the District Courts and Domestic Relations Courts may appoint an administrator and such assistants as in their judgment may be necessary for a term of two years. The judges of the District Courts and Domestic Relations Courts shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the judges.

(c) If a child support office serves more than one county, the judges of the District Courts and the Domestic Relations Courts in those counties shall determine the location of the child support office. The powers and duties of the county officials and employees prescribed in this section shall be performed by the officials and employees of the county in which the child support office is located. The counties served by the child support office shall pay the salaries of the personnel, premiums for a bond, and other expenses in accordance with the proportion that the population of each county bears to the total population of all counties served by that office.

(d) Each administrator of a child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(e) Each child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in each county with a child support office to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the judges.

(f) A service fee for receiving and disbursing payments, not to exceed \$1 per month, shall be assessed each payor or payee of child support who is ordered by a court to pay support to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. The service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. The service fee shall be collected by the child support office from the payor annually in advance and shall be paid to the county treasurer on the last day of each calendar month, to be kept in a separate account to be known as the "Child Support Fund." This fund shall be administered by the judges of the District Courts and Domestic Relations Courts, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to

commence payments for child support and thereafter on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The Child Support Fund is subject to regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

#### Judge's Compensation Not Fees of Office

Sec. 8. It is expressly provided hereby that the compensation allowed District Judges shall not be counted as fees of office.

#### Partial Invalidity

Sec. 9. If it shall be held that any part or parts of this Act are unconstitutional, then the remainder shall remain in full force and effect as law, independently and despite such holdings.

[Acts 1949, 51st Leg., p. 61, ch. 32. Amended by Acts 1969, 61st Leg., p. 1740, ch. 572, § 1, eff. June 11, 1969; Acts 1971, 62nd Leg., p. 1823, ch. 542, § 27, eff. Sept. 1, 1971; Acts 1977, 65th Leg., p. 2069, ch. 821, § 1, eff. Aug. 29, 1977.]

#### Art. 5142c-2. Juvenile Probation Officers in Counties of Over 500,000

##### Chief Juvenile Probation Officer; Appointment; Term; Salary; Removal

Sec. 1. In counties having a population of more than five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, regular or special, the County Juvenile Board shall appoint a Chief Juvenile Probation Officer for a term of two (2) years at a salary to be fixed by the Juvenile Board and approved by the Commissioners Court, to be paid in monthly installments by the county. The salary so fixed shall not be less than Seven Thousand, Five Hundred Dollars (\$7,500.00) per annum. The County Juvenile Board may remove the Chief Juvenile Probation Officer for just cause.

##### Assistant Juvenile Probation Officers and other Employees; Appointment; Salaries; Automobiles

Sec. 2. The Chief Juvenile Probation Officers in counties to which this Act applies are hereby authorized to appoint, and shall appoint, subject to the approval of the Juvenile Board, not less than thirty-

two (32) Assistant Juvenile Probation Officers and other employees, in accordance with the following schedule, and shall fix their salary rates at not less than the following amounts: One (1) assistant, Five Thousand, Four Hundred Dollars (\$5,400.00) per annum; two (2) assistants, Four Thousand, Four Hundred Dollars (\$4,400.00) per annum each; three (3) assistants, Three Thousand, Nine Hundred Dollars (\$3,900.00) per annum each; five (5) assistants, Three Thousand, Seven Hundred Twenty Dollars (\$3,720.00) per annum each; eight (8) assistants, Three Thousand, Six Hundred Dollars (\$3,600.00) per annum each; and five (5) assistants, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum each. He shall employ: two (2) clerk-stenographers, at Three Thousand, One Hundred Eighty Dollars (\$3,180.00) per annum each; one (1) secretary, Three Thousand, Three Hundred Dollars (\$3,300.00) per annum; one (1) clerk-stenographer, Three Thousand Dollars (\$3,000.00) per annum; three (3) clerk-typists, Two Thousand, Seven Hundred Dollars (\$2,700.00) per annum each; and one (1) clerk-typist, Two Thousand, Four Hundred Dollars (\$2,400.00) per annum; to be paid by the county in monthly or semi-monthly installments.

In addition to the salaries herein provided for the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, the Commissioners Court is authorized to furnish automobiles for the use of the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers, to be used in the official work of the Juvenile Probation Office, and provide for the maintenance and operation of same; or if the Commissioners Court does not furnish automobiles to the Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers to be used in the discharge of their duties, it shall allow such Chief Juvenile Probation Officer and Assistant Juvenile Probation Officers such reasonable amounts as may be necessary for the use and operation of their personally owned automobiles, such amounts and the reasonableness thereof to be determined by the Juvenile Board.

##### Additional Probation Officers, Assistants and Employees

Sec. 3. Should the Juvenile Board, in any county to which this Act applies, be of the opinion that the number of Juvenile Probation Officers, clerks stenographers, typists and other employees above provided for, is inadequate for the proper investigation, processing and handling of all cases referred to the office, or is inadequate for the efficient performance of the duties of the office, with the advice and approval of the Commissioners Court, it may appoint such additional Juvenile Probation Officers, assistants or employees as the Juvenile Board may determine; the salaries of such additional Juvenile Probation Officers, assistants and employees to be fixed by the Juvenile Board and approved by the Commissioners Court.

**Payments for Support of Wife or Children;  
Desertion Cases**

Sec. 4. All payments made under the order of the District and Criminal District Courts in such county in wife and child desertion cases for the support of wives and children shall be paid in, either to said Juvenile Probation Officer working in said courts as an officer of the courts, or the District Clerk, as the Juvenile Board may direct, and said Juvenile Probation Officer, or District Clerk, as the case may be, shall disburse said funds for the benefit of the wife and/or children of the defendant, making such payment in such manner as shall appear to the courts to be for the best interest of said wife and/or children.

**Bond of Probation Officer**

Sec. 5. In all cases wherein the Juvenile Board designates the Juvenile Probation Officer to receive said payments in wife and child desertion cases for the support of wives and children, said Juvenile Probation Officer shall make a surety bond in some solvent surety company authorized to make such bond in Texas, conditioned upon the faithful performance of the duties of his position, and further conditioned upon his properly accounting for any moneys entrusted to him, said bond to be in such amount as may be fixed by the Commissioners Court and subject to the approval of the Commissioners Court, the premium for such bond to be paid out of the general funds of the county.

**Records of Receipts and Disbursements**

Sec. 6. Said Juvenile Probation Officer in such county with a population in excess of five hundred thousand (500,000) inhabitants, according to the last preceding or any future Federal Census, shall keep an accurate and complete record of all his receipts and disbursements of all moneys for the benefit of support of wives and children, which shall be a public record open to the inspection of the public; and it shall be the duty of the County Auditor to inspect and examine such records and audit such accounts quarterly, making due report of his findings and recommendations with respect thereto to the County Juvenile Board.

**Partial Invalidity**

Sec. 7. If any clause, section or part of this Act is found to be unconstitutional or invalid, it is hereby declared to be the purpose and intention of the Legislature that such clause or section shall not in any manner invalidate or impair the remaining portions of this Act.

**Cumulative of Other Laws; Conflicting Laws Repealed**

Sec. 8. It is further provided that this law is cumulative of all other laws and parts of laws and repeals only those laws and parts of laws in conflict with this Act; and the same are hereby repealed to the extent of such conflicts only.

**Effective Date**

Sec. 9. This Act shall become operative on the first day of January, 1956.

[Acts 1955, 54th Leg., p. 699, ch. 250.]

**Art. 5142c-3. Juvenile Officer for Counties  
Within 69th Judicial District**

(a) A juvenile officer may be employed to serve any or all counties at their request within the 69th Judicial District by appointment of the District Judge of the 69th Judicial District. The annual salary of such officer shall be fixed by the District Judge of the 69th Judicial District with approval of Commissioners Courts of the counties participating in an amount not to exceed Eight Thousand Dollars (\$8,000). The total salary of such juvenile officer shall be derived from the participating counties of the 69th Judicial District, with contributions among them in the same proportion as the population in each county using the services of such officer bears to the total population of all counties participating. Populations used shall be those of the last preceding Federal Census.

(b) Such juvenile officer may be reimbursed by each county in which he renders services to the county for actual expenses for meals and lodging while serving such county, and for travel expenses at the rate fixed by the Commissioners Court of each county contributing to his salary.

(c) Any school district, city or town within the 69th Judicial District may participate in the services of such juvenile officer by contributing to the total expenses of such officer in an amount fixed by the District Judge of the 69th Judicial District. When any school district, city or town contributes to the salary of such juvenile officer, then the total amount to be contributed by the counties may be reduced in the amount contributed by any school district, city or town.

[Acts 1963, 58th Leg., p. 968, ch. 391, § 1.]

**Art. 5142c-4. Juvenile Officer for Grayson  
County**

Sec. 1. the commissioners court of Grayson County may appoint a juvenile officer, an assistant juvenile officer, and a clerk or secretary for the office of the juvenile officer.

Sec. 2. The commissioners court may pay the juvenile officer a salary of not more than \$650 per month and may allow him not more than 10 cents per mile for transportation expenses when he supplies his own automobile. The commissioners court may pay the assistant juvenile officer a salary of not more than \$525 per month and may allow him not more than 10 cents per mile for transportation expenses when he supplies his own automobile.

The clerk or secretary shall receive a salary to be set by the commissioners court.

[Acts 1965, 59th Leg., p. 409, ch. 198, eff. May 18, 1965. Amended by Acts 1971, 62nd Leg., p. 929, ch. 143, § 1, eff. May 10, 1971.]

**Art. 5142d. Salaries of Juvenile or Probation Officers; How Fixed; Automobile or Allowance**

The Commissioners Courts of all counties in which Juvenile Officers or Probation Officers, or their assistants, are employed under existing laws of this State, shall fix the salaries to be paid such Juvenile Officers or Probation Officers and their assistants, and provide for their expenses, without limitation. Provided, that in counties where there is a Juvenile Board, said Board shall recommend the salary to be paid to such Juvenile Officer or Probation Officer and their assistants, which salary shall be approved by the Commissioners Court; and provided, further, that no Juvenile Officer or Probation Officer, or their assistants, shall be paid a salary less than that now provided by existing laws. The Commissioners Court is authorized in its discretion to furnish such Juvenile Officers or Probation Officers an automobile and provide an allowance for the expense of operating the same. The provisions of this Act shall not apply to those counties whose population exceeds one hundred and ninety thousand (190,000) according to the last or any future Federal Census.

[Acts 1949, 51st Leg., p. 653, ch. 338, § 1.]

**Arts. 5143, 5143a. Repealed by Acts 1973, 63rd Leg., p. 1485, ch. 544, § 3, eff. Sept. 1, 1973**

Acts 1973, 63rd Leg., p. 1485, ch. 544, repealing these articles, enacts Title 3 of the Texas Family Code.

See, now, Family Code, § 51.01 et seq.

**Art. 5143b. Clothing, Money and Transportation Furnished on Release from Gatesville and Gainesville Training Schools**

Sec. 1. Upon the discharge or parole of any person committed to the Gatesville State School for Boys or the Gainesville State School for Girls, the Superintendent of the Institution from which such person is discharged or paroled shall provide them with a complete suit of suitable clothing, and Five Dollars (\$5) in money, and procure transportation for them to their homes, if resident of this State, or to the county in which they may have been convicted or to such other place in the State at which said discharged or paroled person may have procured employment or to a place where a suitable home has been found for such person.

Sec. 2. The furnishing of clothing and transportation and the payment of money may be made from appropriations for support and maintenance made to

the Institution from which such person was discharged or paroled, or from local funds, or from any appropriation specifically made for such purposes by the Legislature of the State of Texas.

[Acts 1945, 49th Leg., p. 155, ch. 106.]

**Art. 5143c. Repealed by Acts 1977, 65th Leg., p. 108, ch. 52, § 1, eff. April 5, 1977**

**Art. 5143d. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979**

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Human Resources Code.

**Art. 5143e. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974**

Acts 1973, 63rd Leg., p. 1458, ch. 543, repealing this article, enacts Title 2 of the Texas Family Code.

**Art. 5143f. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979**

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Human Resources Code.

**Art. 5143g. Missing Children Investigations by Law Enforcement Agencies**

**Missing children investigations**

Sec. 1. On the written request made to a law enforcement agency by a parent, foster parent, managing or possessory conservator, guardian of the person or the estate, or other court-appointed custodian of a child whose whereabouts is unknown, the law enforcement agency shall request from the Federal Bureau of Investigation information concerning the child that may aid the person making the request in the identification or location of the child.

**Report of Inquiry**

Sec. 2. A law enforcement agency to which a request has been made under Section 1 of this Act shall report to the parent on the results of its inquiry within 14 days after the day that the written request is filed with the law enforcement agency.

**Information to Federal Bureau of Investigation**

Sec. 3. Each law enforcement agency shall provide to the Federal Bureau of Investigation any information that would assist in the location or identification of any missing child who has been reported to the agency as missing.

Definitions

Sec. 4. In this act:

(1) "Child" means a person under 25 years of age.

(2) "Law enforcement agency" means a police department of a city in this state, a sheriff of a county in this state, and the Department of Public Safety.

[Acts 1983, 68th Leg., p. 2628, ch. 450, eff. June 17, 1983.]

# TITLE 83

## LABOR

Chapter	Article
1. Department .....	5144
2. Labor Organizations .....	5152
3. Payment of Wages .....	5155
4. Contractors' Performance and Payment	
Bonds .....	5160
5. Hours of Labor .....	5165
6. Female Employees .....	5168
7. Protection of Health and Safety .....	5173
8. Child Labor .....	5181
9. Protection of Workmen on Buildings .....	5182
9A. Occupational Safety .....	5182a
10. Industrial Commission .....	5183
10A. Texas Relief Commission [Repealed] .....	5190a
11. Stevedores .....	5191
12. Restrictions on Labor .....	5196
13. Employment Agents .....	5208
14. Unemployment Compensation .....	5221b-1
15. Inspection of Steam Boilers .....	5221c
16. Miscellaneous Provisions .....	5221d

### CHAPTER ONE. DEPARTMENT

Art. 5144. Appointment of Commissioner.
5144a. Application of Sunset Act.
5145. Duties of Commissioner
5145a. Duties of Commissioner.
5146. Report.
5147. Preservation of Records.
5147a. Duty of Owner of Factory, etc.
5148. May Enter Factories, etc.
5148a. May Enter Factories, etc.
5149. To Report Violations.
5150. To Take Testimony.
5150a. Failure to Testify Before Commissioner; Penalty.
5151. Expenses.
5151a. Change of Names.
5151b. Disclosing Name of Informant; Penalty.
5151c. Penalty for Interfering With Bureau.

#### Change of Name

*Acts 1973, 63rd Leg., p. 1185, ch. 434, as amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 2 (classified as article 5151a), changed the names of the Bureau of Labor Statistics and/or Commissioner of Labor Statistics to the Texas Department of Labor and Standards and the Commissioner of Labor and Standards.*

#### Art. 5144. Appointment of Commissioner

A Commissioner of Labor and Standards, whose office shall be in Austin, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the

Governor, conditioned for the faithful discharge of the duties of his office.

[Acts 1925, S.B. 84. Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 1, eff. June 19, 1975.]

#### Art. 5144a. Application of Sunset Act

The office of Commissioner of Labor and Standards is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the office is abolished effective September 1, 1989.

[Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.167, eff. Aug. 29, 1977.]

<sup>1</sup> Article 5429k.

#### Art. 5145. Duties of Commissioner

The Bureau of Labor Statistics<sup>1</sup> shall be under the charge and control of the Commissioner of Labor Statistics. The Commissioner shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, 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 the factories and other places of employment, the labor of women and children, and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Said Commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interest therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry. He shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the State, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. Except as hereinafter provided he shall safely keep and deliver to his successor all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office.

[Acts 1925, S.B. 84.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.



**Art. 5145a. Duties of Commissioner**

Sec. 1. The Commissioner of Labor and Standards 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. 2. The commissioner may perform functions that are assigned to him under an agreement between the commissioner and the Texas Energy and Natural Resources Advisory Council and that are prescribed by a state residential energy conservation plan adopted by the advisory council pursuant to 42 United States Code, Sections 8211 et seq., and regulations issued by the United States Department of Energy in accordance therewith. The functions may include:

(1) preparation of a master list of persons who are willing to sell or install or finance residential energy conservation measures, as defined by 42 United States Code, Section 8211;

(2) inspection of the installed residential energy conservation measures; and

(3) establishment of consumer grievance procedures to resolve the complaints of persons against persons who sell or install the residential energy conservation measures or who finance the purchase or installation of the measures.

In performance of his assigned responsibilities, the commissioner may establish such rules and regulations as are needed to administer the program including, if necessary in the judgment of the commissioner, security requirements as a prerequisite for master listing of sellers or installers of residential energy conservation measures. The commissioner is additionally authorized to establish and adopt, after consultation with the Texas Energy and Natural Resources Advisory Council, necessary fees to be collected by the commissioner to contribute to the costs of the department associated with the program.

Sec. 3. Fees collected by the commissioner in the performance of functions under Section 2 of this article shall be deposited in the state treasury to the credit of a special fund to be known as the residential conservation fund. The fund may be used only for the administration of the commissioner's functions under Section 2 of this article.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 999, ch. 378, § 1, eff. June 10, 1981.]

**Art. 5146. Report**

In each biennial report, the Commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and their employees, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employees living in rented houses, with the average rental paid, the value of property owned by such employees, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical. Such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as may be provided by law.

[Acts 1925, S.B. 84.]

**Art. 5147. Preservation of Records**

No report or return made to the bureau under the provisions of this chapter or the Penal Code, and no schedule, record or document gathered or returned by its officers or employees shall be destroyed within two years of the collection or receipt thereof. At the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the Commissioner to be of no further value, shall be destroyed, if the permission of the Governor therefor be first obtained.

[Acts 1925, S.B. 84.]

**Art. 5147a. 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<sup>1</sup> 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.

[1925 P.C.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5148. May Enter Factories, etc.**

Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the Commissioner 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 employees from danger and the sanitary conditions in and around such building or place, of all of which the said Commissioner shall make and return to the Bureau of Labor Statistics a true and detailed record in writing.

[Acts 1925, S.B. 84.]

**Art. 5148a. May Enter Factories, 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 employes from danger and the sanitary conditions in and around such building or place.

[1925 P.C.]

**Art. 5149. To Report Violations**

If the Commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employees, or the preservation of health, or in any other way affecting the employes, he shall at once give written notice of the facts to the proper county or district attorney.

[Acts 1925, S.B. 84.]

**Art. 5150. To Take Testimony**

The Commissioner shall have power to issue subpoenas and take testimony in all matters relating to the duties herein required of said Bureau. Such testimony must be taken in the vicinity of the residence or office of the person testifying.

[Acts 1925, S.B. 84.]

**Art. 5150a. Failure to Testify Before Commissioner; Penalty**

The Commissioner of the Bureau of Labor Statistics<sup>1</sup> shall have power to issue subpoenas, 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 subpoenaed under any provision of this chapter who shall wilfully neglect or fail to attend or testify at the time and place mentioned in the subpoena 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.

[1925 P.C.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5151. Expenses**

The Commissioner shall be allowed necessary postage, stationary, printing, and other expenses to transact the business of the Bureau, and he and any employé of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this chapter, and within the limits of the appropriations made therefor.

[Acts 1925, S.B. 84.]

**Art. 5151a. Change of Names**

(a) The names of the Bureau of Labor Statistics and the Commissioner of Labor Statistics are changed to the "Texas Department of Labor and Standards" and the "Commissioner of Labor and Standards."

(b) Wherever the names Bureau of Labor Statistics and/or Commissioner of Labor Statistics appear in any legislative Act in this state, such names shall hereafter mean and apply to the Texas Department of Labor and Standards and the Commissioner of Labor and Standards.

[Acts 1973, 63rd Leg., p. 1185, ch. 434, § 1, eff. Aug. 27, 1973. Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 2, eff. June 19, 1975.]

**Art. 5151b. Disclosing Name of Informant; Penalty**

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.<sup>1</sup> 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.

[1925 P.C.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5151c. Penalty for Interfering With 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<sup>1</sup> 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.

[1925 P.C.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

**CHAPTER TWO. LABOR ORGANIZATIONS**

- Art.  
5152. Right to Organize.  
5153. Other Rights and Privileges.  
5154. Organizations Excepted.  
5154a. Labor Unions, Regulation of.  
5154b. Liability of Labor Organizations for Damages.  
5154c. Public Employees, Collective Bargaining Contracts With Organizations Representing; Strikes; Loss of Civil Service and Other Rights.  
5154c-1. The Fire and Police Employee Relations Act.  
5154d. Picketing.  
5154e. Contracts for Withholding Union Dues From Employee's Wages Invalid Without Employee's Consent.  
5154f. Secondary Strikes, Picketing and Boycotts Prohibited.  
5154g. Strikes and Picketing Regulated and Prohibited; Elections; Injunction.

**Art. 5152. Right to Organize**

It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and 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 1925, S.B. 84.]

**Art. 5153. Other Rights and Privileges**

It shall be lawful for any member or 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 to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or

trespass upon the premises of another without the consent of the owner thereof.

[Acts 1925, S.B. 84.]

**Art. 5154. Organizations Excepted**

The preceding 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 defined by the laws of this state. 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 employees. 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 1925, S.B. 84. Amended by Acts 1947, 50th Leg., p. 530, ch. 310, § 2.]

**Art. 5154a. Labor Unions, Regulation of****Preamble of Public Policy**

Sec. 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

**Definitions**

Sec. 2. The words and terms hereafter defined, as used in this Act, shall have the meaning herein stated, except where the context of the Act shows that the same are used in some other sense or meaning; (a) the words "Secretary of State" shall mean the Secretary of State of the State of Texas; (b) "labor union" shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves, and improving their working conditions, wages, or employment relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions; (c) "labor organizer" shall mean any person who for a pecuniary or financial consideration solicits memberships in a labor union or members for a labor union; (d) "enforcement offi-

cer" means the Attorney General, District Attorney and the County Attorney; (e) "working agreement" means a collective bargaining contract with an employer for union labor employees in any business or industry, and shall include any renewal, extension, supplementation or change whatever in respect to any such agreement.

#### Reports

Sec. 3. It shall be the duty of every labor union required to file reports with the Secretary of Labor pursuant to Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. 431), or any similar statute subsequently enacted, to file a copy of each report with the Secretary of State not later than the 30th day following the date the report was filed with the Secretary of Labor.

#### Officers

Sec. 4. All officers, agents, organizers, and representatives of such labor union shall be elected by majority vote of the members present and participating; provided, however, that labor unions, if they so desire, may require more than a majority vote for election of any officer, agent, organizer or representative, and may take any such vote of the entire membership by mailed ballots. Such election shall be held at least once each year, and the determination taken by secret ballot, of which election the membership shall be given at least seven (7) days' notice by written or printed notice mailed to the member's last known address, or by posting notice of such election in a place public to the membership, or by announcement at a regular stated meeting of the union, whichever is most convenient to the union. The result of such election when held shall be ascertained and declared by the president and the secretary at the time in the presence of the members or delegates participating.

Provided, the requirement for annual elections herein made, or the methods of holding same, shall not apply to any labor union that for four (4) years prior to the effective date of the law shall have held its elections for officers, delegates and the like representatives less frequently than annually but which have held such elections either every three (3) years or every four (4) years under their constitution, bylaws, or other organization rules, and which unions have during the last ten (10) years charged not more than Ten Dollars (\$10) initiation fee to members.

#### Aliens or Convicts as Officers

Sec. 4a. It shall be unlawful for any alien or any person convicted of a felony charge to serve as an officer or official of a labor union or as a labor organizer as defined in this Act. This Section shall not apply to a person who may have been convicted of a felony and whose rights of citizenship shall have been fully restored.

#### Political Contributions Prohibited

Sec. 4b. It shall be unlawful for any labor union to make any financial contribution to any political party or to any persons running for political office as a part of the campaign expenses of such individual.

#### Organizers

Sec. 5. All labor union organizers operating in the State of Texas shall be required to file with the Secretary of State, before soliciting any members for his organization, a written request by United States mail, or shall apply in person for an organizer's card, stating (a) his name in full; (b) his labor union affiliations, if any; (c) describing his credentials and attaching thereto a copy thereof, which application shall be signed by him. Upon such applications being filed, the Secretary of State shall issue to the applicant a card on which shall appear the following: (1) the applicant's name; (2) his union affiliation; (3) a space for his personal signature; (4) a designation, "labor organizer"; and, (5) the signature of the Secretary of State, dated and attested by his seal of office. Such organizer shall at all times, when soliciting members, carry such card, and shall exhibit the same when requested to do so by a person being so solicited for membership.

#### Working Agreements

Sec. 6. All labor unions are hereby required to forward to the Secretary of State a copy of all existing working agreements with employers under which that organization is operating, within twenty (20) days after the execution of such working agreements, but only if such agreements contain a clause, or as a part of such agreement, which provides that the dues or any other collections for the benefit of the labor union are deducted from the worker's check or salary by the employer. Such working agreements shall be available only to the Secretary of State, the Commissioner of Labor Statistics, and the Attorney General, but shall also be open to grand juries, judicial and quasi-judicial inquiries. This shall not in anywise be construed to vitiate the Statute of Frauds.<sup>1</sup>

<sup>1</sup> Business and Commerce Code, § 26.01.

#### Fees, Dues, Fines and Assessments

Sec. 7. It shall be unlawful for any labor union, its officers, agent or any member to make any charge or exaction, or to receive any moneys for initiation fees, dues, fines, assessments, or other pecuniary exactions, which will create a fund in excess of the reasonable requirements of such union, in carrying out its lawful purpose or activities, if such fees, dues, fines, assessments, or other pecuniary exactions create, or will create, an undue hardship on the applicant for initiation to the union, or upon the union members. Nothing in this Section shall be deemed or construed to prevent the collection by a labor union of dues or assessments for purposes which are beneficial to the members of

the union according to the established practice, and/or to maintain funds or make investments of funds for such beneficial purposes. Neither shall this Section be construed to prevent dues, collections or other assessments for old age benefits, death and burial benefits, hospitalization, unemployment, health and accident, retirement or other forms of mutual insurance, for legislative representation, grievance committee, or for gifts, floral offerings, or other charitable purposes, or any other legitimate purposes when the union engages in or decides to engage in such a field or practice; provided that the members contributing share or can reasonably expect to share in the benefits for which they are assessed; neither shall this Section be construed to prevent assessments, dues, or other collections, except initiation fees, to be placed in the funds or as a part of the funds of the union for the use by the union in paying its members while such members are on a strike; provided such funds shall remain under control of the labor union members. This Section shall be liberally construed, however, to prevent excessive initiation fees.

#### Advance Fees

Sec. 8. It shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents, to collect any fees, dues, or sum of money whatsoever, in respect to membership in a labor union, or for the privilege to work or as a permit to work, from any person, without giving such person at that time a receipt therefor signed by such labor organizer, union official or officer, or member of the labor union, or their agent, reciting that such sum of money so received is to be delivered to the labor union, and be held intact until said person has been duly elected, and has become a bona fide voting member of said labor union. Provided that it shall be unlawful for any labor organizer, union official or officer, or member of a labor union, or their agents to collect any fee for the privilege to work or as a permit to work and no charge shall ever be made nor shall any fee ever be collected for the privilege to work in this State. Provided, however, this shall not prevent the collection of reasonable initiation fees as provided in this Act. Upon the payment in full by an applicant for membership in a labor union of any and all initiation fees or dues regularly assessed by such union, such labor union shall (a) elect such applicant to membership, or (b) shall forthwith return in full said money thus paid by the applicant. Upon such election, however, such advance fees thus paid may be applied by the labor union to the purposes and uses for which same were advanced. All unions, its members, officers, or agents, shall collect all fees in good faith, and no union shall elect a person to membership merely for the purpose of obtaining his initiation fee. Neither shall any labor union engage in the practice of collecting initiation fees from members and proceeding thereafter to discharge, suspend or drop such member, or cause his employer to discharge such employee, without reasonable

and just cause. If any labor union shall engage in such practice, it shall be guilty of a violation of this Act, and shall be subject to the civil penalties herein prescribed. Nothing hereinabove stated shall be construed to prevent a closed shop contract or other type of bargaining agreement or to limit the bargaining power of a labor union.

#### Collecting Fees for Privilege to Work Forbidden

Sec. 8a. It shall be unlawful for any labor union, any labor organizer, any officer, any agent or representative or any member of any labor union to collect, receive or demand, directly or indirectly, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work from any person not a member of the union; provided, however, this shall not prevent the collection of initiation fees as above stated.

#### Books of Accounts

Sec. 9. It shall be the duty of any and all labor unions in this State to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor union shall be entitled at all reasonable times to inspect the books, records and accounts of such labor union, and any enforcement officer shall be entitled upon demand, subject to the approval of the Attorney General at all reasonable times, to inspect such books, records, and accounts of such labor union. Such books, records, and accounts shall also be open to grand juries and judicial and quasi judicial inquiries in legal proceedings.

#### Members' Rights

Sec. 10. It shall be unlawful for any labor union to refuse to give any person desiring membership therein a reasonable time, after obtaining the promise of employment, within which to decide whether or not he desires to become a member of such labor organization, as a condition to such person's employment by the employer. It shall also be unlawful for any labor union to expel any member thereof except for good cause, and upon a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on specific charges preferred. Any Court of competent jurisdiction upon his petition therefor, shall order reinstatement of any member of the labor organization who shall be expelled without good cause.

#### Members in Armed Forces

Sec. 10a. Any employee who is a member of any union, who, because of services with the armed forces of the United States, has been unable to pay any dues, assessments, or sums levied by any union, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any union to which he belonged.

#### Penalties

Sec. 11. If any labor union violates any provision of this Act, it shall be penalized civilly in a sum not exceeding One Thousand Dollars (\$1,000) for each such violation, the sum recovered as a penalty in a Court of competent jurisdiction, in the name of the State, acting through an enforcement officer herein authorized. Any officer of a labor union and any labor organizer who violates any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a Court of competent jurisdiction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500) or by confinement in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

#### Enforcement by Civil Procedure

Sec. 12. The District Courts of this State and the Judges thereof shall have full power, authority and jurisdiction, upon the application of the State of Texas, acting through an enforcement officer herein authorized, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writs or processes appropriate to carry out and enforce the provisions of this Act. Such proceedings shall be instituted, prosecuted, tried and heard as other civil proceedings of like nature in said Courts.

#### Enforcement Officer

Sec. 13. It is hereby made the duty of the Attorney General and the District Attorneys and County Attorneys of this State, within their respective jurisdictions, to prosecute any and all criminal proceedings and to institute and maintain any and all civil proceedings herein authorized for the enforcement of this Act.

#### Liberal Construction Required

Sec. 14. The provisions of this Act are to be liberally construed so as to effectuate the purposes expressed in the preamble and in such manner as to protect the rights of laboring men to work and/or to organize for their mutual benefit in connection with their work; nor shall anything in this Act be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing with respect to all matters affecting labor and employment.

#### Separability Clause with Respect to Constitutional Invalidity

Sec. 15. 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 1943, 48th Leg., p. 180, ch. 104. Amended by Acts 1975, 64th Leg., p. 355, ch. 150, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"The secretary of state is authorized to remove from the files and destroy all reports filed pursuant to Section 3, Chapter 104, Acts of the 48th Legislature, 1943 (Article 5154a, Vernon's Texas Civil Statutes), as that section existed prior to the effective date of this Act."

#### Art. 5154b. Liability of Labor Organizations for Damages

Sec. 1. A labor organization whose members picket or strike against any person, firm or corporation shall be liable in damage for any loss resulting to such person, firm or corporation by reason of such picketing or strike in the event that such picketing or strike is held to be breach of contract by a Court of competent jurisdiction.

Sec. 2. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

The term "picketing" as used in this Act, shall include the stationing or posting of one person or of others for and in behalf of any organization in order to induce or attempting to induce, anyone not to enter the premises in question, or to apprise the public, by signs, banners, or by any other means, of the existence of a dispute, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or to attempt to persuade them to cease entering or of patronizing the premises being picketed.

Sec. 3. If any clause, sentence or paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be judged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the persons or circumstances involved.

[Acts 1947, 50th Leg., p. 228, ch. 132.]

#### Art. 5154c. Public Employees, Collective Bargaining Contracts With Organizations Representing; Strikes; Loss of Civil Service and Other Rights

Sec. 1. It is declared to be against the public policy of the State of Texas for any official or group of officials of the State, or of a County, City, Municipality or other political subdivision of the State, to enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of public employees, and any such contracts entered into after the effective date of this Act shall be null and void.

Sec. 2. It is declared to be against the public policy of the State of Texas for any such official or group of officials to recognize a labor organization as the bargaining agent for any group of public employees.

Sec. 3. It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State of Texas or any political subdivision thereof. Any such employee who participates in such a strike shall forfeit all civil service rights, re-employment rights and any other rights, benefits, or privileges which he enjoys as a result of his employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

Sec. 4. It is declared to be the public policy of the State of Texas that no person shall be denied public employment by reason of membership or nonmembership in a labor organization.

Sec. 5. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 6. The provisions of this Act shall not impair the existing right of public employees to present grievances concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

Sec. 7. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved.

[Acts 1947, 50th Leg., p. 231, ch. 135.]

#### Art. 5154c-1. The Fire and Police Employee Relations Act

##### Designation of Act

Sec. 1. This Act shall be known as "The Fire and Police Employee Relations Act."

##### Policy

Sec. 2. (a) It is declared to be the policy of the State of Texas that cities, towns, and other political subdivisions within the state having police and/or fire departments shall provide the firefighters and policemen, in said departments, with compensation

and other conditions of employment that are substantially the same as compensation and conditions prevailing in comparable private sector employment.

(b) (1) It is also the policy of the State of Texas that firefighters and policemen, like employees in the private sector, should have the right to organize for purposes of collective bargaining, for collective bargaining is deemed to be a fair and practical method for determining wages and other conditions of employment for the employees who comprise the paid fire and police departments of the cities, towns, and other political subdivisions within this state. A denial to such employees of the right to organize and bargain collectively would lead to strife and unrest, with consequent injury to the health, safety, and welfare of the public. The protection of the health, safety, and welfare of the public, however, demands that strikes, lockouts, work stoppages and slowdowns of firefighters and policemen be prohibited; therefore, it is the obligation of the state to make available reasonable alternatives to strikes by employees in these protective services.

(2) In view of the essential and emergency nature of the public service performed by firefighters and policemen, a reasonable alternative to such strikes is a system of arbitration conducted under adequate legislative standards. Another reasonable alternative, which should be provided in the event the parties fail to agree to arbitrate, is judicial enforcement of the requirements of this Act regarding the compensation and working conditions applicable to firefighters and policemen.

(3) With the right to strike prohibited, it is requisite to the high morale of firefighters and policemen, and to the efficient operation of the departments which they serve, that alternative procedures be expeditious, effective, and binding. To that end, the provisions of this Act should be liberally construed.

##### Definitions

Sec. 3. As used in this Act, the following terms have the following meanings:

(1) The term "firefighter" means each permanent paid employee in the fire department of any city, town, or other political subdivision within the state, with the sole exception of the chief of the department. Nothing herein shall apply to volunteer firefighters.

(2) The term "policeman" means each sworn certified full-time paid employee, whether male or female, who regularly serves in a professional law enforcement capacity in the police department of any city, town, or other political subdivision within the state, with the sole exception of the chief of the department.

(3) The term "public employer" means the proper official or officials within any city, town, or other political subdivision whose duty is to establish the wages, salaries, rates of pay, hours, working condi-

tions, and other terms and conditions of employment of firefighters and/or policemen whether such person or persons be the mayor, city manager, town manager, town administrator, city council, director of personnel, personnel board, commissioners, or other officials, by whatever name designated, or by a combination of such persons.

(4) The term "association" means any organization of any kind, or any agency or employee representation committee or plan, in which firefighters and/or policemen participate and which exists for the purpose, in whole or in part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting firefighters and/or policemen.

(5) "Strike" means the failure, in concerted action with others, to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, or in any manner interfering with the operation of any municipality, for the purpose of inducing, influencing, or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.

#### Requirement for Prevailing Wages and Conditions

Sec. 4. Cities, towns, and other political subdivisions within the state employing firefighters and/or policemen shall provide those protective service employees with compensation and other conditions of employment that are substantially the same as compensation and other conditions of employment which prevail in comparable private sector employment; therefore, compensation and other conditions of employment for those employees shall be based on prevailing private sector wages and working conditions in the labor market area in other jobs, or portions of other jobs, which require the same or similar skills, ability, and training, and which may be performed under the same or similar conditions.

#### Right to Organize and Bargain Collectively

Sec. 5. (a) Upon the adoption of the provisions of this Act by any city, town, or political subdivision in this state to which this Act applies, as herein in this section provided, firefighters and/or policemen shall have the right to organize and bargain collectively with their public employer as to wages, hours, working conditions, and all other terms and conditions of employment.

(b) The provisions of this Act may be adopted by any city, town, or other political subdivision to which this Act applies by the following method:

Upon receiving a petition signed by the lesser of five percent or 20,000 of the qualified voters voting in the last preceding general election in such city, town, or political subdivision, the governing body of such city, town, or political subdivision shall hold an election within 60 days after said petition has been

filed with such governing body. If at said election, a majority of the votes cast shall favor the adoption of this Act, then such governing body shall place this Act into effect within 30 days after the beginning of the first fiscal year of said city or town after said election. The question which shall be submitted to the vote of the qualified electors shall be as follows:

FOR or AGAINST the following:

Adoption of the state law applicable to "firefighters and policemen" or "firefighters" or "policemen", (whichever shall be applicable), which establishes collective bargaining when a majority of the affected employees favor representation by an employees' association and which preserves the prohibition of strikes and lockouts and provides penalties therefor.

(c) In any city, town, or political subdivision in which the provisions of this Act have been in effect for a period of one year, if a petition signed by the lesser of five percent or 20,000 of the qualified voters voting in the last preceding general election in such city, town, or political subdivision shall be presented to the governing body thereof to call an election for the repeal of the adoption of the provisions of this Act, then and in that event, the governing body shall call an election of the qualified voters to determine if they desire to repeal such adoption. If at said election, a majority of the votes cast shall favor the repeal of the adoption of this Act, then the provisions hereof shall become null and void as to such city, town, or political subdivision. The question which shall be submitted to the vote of the qualified electors shall read as follows:

FOR or AGAINST the following:

Repeal of the adoption of the state law applicable to "firefighters and policemen" or "firefighters" or "policemen", (whichever shall be applicable), which establishes collective bargaining when a majority of the affected employees favor representation by an employees' association and which preserves the prohibition of strikes and lockouts and provides penalties therefor.

(d) When any election has been held in any city, town, or political subdivision at which election the adoption or rejection of the adoption of this Act has been submitted as aforesaid, a like petition for another such election shall not be filed for at least one year subsequent to the election so held.

#### Recognition of Bargaining Agent

Sec. 6. (a) An association selected by a majority of the paid firefighters of a fire department in any city, town, or other political subdivision, excluding the chief of the the department, shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the firefighters of that department, unless and until recognition of such association is withdrawn by a majority of those firefighters.

(b) An association selected by a majority of the sworn certified full-time paid policemen of a police



department in any city, town, or other political subdivision, excluding the chief of the the department, shall be recognized by the public employer as the sole and exclusive bargaining agent for all of the policemen of that department, unless and until recognition of such association is withdrawn by a majority of those policemen.

(c) In the event of a question as to whether or not an association is the majority representative of the employees in a department, pursuant to this section, such question concerning representation shall be resolved by a fair election conducted according to procedures agreeable to the parties. If the parties are unable to agree on such procedures, either party may request the American Arbitration Association to conduct the election and to certify the results thereof. Certification of the results of an election held pursuant to this section shall resolve the question concerning representation. The public employer shall be responsible for the expenses of the election, provided however that if two or more associations seek recognition as the bargaining agent then said associations shall share the costs of such election equally.

(d) Although the fire and police departments within the same city, town, or other political subdivision shall constitute separate collective bargaining units under this Act, nothing contained herein shall prevent associations representing employees in both of these departments within the same city, town, or other political subdivision from voluntarily joining together for purposes of collective bargaining with the public employer.

#### Obligation to Bargain in Good Faith

Sec. 7. (a) Whenever the firefighters and/or the policemen of a city, town, or other political subdivision of the state are represented by an association in accordance with Section 6 of this Act, the public employer and the association shall be obligated to bargain collectively.

(b) For purposes of this section, to bargain collectively is the performance of the mutual obligation of the public employer and the association to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(c) The association or the public employer may designate any person or persons to negotiate or bargain on its behalf; and the parties may utilize mediation, pursuant to Section 9 of this Act to assist them in arriving at an agreement.

(d) Whenever wages, rates of pay, or any other matter requiring appropriation of money by any governing body are included as a matter for collec-

tive bargaining pursuant to this Act, it shall be the obligation of the association to serve written notice of request for such collective bargaining on the public employer at least 120 days before the conclusion of the current fiscal operating budget.

(e) All deliberations pertaining to collective bargaining between an association and a public employer or any deliberation by a quorum of members of an association authorized to bargain collectively or by a member of a public employer authorized to bargain collectively shall be open to the public and in compliance with the Acts of the State of Texas.

#### Enforceability of Agreements

Sec. 8. Whenever a public employer and an association reach an agreement on compensation and/or other terms and conditions of employment for firefighters or policemen, pursuant to the provisions of this Act, the public employer shall be deemed to be in compliance with the requirements of Section 4 hereof as to such terms and conditions of employment for the duration of agreement. The agreement shall be enforceable and shall be binding upon the public employer, the association, and the firefighters or policemen covered therein.

#### Impasse Procedures and Voluntary Mediation

Sec. 9. (a) In any dispute between a public employer and its protective services employees represented by an association, pursuant to this Act, where an impasse is reached in the collective bargaining process, or where the appropriate lawmaking body fails to approve a contract reached through collective bargaining, and as a result the public employer and the employees are unable to effect a settlement, then either party to the dispute, after written notice to the other party containing specifications of the issue or issues in dispute, may request appointment of an arbitration board; provided, however, a party shall not request arbitration more than once during any fiscal year.

(b) For purposes of this section, an impasse in the collective bargaining process shall be deemed to occur when the parties do not reach a settlement of the issue or issues in dispute by way of a written agreement within 60 days after initiation of the collective bargaining proceedings. The period, however, may be extended by written agreement for additional periods of time, provided each such extension of time is for a definite period not to exceed 15 days.

(c) Prior to invoking arbitration, the parties shall make every reasonable effort to settle their dispute through good-faith collective bargaining; such efforts shall include mediation, provided a mediator can be appointed by agreement of the parties or by an appropriate agency of the state. If a mediator is appointed, his function shall be to assist all parties to reach a voluntary agreement. He may hold separate or joint conferences as he deems expedient to effect a voluntary, amicable, and expeditious

adjustment and settlement of the differences and issues between the parties. He shall make no public recommendation on any negotiation issue in connection with the performance of his service nor shall he make a public statement or report which evaluates the relative merits of the position of the parties. The mediator may, however, recommend or suggest to the parties any proposal or procedure which in his judgment might lead to settlement.

#### Arbitration

Sec. 10. (a) The request for arbitration referred to in Section 9 hereof shall be initiated within five days following the expiration of the 60-day pre-impassé period or within five days following an agreed extension of the period, as provided in Section 9. If both parties elect to settle their dispute by arbitration, such election shall be made within five days following the request for arbitration, and shall be in the form of a written agreement to arbitrate. The issues to be arbitrated shall be all matters which the parties have been unable to resolve through collective bargaining in accordance with the procedures of Sections 7 and 9 of this Act.

(b) Although the policy of this Act favors and encourages the parties to elect voluntary arbitration, nothing contained herein shall be deemed a requirement for compulsory arbitration.

#### Arbitration Board

Sec. 11. If the parties elect arbitration, within five days following the execution of the agreement to arbitrate they shall select and name one arbitrator and shall immediately notify each other in writing of the name and address of the person so selected. The two arbitrators so selected and named shall, within 10 days from the execution of the agreement to arbitrate, attempt to agree upon a third (neutral) arbitrator. If on the expiration of the said 10-day period the two arbitrators have been unable to agree upon the selection of the third arbitrator, either party may request the American Arbitration Association to utilize its procedures for selection of the neutral arbitrator, and said association shall be authorized to effect the appointment of the neutral arbitrator according to fair and regular procedures. Unless both parties consent, the neutral arbitrator so selected will not be the same person selected as a mediator pursuant to Section 9 hereof. The third (neutral) arbitrator, whether selected as a result of agreement between the two arbitrators previously selected or selected pursuant to American Arbitration Association procedures, shall serve as chairman of the arbitration board.

#### Hearings

Sec. 12. (a) The arbitration board shall, acting through its chairman, call a hearing to be held within 10 days after the date of the appointment of the chairman; and the board shall, acting through its chairman, give the other two arbitrators; the association, and the public employer at least seven

days' notice in writing of the time and the place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any and all documentary evidence and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records, and other evidence relative or pertinent to any issue presented to them for determination.

(b) The hearing conducted by the arbitration board shall be concluded within 20 days of the time of commencement; within 10 days after the conclusion of the hearing the arbitration board shall make written findings, in accordance with Section 12 of this Act, and render a written award on the issues presented. A copy of the findings and award shall be mailed or otherwise delivered to the association and to the public employer.

(c) Time periods specified in this section may be extended for reasonable periods by written agreement of the parties. Time periods may also be extended, for good cause, by the arbitration board, provided the cumulative period of the extensions granted by the board shall not exceed 20 days.

#### Scope of the Arbitrators' Authority, Effect of the Award, and Enforceability

Sec. 13. (a) It shall be the duty of the arbitration board to render an award in accordance with the requirements of Section 4 of this Act. Accordingly, hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training, and skills are factors, among others, which the arbitrators shall consider in settling disputes relating to wages, hours, and other terms and conditions of employment.

(b) When an arbitration award is rendered in accordance with these provisions, the public employer involved shall be deemed to be in compliance with the requirements of Section 4 hereof as to the terms and conditions provided by said award for the duration of the collective bargaining period for which the award is applicable.

(c) A majority decision of the arbitration board, if supported by competent, material, and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration board, in the state district court for the judicial district in which a majority of the affected employees reside.

(d) The commencement of a new fiscal year following the initiation of arbitration procedures under this Act, but prior to the rendition of the arbitration award or its enforcement, shall not render a dispute moot or otherwise impair the jurisdiction or authority of the arbitration board or its award. Increases in rate of compensation awarded by the arbitration board under this section may be effective only at

the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since initiation of arbitration procedures under this Act, the foregoing limitation shall be inapplicable and such awarded increases may be retroactive to the commencement of such fiscal year, any other statute or charter provision to the contrary notwithstanding.

(e) The parties may amend or modify an arbitration award by agreement in writing at any time.

#### Judicial Review of the Arbitration Award

Sec. 14. Awards of the arbitration board shall be reviewable by the state district court for the judicial district in which the municipality is located, but only on the following grounds: (1) that the arbitration panel was without or exceeded its jurisdiction; (2) that the order is unsupported by competent material, and substantial evidence on the whole record; or (3) that the order was procured by fraud, collusion, or other such unlawful means. The pendency of a proceeding for review shall not automatically stay the order of the arbitration board.

#### Compensation of Arbitrators and Expenses

Sec. 15. The compensation, if any, of the arbitrator appointed for the firefighters and/or policemen shall be paid by the association representing the firefighters and/or policemen. The compensation of the arbitrator appointed for the public employer shall be paid by the public employer. The compensation of the neutral arbitrator, as well as all stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings, shall be paid jointly in even proportions by the association representing the firefighters and/or the policemen and the public employer. If either party in the arbitration requires a transcript of the arbitration proceedings that party shall be required to bear the cost of the transcript.

#### Judicial Enforcement When the Public Employer Declines to Arbitrate

Sec. 16. Should a public employer choose not to elect arbitration when arbitration has been requested by an association pursuant to Sections 9, 10, and 11 hereof, on the application of the association, the state district court of the judicial district in which a majority of the affected employees reside shall have full power, authority, and jurisdiction to enforce the requirements of Section 4 hereof as to any unsettled issue relating to compensation and/or other terms and conditions of employment for firefighters and/or policemen. The court costs of any such action, including costs for a master if one is appointed, shall be taxed against the public employer. In the event the court finds the public employer in violation of Section 4 hereof, it shall: (1) order the public employer to make the affected firefighters and/or policemen whole as to their past losses; (2) declare the compensation and/or other terms and conditions of employment required by Section 4

hereof for the period as to which the parties had been bargaining, but not to exceed a period of one year, and (3) award the employees' association reasonable attorney's fees.

#### Strikes and Lockouts

Sec. 17. (a) Strikes, lockouts, work stoppages, and slowdowns of firefighters and/or policemen shall be unlawful, and they are hereby prohibited.

(b) In the case of a lockout of firefighters or policemen by a municipality, or its designated representative or agent, or a department or agency head, the Court shall (i) issue an order restraining and enjoining such violation, and/or (ii) impose on any individual violator a fine of not more than \$2,000.

(c) Upon the finding by the district court in which the municipality is located that a fire or police service association has called, ordered, aided, or abetted in a strike of firefighters or policemen, the Court shall impose upon such employee organization, for each day of such violation a fine fixed in an amount equal to  $\frac{1}{2}$  of the total amount of annual membership dues of such association or \$20,000, whichever is the lesser; provided, however, that where an amount equal to  $\frac{1}{2}$  of the total amount of annual membership dues of such employee organization is less than \$2,500, such fine shall be fixed in the amount of \$2,500. In addition, the Court shall order forfeiture of any membership dues checkoff for a specified period of time not to exceed 12 months. If, however, the association alleges, and the Court finds, that the appropriate municipality or its representatives engaged in such acts of extreme provocation as to detract substantially from the responsibility of the association for the strike, the Court may, in its discretion, reduce the amount of the fine imposed.

(d) If an association appeals a fine imposed pursuant to the preceding paragraph, such employee organization shall not be required to pay such fine until such appeal is finally determined.

(e) If a firefighter or policeman engages in a strike, or interferes with the municipality, or prevents the municipality from engaging in its duty, or commits, attempts or directs any employee of the municipality to stop or decline to work, or slowdown work, or causes any other person to fail or refuse to deliver to the municipality goods or services, or pickets for any of the above illegal acts, or conspires to perform any of the above acts, the wages or compensation in any form of such firefighter or policeman shall not increase in any manner or form, until after the expiration of one year from the date such firefighter or policeman resumes normal working duties, and said firefighter or policeman shall be on probation for two years with respect to civil service status, tenure of employment, or contract of employment, which that person may have theretofore been entitled.

**Judicial Enforcement Generally**

Sec. 18. The state district court of the judicial district in which the municipality is located, and any judge thereof, shall have full power, authority, and jurisdiction, on the application of either party aggrieved by an action or omission of the other party, when such action or omission pertains to the rights, duties, or obligations provided in this Act, to issue any and all proper restraining orders, temporary or permanent injunctions, and any other and further writ, order, or process, including but not limited to contempt orders, that are appropriate to carrying out and enforcing the provisions of this Act.

**Severability**

Sec. 19. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

**Act Takes Precedence**

Sec. 20. (a) This Act shall supersede all conflicting provisions in previous statutes concerning this subject matter; to the extent of any conflict the previous conflicting statutory provision is hereby repealed; and this Act shall preempt all contrary local ordinances, executive orders, legislation, rules, or regulations adopted by the state or by any of its political subdivisions or agents, such as, but not limited to, a personnel board, a civil service commission, or a home-rule municipality.

(b) Provisions of collective bargaining contracts made pursuant to this Act shall take precedence over state or local civil service provisions whenever the collective bargaining contract, by agreement of the parties, specifically so provides. Otherwise, the civil service provisions shall prevail. Civil service provisions, however, shall not be repealed or modified by arbitration or judicial action; although arbitrators and courts, where appropriate, may interpret and/or enforce civil service provisions.

(c) Nothing contained in this Act shall be construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' or policemen's salaries, pensions, or retirement plans, hours of work, conditions of work, or other emoluments; this Act shall be cumulative and in addition to the benefits provided by said statutes and ordinances.

(d) Nothing contained in this Act shall be deemed a limitation on the authority of a fire chief or police chief of a city under Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes), except to the extent the parties through collective bargaining shall agree to modify such authority.

[Acts 1973, 63rd Leg., p. 151, ch. 81, eff. Aug. 27, 1973. Amended by Acts 1981, 67th Leg., p. 2634, ch. 707, § 4(12), eff. Aug. 31, 1981.]

**Art. 5154d. Picketing**

Sec. 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activity that shall constitute mass picketing as herein defined.

"Mass picketing," as that term is used herein, shall mean any form of picketing in which:

1. There are more than two (2) pickets at any time within either fifty (50) feet of any entrance to the premises being picketed, or within fifty (50) feet of any other picket or pickets.

2. Pickets constitute or form any character of obstacle to the free ingress to an egress from any entrance to any premises being picketed or to any other premises, either by obstructing said free ingress or egress by their persons or by the placing of vehicles or other physical obstructions.

The term "picket," as used in this Act, shall include any person stationed by or acting for and in behalf of any organization for the purpose of inducing, or attempting to induce, anyone not to enter the premises in question or to observe the premises so as to ascertain who enters or patronizes the same, or who by any means follows employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

The term "picketing," as used in this Act, shall include the stationing or posting of one's person or of others for and in behalf of any organization to induce anyone not to enter the premises in question, or to observe the premises so as to ascertain who enters or patronizes the same, or to follow employees or patrons of the place being picketed either to or from said place so as either to observe them or attempt to persuade them to cease entering or patronizing the premises being picketed.

Sec. 2. It shall be unlawful for any person, singly or in concert with others, by use of insulting, threatening or obscene language, to interfere with, hinder, obstruct, or intimidate, or seek to interfere with, hinder, obstruct, or intimidate, another in the exercise of his lawful right to work, or to enter upon the performance of any lawful vocation, or from freely entering or leaving any premises.

Sec. 3. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or any form of picketing activities, where any part of such picketing is accompanied by slander, libel, or the public display or publication of oral or written misrepresentations.

Sec. 4. It shall be unlawful for any person, singly or in concert with others, to engage in picketing, the purpose of which, directly or indirectly, is to secure the disregard, breach or violation of a valid subsisting labor agreement arrived at between an employer and the representatives designated or selected by the employees for the purpose of collective

bargaining, or certified as the bargaining unit under the provisions of the National Labor Relations Act.<sup>1</sup>

Sec. 4a. It shall be unlawful for any person, singly or in concert with others, to declare, publicize or advertise the continued existence of picketing, actual or constructive, at any point or directed against any premises after a court of competent jurisdiction has enjoined and restrained the continuance of such picketing at said point or premises.

Sec. 5. Any person guilty of violating any of the Sections of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Twenty-five Dollars (\$25) nor more than Five Hundred Dollars (\$500), or be imprisoned in jail not to exceed ninety (90) days, or both. Each separate act of violation shall constitute a separate offense.

Sec. 6. If any clause, sentence, paragraph or part of this Act or the application thereof, to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act and the application thereof, it being the expressed intention of the Legislature to enact such Act without respect to such Section or part so held to be invalid.

[Acts 1947, 50th Leg., p. 239, ch. 138.]

129 U.S.C.A. § 151 et seq.

**Art. 5154e. Contracts for Withholding Union Dues From Employee's Wages Invalid Without Employee's Consent**

Any contract which permits, requires, prescribes or provides for the retention of any part of the compensation of an employee for the purpose of paying dues or assessments on his part to any labor union, without the written consent of the employee delivered to the employer authorizing the retention or the withholding of such sum shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of existing contracts and to any new agreement or contract executed after the effective date of this Act.

[Acts 1947, 50th Leg., p. 487, ch. 284, § 1.]

**Art. 5154f. Secondary Strikes, Picketing and Boycotts Prohibited**

Sec. 1. It shall be unlawful for any person or persons, or association of persons, or any labor union, incorporated or unincorporated, or the members or agents thereof, acting singly or in concert with others, to establish, call, participate in, aid or abet a secondary strike, or secondary picketing, or a secondary boycott, as those terms are defined herein.

Sec. 2. As used in this Act:

a. The term "labor union" means every association, group, union, national and local, branch or

subordinate organization of any union of working men, incorporated or unincorporated, organized and existing in part for the purpose of protecting themselves and improving their working conditions, wages, or employment relationships in any manner; and shall include the local, state, national and international affiliates of such organizations or unions.

b. "Secondary strike" shall mean a temporary stoppage of work by the concerted action of two or more employees of an employer where no labor dispute exists between the employer and such employees, and where such temporary stoppage results from a labor dispute to which such two or more employees are not parties.

c. The term "picket" shall include any person stationed by or acting in behalf of any organization for the purpose of inducing anyone not to enter the premises in question; or for apprising the public by signs, banners or other means, of the existence of a labor dispute at or near the premises in question; or for observing the premises so as to ascertain who enters or patronizes the same; or any person who by any means follows employees or patrons of the place being picketed either to or from such place so as to either observe them or to attempt to persuade them to cease entering or patronizing the premises being picketed.

d. The term "secondary picketing" shall mean the act of establishing a picket or pickets at or near the premises of any employer where no labor dispute, as that term is defined in this Act, exists between such employer and his employees.

e. The term "secondary boycott" shall include any combination, plan, agreement or compact entered into or any concerted action by two or more persons to cause injury or damage to any person, firm or corporation by whom they are not employees, by

(1) Withholding patronage, labor or other beneficial business intercourse from such person, firm or corporation; or (2) Picketing such person, firm or corporation; or (3) Refusing to handle, install, use or work on the equipment or supplies of such person, firm or corporation; or (4) Instigating or fomenting a strike against such person, firm or corporation; or (5) Interfering with or attempting to prevent the free flow of commerce; or (6) By any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not a party to such labor dispute.

f. The term "employer" means any person, firm or corporation who engages the services of an employee.

g. The term "employee" shall include any person, other than an independent contractor, working for another for hire in the State of Texas.

h. The term "labor dispute" is limited to and means any controversy between an employer and the majority of his employees concerning wages,

hours or conditions of employment; provided that if any of the employees are members of a labor union, a controversy between such employer and a majority of the employees belonging to such union, concerning wages, hours or conditions of employment, shall be deemed, as to the employee members only of such union, a labor dispute within the meaning of this Act.

Sec. 3. Any person who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding Five Hundred (\$500.00) Dollars, or by confinement in the county jail not to exceed six months, or by both such fine and imprisonment.

Sec. 4. Any person who violates any of the provisions of this Act shall be liable to the person suffering the same for all damages resulting therefrom, and the person damaged is hereby given right of action and access to the courts to redress such wrong or damage, including injunctive relief; and any association or labor union, local, state, national or international, which represents or purports to represent any such person violating any of the provisions of this Act shall be jointly and severally liable with any such person for all such damages resulting thereby.

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute a suit in the District Court to enjoin any person, association of persons, labor union, firm or corporation, or any officer, agent, servant or employee of such person, association of persons, labor union, firm or corporation, from violating any provision of this Act.

Sec. 6. In any suit or cause of action arising under this Act, venue shall lie: (1) in the county where such violation is alleged to have occurred; (2) in the county of the residence of the defendant; (3) in the county of the residence of either defendant if there be two or more defendants.

Sec. 7. All laws and parts of laws in conflict herewith are hereby repealed.

Sec. 8. If any section, sentence, phrase or part of this Act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining portions thereof; it being the intention of the Legislature to pass the constitutional sections, sentences, phrases and parts of this Act even though some one or more sections, sentences, phrases or parts shall be held to be invalid.

[Acts 1947, 50th Leg., p. 779, ch. 387.]

**Art. 5154g. Strikes and Picketing Regulated and Prohibited; Elections; Injunction**

**Public Policy Declared; Right to Work Not To Be Denied or Abridged for Union Membership or Non-membership**

Sec. 1. It is hereby declared to be the public policy of the State of Texas that the right of per-

sons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization and that in the exercise of such rights all persons shall be free from threats, force, intimidation or coercion.

**Striking or Picketing to Coerce Employer to Bargain with Employee Groups Representing Minority of Employees**

Sec. 2. It shall be a violation of the rights set forth in Section 1 for any person or persons, or associations of persons, or any labor union or labor organization, or the members or agents thereof, acting singly or in concert with others, to establish, call, maintain, participate in, aid or abet any strike or picketing, an object of which is to urge, compel, force or coerce any employer to recognize or bargain with, or any employee or group of employees to join or select as their representative, any labor union or labor organization which is not in fact the representative of a majority of the employees of an employer or, if the employer operates two or more separate and distinct places of business, is not in fact the representative of a majority of such employees at the place or places of business subjected to such strike or picketing.

**Election by Employees to Determine Bargaining Agency; Authority of Judge to Order; Procedure; Employees Eligible to Vote**

Sec. 3. In any proceeding or suit that may be instituted under the provisions of Section 2 hereof, the trial judge, prior to final hearing thereon, is hereby authorized to order an election, by the employees of the employer subjected to strike or picketing, for the purpose of determining whether a labor union or labor organization is in fact the representative of a majority of the employees of said employer, and any such election shall be held, within twenty (20) days after the institution of such proceeding or suit, by a disinterested master appointed by the trial judge, under rules and procedures prescribed by the trial judge, which shall provide that the employer and the said labor union or labor organization may each have one representative present at the voting place or places as an observer, such representatives to be approved by the trial judge, and the voting of such election shall be by secret ballot. The ballots used in all elections under this Act shall be on plain white paper through which printing or writing cannot be read, shall be uniform in size, and shall not be numbered nor have attached in any manner any form of stub nor shall the person using said ballot be required to sign the same. Employment lists will be checked and no employees shall be allowed to vote more than once. Each ballot shall be initialed by the judge before being presented to the voter. All employees of the employer at the time of the commencement of the strike or picketing complained of shall be eligible to vote in any such election except employees who have since quit or been discharged for cause, which shall not include the participation in the strike or

picketing complained of, and have not been rehired or reinstated prior to the date of the election; provided, however, that permanent replacements of employees on strike shall be eligible to vote in any such election.

#### Liability for Damages for Violations; Injunction

Sec. 4. Any person, organization or association who violates any of the provisions of this Act shall be liable to the person suffering therefrom for all resulting damages, and the person subjected to strike or picketing in violation of this Act is given right of action to redress such wrong or damage, including injunctive relief, and the District Courts of this State shall grant injunctive relief when a violation of this Act is made to appear.

#### Injunction Suits

Sec. 5. The State of Texas, through its Attorney General or any District or County Attorney, may institute suit in the District Court to enjoin any person or persons, association of persons, labor union or labor organization from violating any provision of this Act.

#### Application for Assignment of Judge to Hear Proceedings

Sec. 6. Any party to any suit or cause of action arising under this Act may make, within two (2) days after notice of the institution of said cause, application to the Presiding Judge of the Administrative Judicial District within which the suit is filed who shall immediately assign a District Judge from within said Administrative Judicial District who shall then hear all proceedings in the cause.

[Acts 1955, 54th Leg., p. 1029, ch. 387.]

### CHAPTER THREE. PAYMENT OF WAGES

#### Art.

- 5155. Pay Days.
- 5156. If Not Paid on Pay Day.
- 5157. Penalty for Failure to Pay.
- 5158. Attorneys Fees.
- 5159. Duty of Commissioner.
- 5159a. Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be Maintained.
- 5159b. Coupons, Chips, Scrip, Store Orders, or Other Evidence of Indebtedness to Laborers to be Redeemable on Demand in Money.
- 5159c. Action on Assignment of Wages; Written Notice of Assignment.
- 5159d. Minimum Wage Act of 1970.

#### Art. 5155. Pay Days

(a) A person who employs one or more employees in this state shall pay the employees who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938<sup>1</sup> at least once per month and shall pay all other employees at least semimonthly.

(b) In this article, "person" means an individual, corporation, organization, partnership, association, or any other legal entity.

[Acts 1925, S.B. 84. Amended by Acts 1933, 43rd Leg., p. 730, ch. 217; Acts 1957, 55th Leg., p. 1344, ch. 455, § 1; Acts 1983, 68th Leg., p. 1691, ch. 317, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> 29 U.S.C.A. § 201 et seq.

#### Art. 5156. If Not Paid on Pay Day

An employee who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand. Any employee leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand.

[Acts 1925, S.B. 84.]

#### Art. 5157. Penalty for Failure to Pay

Every person, partnership or corporation, willfully failing or refusing to pay the wages of any employee at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty dollars for each and every such failure or refusal. Suits for penalties accruing under this law shall be brought in any court having jurisdiction of the amount in the county in which the employé should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction, or by the County or District Attorney for the county or district in which suit is brought.

[Acts 1925, S.B. 84.]

#### Art. 5158. Attorneys Fees

The attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein ten dollars of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the county or district attorneys under the General Fee Act.

[Acts 1925, S.B. 84.]

#### Art. 5159. Duty of Commissioner

The Commissioner of Labor Statistics shall inquire diligently for violations of this chapter and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof.

[Acts 1925, S.B. 84.]

#### Art. 5159a. Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be Maintained

Sec. 1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem

wages for legal holiday and overtime work, shall be paid to all laborers, workmen and mechanics employed by or on behalf of the State of Texas, or by or on behalf of any county, city and county, city, town, district or other political subdivision of the State, engaged in the construction of public works, exclusive of maintenance work. Laborers, workmen, and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works with the State, or any officer or public body thereof, or in the execution of any contract or contracts for public works, with any county, city and county, city, town, district or other political subdivision of this State, or any officer or public body thereof, shall be deemed to be employed upon public works.

Sec. 2. The public body awarding any contract for public work on behalf of the State, or on behalf of any county, city and county, city, town, district or other political subdivision thereof, or otherwise undertaking any public work, shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workman needed to execute the contract, also the prevailing rate for legal holiday and overtime work, and it shall be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen and mechanics employed by them in the execution of the contract. The contractor shall forfeit as a penalty to the State, county, city and county, city, town, district or other political subdivision on whose behalf the contract is made or awarded, Ten Dollars (\$10.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by him, or by any subcontractor under him, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to this effect. It shall be the duty of such public body awarding the contract, and its agents and officers, to take cognizance of complaints of all violations of the provisions of this Act committed in the course of the execution of the contract, and, when making payments to the contractor of monies becoming due under said contract, to withhold and retain therefrom all sums and amounts which shall have been forfeited pursuant to the herein said stipulation and the terms of this Act; provided, however, that no sum shall be so withheld, retained or forfeited, except from the final payment, without a full investigation by the awarding body. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the said subcontractor's failure to comply with

the terms of this Act, and if payment has already been made to him the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

Sec. 3. The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with the said public work, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents.

Sec. 4. Any construction or repair work done under contract, and paid for in whole or in part out of public funds, other than work done directly by any public utility company pursuant to order of the Railroad Commission or other public authority, whether or not done under public supervision or direction, or paid for wholly or in part out of public funds, shall be held to be "public works" within the meaning of this Act. The term "locality in which the work is performed" shall be held to mean the county, city and county, city, town, district or other political subdivision of this state in which the building, highway, road, excavation, or other structure, project development or improvement is situated in all cases in which the contract is awarded by the state, or any public body thereof, and shall be held to mean the limits of the county, city and county, city, town, district or other political subdivisions on whose behalf the contract is awarded in all other cases. The term "general prevailing rate of per diem wages" shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision in the matter shall be final. It is mandatory that the public body state such prevailing wage as a sum certain, in dollars and cents. Nothing in this Act, however, shall be construed to prohibit the payment to any laborer, workman or mechanic employed on any public work as aforesaid of more than the said general prevailing rate of wages.

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. Amended by Acts 1969, 61st Leg., p. 1354, ch. 410, § 1, eff. June 2, 1969.]

**Art. 5159b. Coupons, Chips, Scrip, Store Orders, or Other Evidence of Indebtedness to Laborers to be Redeemable on Demand in Money**

**Redemption**

Sec. 1. All persons, firms, partnerships, or corporations using coupons, chips, scrip, punchouts, store orders, or other evidence of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe, or bona fide holder in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, partnership, or corporation using same as aforesaid, at a regular payday, such redemption to be at the face value of said scrip, chips, punchouts, coupons, store order, or other evidence of indebtedness; provided further, said face value shall be in cash the same as its purchasing power in goods, wares, and merchandise at the commissary store or other repository of such persons, firms, partnerships, or corporations aforesaid.

**Actions to Redeem; Penalty**

Sec. 2. Any employe, laborer, or bona fide holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, chips, coupon, punchout, store order, or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, partnership, or corporation to redeem the same in good and lawful money of the United States the owner of any such evidence of indebtedness may maintain in his, her, or their own name an action before any Court of competent jurisdiction against such person, firm, partnership, or corporation, using same as aforesaid for the recovery of the value of such coupon, scrip, chips, punchout, store order, or other evidence of indebtedness, as defined in Section 1 of this Act. If the plaintiff shall recover judgment in such case, it shall include a penalty of twenty-five (25) per cent of the amount due and a reasonable fee for the plaintiff's attorney for his services in the suit, all of which, as well as to costs, shall be taxed against the defendant.

[Acts 1937, 45th Leg., p. 705, ch. 354.]

**Art. 5159c. Action on Assignment of Wages; Written Notice of Assignment**

Sec. 1. No action shall be brought against any employer upon any assignment by an employee of such employer to any person of any wages or salaries unearned at the time of such assignment unless such employer shall have written notice thereof immediately after the execution of such assignment.

Sec. 2. The provisions of this Act shall not apply to such assignments heretofore executed if action is brought within ninety (90) days following the effective date of this Act, nor shall this Act apply to pending litigation.

Sec. 3. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only. Provided, however, that nothing in this Act shall in any manner affect or repeal any part of Acts, 1939, Forty-sixth Legislature, page 282, Chapter 13, as amended (codified as Vernon's Article 2883a).<sup>1</sup>

[Acts 1955, 54th Leg., p. 595, ch. 203.]

<sup>1</sup> Article 2883a was repealed by Acts 1969, 61st Leg., p. 3042, ch. 889, § 2, enacting the Texas Education Code. See, now, Education Code, § 2.07.

**Art. 5159d. Minimum Wage Act of 1970**

**Purpose**

Sec. 1. The Legislature hereby finds that a substantial number of the people of this state are working for wages that are not sufficient, in view of the cost of living, to enable them to maintain a standard of living necessary for the health, efficiency, and general well-being of themselves or their families. The Legislature also finds that this condition is a contributing cause of certain social disorders which have an adverse effect upon the economy of the state and the general welfare of its people, among which disorders are school dropouts, the disintegration of family units, and undue dependency upon public and private welfare programs. It is hereby declared to be the policy of this state to alleviate and as rapidly as practicable eliminate these conditions without undue curtailment of employment or earning power.

**Short Title**

Sec. 2. This act may be cited as the Texas Minimum Wage Act of 1970.

**Definitions**

Sec. 3. In this Act, unless the context requires a different definition:

(a) "Person" means any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Employee" includes any individual employed by an employer.

(d) "Employ" includes to suffer or permit to work.

(e) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips.

(f) "Agriculture" includes farming in all its branches and among other things includes (1) the cultivation and tillage of the soil; (2) dairying; (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities including commodities defined as agricultural commodities in Section 15(g) of the federal Agricultural Marketing Act, as amended<sup>1</sup>; (4) the raising of livestock, bees, fur-bearing animals, or poultry; and (5) any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Piece rate worker" means any person who is employed as a hand harvest laborer in agriculture and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been paid on a piece rate basis in the region of employment.

(h) "Contract laborer" means any person or group of persons whose services are furnished to an employer by someone other than the laborer himself to perform agricultural labor.

(i) "Man-day" means any day during which an employee performs any agricultural labor for not less than four hours.

(j) "Commissioner" means the Commissioner of Agriculture.

(k) "Pay period" means the period of time which an employee works for which salary or wages are regularly paid under his employment agreement.

(l) "Range production of livestock" includes any livestock operation, regardless of size or type of location, where the land produces forage or feedstuffs either revegetated naturally or artificially and shall be considered to include the breeding, feeding, watering, containing, maintaining, and caring for livestock, and all other activities necessary or useful to the raising of livestock; provided that "range production of livestock" does not include production of livestock in feed lots.

<sup>1</sup> 112 U.S.C.A. § 1141j(g).

#### Exemptions

Sec. 4. (a) The provisions of this Act shall not apply to any person covered by provisions of the federal Fair Labor Standards Act of 1938, as amended.<sup>1</sup>

(b) Employers are exempt from the provisions of this Act with respect to employment of the following:

(1) any person who is a member of a religious order while performing any service for or at the direction of the order and any duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while performing services as such for a church, synagogue, or religious organization;

(2) any person who is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than 20 years of age and who is a student regularly enrolled in a high school, college, university, or vocational training program. Provided, that this exemption shall not apply to persons employed in agriculture who are paid on a piece rate basis;

(3) any person employed in a bona fide executive, administrative, or professional capacity;

(4) any person employed as an outside salesman or collector and who is paid on a commission basis;

(5) any switchboard operator employed by an independently owned public telephone company which has not more than 750 stations;

(6) any person who performs domestic services in or about a private home, including any person performing the duties of baby sitting in or out of the home of the employer, and any person who lives in or about the private home and furnishes personal care for any resident of the home;

(7) any person who performs any services while imprisoned in the state penitentiary or confined in a local jail;

(8) any person engaged in the activities of an educational, charitable, religious, or nonprofit organization in which the employer-employee relationship does not in fact exist or in which the services are rendered to the organization gratuitously;

(9) any person employed by his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law, guardian, or person in loco parentis;

(10) any handicapped person who is not more than 21 years of age and who is a client of vocational rehabilitation and is participating in a cooperative school-work program;

(11) any employee employed by an establishment which is an amusement or recreational establishment, if it does not operate for more than seven months in any calendar year, or during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year;

(12) any person employed by organizations known as Boy Scouts of America, Girl Scouts of America,

or any local organization affiliated with these organizations;

(13) any person who is employed by any camp of a religious, educational, charitable, or nonprofit organization;

(14) any person employed in dairy farming.

(c) Except with respect to employment of persons in agriculture, employers who are not subject to liability for payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act, as amended,<sup>2</sup> are exempt from the provisions of this Act.

The Texas Employment Commission, during the months of January and June of each year, shall furnish to the Bureau of Labor Statistics a list of the names and addresses of all employers in this state who are then liable for the payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act as disclosed by the records of the Texas Employment Commission. Each list of employers shall be retained by the Bureau of Labor Statistics for a period of two years. Upon written request, the Commissioner of the Bureau of Labor Statistics shall furnish to any person applying therefor, a certificate stating whether or not the name and address of a specified employer appears on any list or lists of employers furnished by the Texas Employment Commission during the two years preceding the date of the request and, if so, the date of the list or lists upon which it appears. The certificates shall be admissible in evidence in any cause of action brought by an employee or employees under the provisions of Section 13 of this Act, and, in the absence of evidence to the contrary, it shall be presumed that the facts stated in such certificates are true and the certificate shall be conclusive as to the issue of whether or not the named employer is exempt from the provisions of this Act under Section 4(c). Except for the furnishing of certificates with respect to a specified employer as provided in this section, the lists of the names and addresses of employers provided to the Bureau of Labor Statistics by the Texas Employment Commission shall be confidential and shall not be removed from the office of the Bureau of Labor Statistics or released to any person nor shall the Commissioner of the Bureau of Labor Statistics permit any person to make a copy of any such list and remove it from his office. The Commissioner of the Bureau of Labor Statistics may require payment of a fee not to exceed \$5 for the issuance of a certificate as provided in this section and all fees collected for issuing certificates shall be deposited in the State Treasury to the credit of the General Revenue Fund.

<sup>1</sup> 29 U.S.C.A. § 201 et seq.

<sup>2</sup> Article 5221b-1 et seq.

(d) Notwithstanding the provisions of any other section of this Act the provisions of this Act shall

not apply to any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children:

(1) who are orphans or one of whose natural parents is deceased, or

(2) who are enrolled in such institution and reside in residential facilities of the institution while such children are in residence at such institution, if such employee and his spouse reside in such facilities and received, without cost, board and lodging from such institution.

#### Minimum Wage

Sec. 5. (a) Except as provided in Sections 6 and 7 of this Act, every employer shall pay to each of his employees (1) not less than \$1.25 an hour on and after February 1, 1970; and (2) not less than \$1.40 an hour on and after February 1, 1971.

(b) In determining the wage of a tipped employee, the amount paid the employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 percent of the applicable minimum wage rate.

(c) The cost to the employer of furnishing meals or lodging, or both, to an employee may be included in computing the wages paid to the employee if meals or lodging are customarily furnished by the employer to his employees, provided that the cost of the meals and of the lodging are separately stated and identified in the earnings statement furnished to the employee under the provisions of Section 11 of this Act.

(d) No employer who has an employee that lives on the premises of a business and is assigned certain working hours plus additional hours when the employee will be subject to call shall be required to pay the employee for more than the number of hours the employee actually worked or was on duty because of assigned working hours.

#### Minimum Wage for Agricultural Employees

Sec. 6. (a) Except for persons covered by Subsections (b) and (c) of this section and Section 7 of this Act, any person employed in agriculture on and after February 1, 1970, shall be entitled to receive for each hour that he works not less than 20 cents less than the federal hourly minimum wage for agriculture as provided in the Fair Labor Standards Act of 1938, as amended, but in no event shall the minimum hourly wage established in this Act for agriculture exceed the amount specified in Section 5 of this Act.

(b) On and after February 1, 1970, when a person employed in agriculture lives on the premises of the employer in quarters furnished by the employer, the employer, in addition to furnishing living quarters and other benefits, shall pay to the employee in cash a minimum weekly salary of not less than \$30 a week.

(c) When a person is employed as provided in Subsection (b) of this section and the employer, in addition to furnishing on-premises living quarters for the employee also furnishes on-premises living quarters for members of the employee's family, any member of the employee's family living in the quarters may be employed in agriculture by the employer without regard to the minimum wage and salary provisions of this Act.

(d) The provisions of this section take effect on February 1, 1970.

#### Piece Rate Workers

Sec. 7. (a) On and after February 1, 1971, any person employed in agriculture as a piece rate worker to harvest a commodity for which a piece rate has been established by the commissioner under the provisions of this section shall be entitled to receive not less than the piece rate established by the commissioner for harvesting the particular commodity involved.

(b) The commissioner shall determine a piece rate for each agricultural commodity commercially produced in substantial quantity in this state in the manner provided in this section. The piece rate in each case shall be equivalent to the minimum hourly wage for other agricultural workers, as provided for in Section 6(a) of this Act, in that when payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity he shall receive an amount equal to the minimum hourly wage for agricultural workers. It is the intent and understanding of the Legislature that if a piece rate worker does not harvest the number of units of a particular commodity that would provide the minimum wage as established for a worker of average ability and diligence, none the less that worker need be paid for only those number of units of production harvested by him.

(c) The commissioner shall accumulate data regarding the actual productivity of hand harvesters of agricultural commodities in this state in sufficient quantity to serve as a reasonable basis for establishing a piece rate for each commodity. On the basis of this data the average hourly productivity of hand harvest laborers with respect to each agricultural commodity commercially produced in substantial quantity in this state shall be calculated in terms of units of each commodity or units of the weight or measure customarily used with respect to each commodity. The minimum wage for agriculture provided for in Section 6(a) of this Act shall then be divided by the average hourly production of hand harvesters of each commodity and in each case the result, rounded to the nearest cent, shall be the piece rate established by the commissioner for that commodity.

(d) When, in the judgment of the commissioner, insufficient data is available for determining the average hourly productivity of hand harvesters of a particular commodity, or when in the judgment of

the commissioner a particular commodity is not commercially produced in this state in sufficient quantity or volume to warrant the determination of a piece rate, then no piece rate shall be established for the harvesting of the commodity and the provisions of Section 6(a) of this Act shall be applicable to employers employing hand harvest laborers to harvest any commodity for which piece rate has not been established. The decision of the commissioner not to establish a piece rate for a particular commodity at any given time shall not preclude the establishment of a piece rate for the commodity at any subsequent time when, in the judgment of the commissioner, sufficient data are available and the volume of production of the commodity warrants the establishment of a piece rate.

(e) The commissioner shall retain all data used in determining any piece rate for the period of time that the piece rate based on the data is in effect, and all the data shall be available for public inspection.

(f) Before issuing an order establishing any piece rate or rates the commissioner, or such person as may be designated by the commissioner for such purpose, shall hold a public hearing at which the proposed rate or rates and the data upon which the rate or rates are based shall be presented. A reasonable opportunity shall be afforded to agricultural employers and employees, or their representatives, to be heard and to protest the establishment of any proposed rate, and following the hearing the commissioner may modify any proposed rate before finally establishing it. The judgment of the commissioner in establishing any piece rate shall be final and binding upon all parties subject to this Act unless set aside by judgment of a court of competent jurisdiction. In the event a piece rate for any commodity is set aside by final judgment of a court of competent jurisdiction, the minimum hourly wage provided in Section 6(a) of this Act shall apply to harvesting the commodity until a valid piece rate is established.

(g) The provisions of this section relating to the duties and authority of the commissioner shall become effective on the effective date of this Act and the commissioner shall proceed forthwith to collect data for the establishment of piece rates to become applicable on February 1, 1971. Initial piece rates shall be established and promulgated by the commissioner not later than December 31, 1970, and thereafter all orders of the commissioner establishing or modifying piece rates shall be issued at least 30 days in advance of the date when the rates become effective.

(h) After the establishment of any piece rate or rates the order establishing same shall be kept on file in the office of the commissioner in Austin, Texas, and shall be available for public inspection. The commissioner shall make copies available to anyone on request and may charge a reasonable amount to cover the cost of making and distributing

the copies. A copy of each order establishing a piece rate or rates shall be furnished by the commissioner to the Bureau of Labor Statistics.

(i) At any time the data available to the commissioner indicates a substantial change in condition a new piece rate may be established for any commodity in the manner provided in this Act for the establishment of piece rates in the first instance. The commissioner shall review all piece rates at least once a year and determine whether any new rates are needed.

(j) The provisions of this section apply to contract labor as well as to any person directly employed by any owner, operator, or manager of a farm.

(k) In case of emergency caused by flood, hurricane, or other natural calamity or other disaster or by any occurrence that may result in the excessive loss of agricultural products, piece rates may be suspended by order of the commissioner for not more than 30 days in any area defined in the order of suspension.

(l) The commissioner may make rules and regulations necessary for the proper administration of this Act, including procedures for giving notice of and conducting hearings.

#### Agricultural Exemption

Sec. 8. The provisions of Sections 5, 6, and 7 shall not apply to any agricultural employer who during any calendar quarter during the preceding calendar year did not use more than 300 man-days of agricultural labor, nor to any agricultural employer with respect to employees engaged in the production of livestock and in activities in support thereof.

#### Special Provisions for Certain Workers

Sec. 9. (a) In order to prevent curtailment of employment opportunities, any person whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury or who is over the age of 65 years may be employed at wages lower than the minimum wage applicable under this Act, but at not less than 60 percent of the minimum wage. Provided, that the provisions of the section shall not be applicable to persons employed in agriculture as piece rate workers.

(b) An employer employing a person mentioned in Subsection (a) of this section at a wage lower than the applicable minimum wage under this Act shall not be relieved of liability under Section 13 of this Act, unless, prior to the employment of the person or within 90 days after the effective date of this Act, the employer secures a medical certificate signed by a physician licensed to practice medicine by the Texas State Board of Medical Examiners, certifying that because of age, physical or mental deficiency, or injury the productive or earning capacity of the person seeking employment is materially impaired.

(c) The medical certificate shall be retained by the employer during the period of employment of the person and for two years after the employment is terminated. The statement of earnings given to the person by the employer, as required by Section 11 of this Act shall include the words "medical certificate."

#### Sheltered Workshops

Sec. 10. Nonprofit charitable organizations which are engaged in evaluating, training, and employment services for handicapped clients and which comply with federal regulations covering these activities will be considered to have complied with this Act.

#### Mental Health and Retardation Department Patient-Student Workers

Sec. 10a. Patients and students who are clients of any facility of the Texas Department of Mental Health and Mental Retardation, whose productive capacity is impaired and who are assisting in the operation of the institutions as part of their therapy, or who are receiving occupational training in sheltered workshops or other programs operated by the Texas Department of Mental Health and Mental Retardation, where the institution or department derives an economic benefit from their services, may be compensated for such services at a percentage of the base wage, which percentage corresponds to the percentage of their productive capacity when compared with employees not so impaired performing the same or similar tasks. The Texas Department of Mental Health and Mental Retardation shall promulgate rules for determining said base wage and said percentage of productive capacity of such clients and such other rules as may be necessary to fulfill the provisions of this section of the Act. It is the specific intent of the legislature that this provision be enacted in order to prevent the curtailment of appropriate occupational training or therapeutic opportunities for such clients. To further such purpose, it is specifically provided that the services rendered and the payment provided for such services herein shall not be construed to create an employer-employee relationship between the Texas Department of Mental Health and Mental Retardation and the patients and students engaged in such training, therapeutic or rehabilitative services.

#### Employer's Statement

Sec. 11. (a) At the end of each pay period, the employer shall give each employee an earnings statement in writing covering that pay period. The earnings statement shall be signed by the employer or his agent and shall include:

- (1) the name of the employee;
- (2) the rate of pay;
- (3) the total amount of pay earned by the employee during the pay period;
- (4) any deductions made from the employee's pay;

(5) the amount of pay after all deductions are made; and

(6) the total number of hours worked by the employee if paid on an hourly basis, or the total amount of work done by the employee during the pay period in units of production if the employee is paid on the piece rate basis.

(b) If the employee is employed in agriculture under the provisions of Section 6(a), 6(b), or 6(c) of this Act, the employer's statement shall include a notation to that effect.

(c) The earnings statement may be in any form determined by the employer and it shall be sufficient if the information required by Subsection (a) of this section is stated on a check voucher or bank draft given to the employee for his wages.

#### Criminal Penalty

Sec. 12. Any employer, who, for the purpose of depriving an employee of any wages to which the employee is entitled, shall furnish to the employee a statement required under the provisions of Section 11 of this Act which the employer knows to be false, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not less than 5 nor more than 30 days or by both.

#### Civil Penalty

Sec. 13. (a) Any employer who violates the provisions of Section 5, 6, 7, or 9 of this Act is liable to the employee or employees affected in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

(b) An action to recover the liability may be maintained in any court of competent jurisdiction in the county where the cause of action accrued by one or more employees for himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any action brought under this section unless he gives his written consent and his written consent is filed in the court in which the action is brought.

(c) At the trial of any cause of action brought under this section, the plaintiff shall recover if the jury or the court finds from a preponderance of the evidence that

(1) the plaintiff or plaintiffs are or have been employed by the defendant at any time during the two years immediately preceding the institution of the suit;

(2) the defendant has failed, up until the time of the filing of the suit, to furnish plaintiff or plaintiffs a statement or statements of earnings as required by Section 11 of this Act;

(3) the original petition filed by or on behalf of plaintiff or plaintiffs is verified and contains a de-

mand for the defendant to furnish the statement or statements of wages paid;

(4) the defendant persisted in failing or refusing to furnish the statement or statements; and

(5) that the defendant had failed to pay to plaintiff or plaintiffs the minimum wage as set forth in Section 5, 6, 7 or 9 of this Act.

(d) In addition to any judgment awarded to the plaintiff or plaintiffs, the court shall allow a reasonable attorney's fee and costs of the action to be paid by the defendant.

(e) An action to recover upon any liability imposed by this section must be commenced within two years after the unpaid wages are due and payable.

#### Collective Bargaining Not Impaired

Sec. 14. Nothing in this Act shall be considered to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages in excess of the applicable minimum under the provisions of this Act.

#### Dissemination of Information

Sec. 15. The Bureau of Labor Statistics shall disseminate information to the public regarding the provisions of this Act to the end that both employers and employees in this state will be fully aware of their respective rights and responsibilities, the exemptions specified, and the penalties and liabilities which may be incurred for violations of the provisions of this Act.

#### Severability

Sec. 16. If any provision of this Act or the application thereof to any person or circumstance 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.

[Acts 1969, 61st Leg., p. 2348, ch. 796, eff. Sept. 1, 1969, § 6, eff. Feb. 1, 1970. Amended by Acts 1975, 64th Leg., p. 1237, ch. 462, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 269, ch. 130, § 1, eff. May 11, 1977.]

Section 2 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the provision or application, and to this end the provisions of this Act are declared to be severable."

#### CHAPTER FOUR. CONTRACTORS' PERFORMANCE AND PAYMENT BONDS

Art.

5160. Bond for Labor and Material; Performance Bond. 5160a to 5164. Repealed.

**Art. 5160. Bond for Labor and Material; Performance Bond****Contractors' Bonds for Performance and Payment for Labor and Material**

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," entering into a formal contract in excess of \$25,000 with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed, but no governmental authority may require a bond if the contract does not exceed the sum of \$25,000. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

**Rights of Person Furnishing Labor or Material; Notice Required**

B. Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in which a Payment Bond is furnished as required hereinabove, and who has not been paid in full therefor, shall have the right, if his claim remains unpaid after the expiration of sixty (60) days after the filing of the claim as herein

required, to sue the principal and surety or sureties on the Payment Bond jointly or severally for the amount due on the balance thereof unpaid at the time of filing the claim or of the institution of the suit plus reasonable attorneys' fees; provided:

(a) Notices Required for Unpaid Bills, other than notices solely for Retainages as hereinafter described.

Such claimant shall have given within ninety (90) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material was delivered, in whole or in part, for which such claim is made, written notices of the claim by certified or registered mail, addressed to the prime contractor at his last known business address, or at his residence, and to the surety or sureties. Such notices shall be accompanied by a sworn statement of account stating in substance that the amount claimed is just and correct and that all just and lawful offsets, payments, and credits known to the affiant have been allowed. Such statement of account shall include therein the amount of any retainage or retainages applicable to the account that have not become due by virtue of terms of the contract between the claimant and the prime contractor or between the claimant and a subcontractor. When the claim is based on a written agreement, the claimant shall have the option to enclose, with the sworn statement of account, as such notice a true copy of such agreement and advising completion or value of partial completion of same.

(1) When no written contract or written agreement exists between the claimant and the prime contractor or between the claimant and a subcontractor, except as provided in subparagraph B(a)(2) hereof, such notices shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, and the approximate dates of performance and delivery, and describing the labor or materials or both in such a manner so as to reasonably identify the said labor or materials or both and amount due therefor. The claimant shall generally itemize his claim and shall accompany same with true copies of documents, invoices or orders sufficient to reasonably identify the labor performed or material delivered for which claim is being made. Such documents and copies thereof shall have thereon a reasonable identification or description of the job and destination of delivery.

(2) When the claim is for multiple items of labor or material or both to be paid for on a lump sum basis such notice shall state the name of the party for whom the labor was done or performed or to whom the material was delivered, the amount of the contract and whether written or oral, the amount claimed and the approximate date or dates of performance or delivery or both and describing the labor or materials or both in such a manner as to reasonably identify the said labor or materials.

(3) When a claimant who is a subcontractor or materialman to the prime contractor or to a subcontractor has a written unit price agreement, completed or partially completed, such notices shall be sufficient if such claimant shall attach to his sworn statement of account a list of units and unit prices as fixed by said contract and a statement of such units completed and of such units partially completed.

(b) Additional Notices Required of Claimants Who Do Not Have a Direct Contractual Relationship With the Prime Contractor.

Excepting an individual mechanic or laborer who is a claimant for wages, no right of action shall be legally enforceable, nor shall any suit be maintained under any provision of this Act by a claimant not having a direct contractual relationship with any prime contractor for material furnished or labor performed under the provisions of this Act unless such claimant has complied with those of the following additional requirements which are applicable to the claim:

(1) If any agreements exist between the claimant and any subcontractors by which payments are not to be made in full therefor in the month next following each month in which the labor was performed or the materials were delivered or both, such claimant shall have given written notice by certified or registered mail addressed to the prime contractor at his last known business address, or at his residence, within thirty-six (36) days after the 10th day of the month next following the commencement of the delivery of materials or the performance of labor that there has been agreed upon between the claimant and such subcontractors such retention of funds. Such notice shall indicate generally the nature of such retainage.

(2) Such Claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b)(1) to the prime contractor within thirty-six (36) days after the 10th day of the month next following each month in which the labor was done or performed, in whole or in part, or material delivered, in whole or in part, that payment therefor has not been received. A copy of this statement sent to the subcontractor shall suffice as such notice.

(3) If the basis of the claim is an undelivered specially fabricated item or items as described in paragraph C(b)(2), such claimant shall have given written notice by certified or registered mail as described in the preceding subparagraph B(b)(1) to the prime contractor within forty-five (45) days after the receipt and acceptance of an order for hereinafter described specially fabricated material that such an order has been received and accepted.

(c) Notices of Unpaid Retainages Required. Retainage Defined.

Retainage as referred to in this Act is defined as any amount representing any part of the contract

payments which are not required to be paid to the claimant within the month next following the month in which the labor was done or material furnished or both.

When a contract between the prime contractor and such claimant, or between a subcontractor and such claimant provides for retainage, such claimant shall have given, on or before ninety (90) days after the final completion of the contract between the prime contractor and the awarding authority, written notices of the claim for such retainage by certified or registered mail to the prime contractor at his last known business address, or at his home address, and to the surety or sureties. Such notices shall consist of a statement showing the amount of the contract, the amount paid, if any, and the balance outstanding. No claim for such retainage contained in such notices shall be valid to an extent greater than the amount specified in the contract between the prime contractor or the subcontractor and the claimant to be retained, and in no event greater than ten per cent (10%) of such contract. However, such notices shall not be required if the amount claimed is part of a prior claim which has been made as heretofore described.

#### Claimant Defined

C. A claimant is defined as anyone having direct contractual relationship with the Prime Contractor, or with a subcontractor, to perform the work or a part of the work, or to furnish labor or materials or both as a part of the work as follows:

(a) Labor is to be construed to mean labor used in the direct prosecution of the work.

(b) Material is to be construed to mean any part or all of the following:

(1) Material incorporated in the work, or consumed in the direct prosecution of the work, or ordered and delivered for such incorporation or such consumption.

(2) Material specially fabricated on the order of the Prime Contractor or of a subcontractor for use as a component part of said public building, or other public work so as to be reasonably unsuitable for use elsewhere, even though such material has not been delivered or incorporated into the public building or public work, but in such event only to the extent of its reasonable costs, less its fair salvage value, and only to the extent that such specially fabricated material is in conformity and compliance with the plans, specifications, and contract documents for same.

(3) Rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment, used in the direct prosecution of the work at the project site, or reasonably required and delivered for such use.

(4) Power, water, fuel and lubricants, when such items have been consumed or ordered and delivered



for consumption, in the direct prosecution of the work.

(c) A subcontractor is any person or persons, firm or corporation who has furnished labor or materials or both as defined above to fulfill an obligation to the prime contractor or to a subcontractor to perform and install all or part of the work required by the prime contract.

A subcontractor shall have a claim, but such claim, including previous payments however, shall not exceed that proportion of the subcontract price which the work done bears to the total of the work covered by the subcontract.

(d) When a claim is assigned to a third party then and in that event such third party shall stand in the same position as a claimant, provided the notices required in this Act are given.

#### Penalty for Fraudulent Claims

D. Any person who shall willfully file a false and fraudulent claim hereunder shall be subject to the penalties for false swearing.

#### Termination of Contract

E. In the event any contractor, who shall have furnished the bonds provided in this Statute, shall abandon performance of his contract or the awarding authority shall lawfully terminate his right to proceed with performance thereof because of a default or defaults on his part, no further proceeds of the contract shall be payable to him unless and until all costs of completion of the work shall have been paid by him. Any balance remaining shall be payable to him or his surety as their interest may appear, as may be established by agreement or judgment of a court of competent jurisdiction.

#### Copy of Bonds to be Furnished

F. The contracting authority is authorized and directed to furnish to any person making application therefor who submits an affidavit that he has supplied labor, rented equipment, or materials for such work, or that he has entered into a contract for specially fabricated material, and payment therefor has not been made, or that he is being sued on any such bond, a certified copy of such payment bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting authority may fix to cover the actual cost of preparation thereof.

#### Venue

G. All suits instituted under the provisions of this Act shall be brought in a court of competent jurisdiction in the county in which the project or work, or any part thereof, is situated. No suit shall be instituted on the performance bond after the expiration of one (1) year after the date of final completion of such contract. No suit shall be insti-

tuted by a claimant on the payment bond after the expiration of one (1) year after the date suit may be brought thereon under the provisions of Section 1.B. hereof. The State of Texas shall not be liable for the payment of any cost or the expenses of any suit instituted by any party or parties on the payment bond.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 481, ch. 226, § 1; Acts 1959, 56th Leg., p. 155, ch. 93, § 1; Acts 1969, 61st Leg., p. 1390, ch. 422, § 1, eff. June 2, 1969; Acts 1975, 64th Leg., p. 2284, ch. 713, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2028, ch. 809, § 1, eff. Aug. 29, 1977.]

Art. 5160a. Repealed by Acts 1981, 67th Leg., p. 2621, ch. 704, § 1, eff. Aug. 31, 1981

Arts. 5161 to 5164. Repealed by Acts 1959, 56th Leg., p. 155, ch. 93, § 3

See, now, art. 5160.

Acts 1959, 56th Leg., ch. 93, p. 155, § 3, also provided that the rights, duties, and obligations of parties arising under or incidental to bonds executed prior to the effective date of this Act shall continue to be governed by the law heretofore applicable to bonds for public works.

### CHAPTER FIVE. HOURS OF LABOR

#### Art.

5165. Eight Hours a Day's Work.

5165.1. Eight Hours a Day's Work.

5165.2. Violating Eight Hour Law.

5165.3. Penalty.

5165a. Weekly Working Hours of State Office Employees.

5166, 5167. Repealed.

5167a. Hours of Peace Officers and Compensation for Extra Hours in Counties Over 500,000.

#### Art. 5165. Eight Hours a Day's 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 1925, S.B. 84.]

#### Art. 5165.1. Eight Hours a Day's 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 simi-

lar character, requiring the service of laborers, workmen or mechanics.

[1925 P.C.]

**Art. 5165.2. 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.

[1925 P.C. Amended by Acts 1935, 44th Leg., p. 644, ch. 259, § 1.]

**Art. 5165.3. Penalty**

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.

[1925 P.C.]

**Art. 5165a. Weekly Working Hours of State Office Employees**

**Sec. 1.** All state employees who are employed in the offices of state departments or institutions or agencies, and who are paid on a full-time salary basis, shall work forty (40) hours a week. Provided, however, that the administrative heads of agencies whose functions are such that certain services must be maintained on a twenty-four (24) hours per day basis are authorized to require that essential employees engaged in performing such services be on duty for a longer work-week in necessary or emergency situations. Provided further that the provisions of this Act do not apply to houseparents who are employed by and who live at the facilities of the Texas Youth Commission.

**Sec. 2.** Except as otherwise provided in Section 1 of this Act, and except on legal holidays authorized by law, the normal office hours of state departments, institutions and agencies shall be from 8:00 a.m. to 5:00 p.m., Mondays through Fridays, and these shall be the regular hours of work for all full-time employees; provided, however, that such normal working hours for employees of state departments and agencies in the Capitol Area in Austin may be staggered in such manner as biennial Appropriations Acts of the Legislature may stipulate or authorize in the interests of traffic regulation and public safety. Where an executive head deems it necessary or advisable, offices may also be kept open during other hours and on other days, and the time worked on such other days shall count toward the forty (40) hours per week which are required under Section 1 of this Act. It is further provided that exceptions to the minimum length of the work week may be made by the executive head of a state agency to take care of any emergency or public necessity that he may find to exist. None of the provisions of this Act shall apply to persons employed on an hourly basis.

[Acts 1953, 53rd Leg., p. 937, ch. 394. Amended by Acts 1963, 58th Leg., p. 184, ch. 104, § 1; Acts 1977, 65th Leg., p. 315, ch. 148, § 1, eff. May 13, 1977; Acts 1983, 68th Leg., p. 185, ch. 44, art. IV, § 3, eff. April 26, 1983.]

**Art. 5166. Repealed by Acts 1935, 44th Leg., p. 644, ch. 259, § 2**

**Art. 5167. Repealed by Acts 1983, 68th Leg., p. 105, ch. 19, § 1, eff. April 13, 1983**

**Art. 5167a. Hours of Peace Officers and Compensation for Extra Hours in Counties over 500,000**

Except in cases of emergency, as determined by the sheriff or constable of such county, it shall be unlawful for any county having more than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census to require any

Peace Officer to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said county other than Peace Officers. If a Peace Officer elects to work extra hours during any calendar week, the county shall compensate the officer for the overtime work on a basis consistent with the overtime provisions of the county personnel policy.

[Acts 1963, 58th Leg., p. 1190, ch. 474, § 1. Amended by Acts 1979, 66th Leg., p. 1115, ch. 531, § 1, eff. June 11, 1979.]

#### CHAPTER SIX. FEMALE EMPLOYEES

Art.

5168 to 5172. Repealed.

5172a. Hours of Work for Female Employees; Seats; Exceptions.

Arts. 5168 to 5172. Repealed by Acts 1943, 48th Leg., p. 94, ch. 68, § 14

Art. 5172a. Hours of Work for Female Employees; Seats; Exceptions

##### Factories, Mines, Mills, Etc.

Sec. 1. No female employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant, rooming house, theater, moving picture show, barber shop, beauty shop, roadside drink and/or food vending establishment, telegraph, telephone or other office, express or transportation company, State institution, or any other establishment, institution or other business enterprise, shall be required by her employer to work in excess of nine (9) hours in any twenty-four (24) hour day, nor more than fifty-four (54) hours in any one calendar week, without the consent of the affected employee.

##### Seats for Female Employees

Sec. 2. Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, beauty shop, telegraph or telephone company or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the preceding Section, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting a notice in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all such employees will be permitted to use such seats when not so engaged.

##### Exceptions

Sec. 3. The two (2) preceding Sections shall not apply to:

Female employees employed in any bona fide executive, administrative, professional, or outside sales capacity.

##### Extraordinary Emergencies; Overtime Pay

Sec. 4. In case of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked; but for such time not less than one and one-half times the regular rate at which such female is employed shall be paid to such female with her consent. Unless otherwise provided herein, any female employee who works more than forty (40) hours per week shall be entitled to receive from the employer pay at a rate not less than one and one-half times the regular rate for which such female is employed for all hours in excess of nine (9) hours per day, provided the employee actually works more than forty (40) hours per week.

##### Violations; Penalty

Sec. 5. Any employer, overseer, superintendent, foreman, or other agent of any such employer who shall permit any female to work in any place mentioned in Section 1 of this Act more than the number of hours provided therein in any one day of twenty-four (24) hours in any one calendar week, or who shall violate any of the other provisions or requirements of the Act in any respect, or who having furnished and provided suitable seats as provided for in Section 2, shall by intimidation, instruction, threats, or in any manner, prevent such female from sitting thereon, when not attending the duties of her position, shall be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars. Each day of such violation and each calendar week of such violation, and each employee permitted to work in said places more than the hours so specified in this Chapter, and every other violation of the provisions of this Chapter, shall be considered a separate offense.

##### Saving Clause

Sec. 6. That in the event any Section or part of a Section of the provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections, or parts of Sections of this Act; but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative Section, or part of Section or provision, had not been included. In the event any penalty, right or remedy created or given in any Section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or inoperative part; and if any exception to, or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand ef-

fective and valid as if the same had been enacted without such limitation or exceptions.

[Acts 1943, 48th Leg., p. 94, ch. 68. Amended by Acts 1947, 50th Leg., p. 792, ch. 393, § 1; Acts 1953, 53rd Leg., p. 832, ch. 335, § 1; Acts 1961, 57th Leg., p. 978, ch. 425, § 1; Acts 1971, 62nd Leg., p. 1671, ch. 473, § 1, eff. Aug. 30, 1971.]

As enacted in 1943, this article consisted of 15 sections. Section 14 thereof provided:

"Chapter 56 of the General Laws of 1915, Regular Session of the 34th Legislature, Chapters 86 and 87 of General Laws of 1929, 41st Legislature, First Called Session; Chapter 114 of General Laws of 1933, Regular Session of the 43rd Legislature, Articles 1569, 1570, 1571, 1572, of Title 13, Chapter 3 of the Penal Code of Texas, Articles 5168, 5169, 5170, 5171 and 5172 of Chapter 6, Title 83 of the Revised Civil Statutes of Texas, are hereby specifically repealed, and all other laws and parts of laws in conflict herewith are hereby repealed."

The 1971 Act revised this article, according to its Title, ". . . In order to eliminate any conflict between the provisions of this Act and the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 200(e) et seq., and to preserve the protections of this Act which the State has the legitimate interest in preserving, insofar as these protections are not inconsistent with the aforesaid federal statute . . ."

#### CHAPTER SEVEN. PROTECTION OF HEALTH AND SAFETY

##### Art.

- 5173. Temperature and Humidity.
- 5174. Odors and Dust.
- 5175. Cleaning and Wet Floors.
- 5176. Exits and Hand Rails.
- 5177. Toilets.
- 5178. Immoral Influences.
- 5178a. Immoral Influences; Penalty.
- 5179. Order to Correct Conditions.
- 5179a. Refusal to Correct Condition; Penalty.
- 5180. Suit to Set Order Aside.

##### Art. 5173. Temperature and Humidity

In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every employee, and which in the judgment of the Commissioner of Labor Statistics or of his deputies and inspectors is sufficient for their health and welfare.

[Acts 1925, S.B. 84.]

##### Art. 5174. Odors and Dust

All factories, mills, workshops, mercantile establishments, laundries and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises; all poisonous or noxious gases arising from any process, and all dust which is injurious to the health of persons employed, which is created in the process

of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices.

[Acts 1925, S.B. 84.]

##### Art. 5175. Cleaning and Wet Floors

All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employes, and gratings or dry standing room shall be provided wherever practicable, at points wherever employes are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors.

[Acts 1925, S.B. 84.]

##### Art. 5176. Exits and Hand Rails

All doors used by employes as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light. The provisions of this article shall not apply to any mercantile establishment having seven female employees or less.

[Acts 1925, S.B. 84.]

##### Art. 5177. Toilets

Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one to every twenty-five male persons, and one to every twenty female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and effectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted.

In case there be more than one shift of not more than eight hours each of employees, the average number of persons in the establishment at any one time should be used in determining the number of toilets required.

[Acts 1925, S.B. 84.]

**Art. 5178. Immoral Influences**

It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees.

[Acts 1925, S.B. 84.]

**Art. 5178a. Immoral Influences; Penalty**

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 employes, shall be fined<sup>1</sup> not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not exceeding sixty days, or both.

[1925 P.C.]

<sup>1</sup> So in enrolled bill. Probably should read "fined."

**Art. 5179. Order to Correct Conditions**

The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this chapter; and they are hereby empowered, upon finding any violation of this law by reason of unsanitary conditions such as endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this law, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this law, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this law, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this law in supposed compliance with any of the requirements of this law, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control or management of such place or establishment, for the correction of any condition caused or permitted in or about such place

or establishment in violation of any of the requirements of this law, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of this law, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided in the succeeding article. Upon the failure or refusal of the owner, manager, superintendent or other person in control or management of such place or establishment, to comply with such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for the succeeding article, the Commissioner of Labor Statistics or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this law or of such order, until such time as such condition, practice or method shall have been corrected.

[Acts 1925, S.B. 84.]

**Art. 5179a. Refusal to Correct Condition; Penalty**

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 employes therein or which do not comply with the law governing such establishments, shall be punished as provided in the preceding article.<sup>1</sup>

[1925 P.C.]

<sup>1</sup> Article 5178a.

**Art. 5180. Suit to Set Order Aside**

The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this law, and directly affected by any finding or order provided for in the preceding article, may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in the preceding article, file a petition setting forth the particular cause or causes of objection to such order and findings in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of

a different nature, except such causes as are provided for in the statutes relating to the Railroad Commission, and shall be tried and determined as other civil causes in said court. If the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court. Said appeal shall at once be returnable to the proper appellate court at either of its terms, and shall have precedence in such appellate court over other causes of a different nature, except as above provided for. In any trial under this article the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them.

[Acts 1925, S.B. 84.]

#### CHAPTER EIGHT. CHILD LABOR

Art.  
5181. Repealed.  
5181.1. Child Labor.  
5181a to 5181g. Repealed.  
5181h. Violations.

Art. 5181. Repealed by Acts 1963, 58th Leg., p. 676, ch. 249, § 4, eff. Aug. 23, 1963

Art. 5181.1. Child Labor

##### Purpose

Sec. 1. The purpose of this Act is to ensure that no child is employed in an occupation or in a manner that is detrimental to the child's safety, health, or well-being.

##### Definitions

Sec. 2. In this Act:

- (1) "Child" means an individual under 18 years of age.
- (2) "Commissioner" means the commissioner of labor and standards.
- (3) "Department" means the Texas Department of Labor and Standards.
- (4) "Person" means an individual, corporation, partnership, unincorporated association, or other legal entity.

##### Minimum Age

Sec. 3. Except as provided by this Act or by a rule of the commissioner of labor and standards, a person commits an offense if that person employs a child under 14 years of age.

##### Rulemaking

Sec. 4. The commissioner of labor and standards may adopt rules necessary to promote the purpose of this Act. Except as expressly authorized by this Act, a rule may not permit the employment of a child under 14 years of age.

##### Hours

Sec. 5. (a) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age to work more than 8 hours in one day or more than 48 hours in one week.

(b) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age who is enrolled in the fall, spring, or summer session of a public or private school to work between the hours of 10 p.m. and 5 a.m. on a day that is followed by a school day or between the hours of midnight and 5 a.m. on a day that is not followed by a school day.

(c) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age who is not enrolled in summer school to work between the hours of midnight and 5 a.m. on any day during the time school is recessed for the summer.

##### Hardship

Sec. 6. (a) The commissioner may adopt rules to determine whether a hardship exists in the case of an individual child.

(b) The department may determine whether a hardship exists in the case of an individual child under the rules adopted by the commissioner.

(c) If the department determines that a hardship exists in the case of an individual child, Sections 5(a), (b), and (c) of this Act do not apply in that case.

##### Inspectors

Sec. 7. (a) The commissioner or any deputy or inspector of the commissioner may, during working hours, inspect a place where there is good reason to believe a child is employed and collect information concerning the employment of a child who works at that place.

(b) A person commits an offense if the person knowingly or intentionally hinders an inspection or the collection of information authorized by this section.

##### Hazardous Occupations

Sec. 8. (a) If the commissioner finds that any occupation is particularly hazardous for the employment of a child and that occupation has been declared to be hazardous by an agency of the federal government, the commissioner by rule shall declare that occupation to be hazardous.

(b) The commissioner by rule may restrict the employment of children 14 years of age or older in hazardous occupations.

(c) A person commits an offense if that person employs a child in violation of a rule adopted under this section.

## Certificate of Age

Sec. 9. (a) A child who is at least 14 years of age may apply to the department for a certificate of age.

(b) When applying for a certificate of age, a child must present documentary proof of age that the department finds necessary.

(c) After the department has approved a child's documentary proof of age, the department shall issue to the child a certificate stating the date of birth of the child.

(d) It is a defense to prosecution of a person employing a child who does not meet the minimum age standard for a type of employment that the person in good faith relied on an apparently valid certificate of age presented by the child showing the child to be the required minimum age.

## Actors

Sec. 10. The commissioner by rule may authorize the employment of a child under 14 years of age as an actor or performer in a motion picture or in a theatrical, radio, or television production.

## Exemptions

Sec. 11. (a) This Act does not apply to employment of a child who is:

(1) employed in a nonhazardous occupation under the direct supervision of the child's parent or an adult having custody of the child in a business or enterprise owned or operated by the parent or custodian;

(2) engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the department;

(4) employed in agriculture during a period of time when the child is not legally required to be attending school;

(5) employed through a rehabilitation program supervised by a county judge; or

(6) engaged in casual nonhazardous employment with parental consent or the consent of an adult having custody of such child which will not endanger the safety, health, or well-being of such child.

(b) In this section, "employed in agriculture" means engaged in producing crops or livestock and includes:

(1) cultivating and tilling the soil;

(2) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity;

(3) dairying; and

(4) raising livestock, bees, fur-bearing animals, or poultry.

(c) The commissioner by rule may define nonhazardous casual employment which the commissioner determines is dangerous to the safety, health, or well-being of a child.

## Penalty

Sec. 12. An offense under this Act is a Class C misdemeanor.

[Acts 1981, 67th Leg., p. 2233, ch. 531, §§ 1 to 12, eff. Jan. 1, 1982.]

Section 14 of the 1981 Act provides:

"This Act takes effect January 1, 1982, and applies only to the employment of a child after that date. Employment of a child before the effective date of this Act is subject to Articles 5181a through 5181g, Revised Civil Statutes of Texas, 1925, as amended, and those laws are continued in effect for that purpose."

**Arts. 5181a to 5181g. Repealed by Acts 1981, 67th Leg., p. 2235, ch. 531, § 13, eff. Jan. 1, 1982**

Section 14 of the 1981 repealing act provides:

"This Act takes effect January 1, 1982, and applies only to the employment of a child after that date. Employment of a child before the effective date of this Act is subject to Articles 5181a through 5181g, Revised Civil Statutes of Texas, 1925, as amended, and those laws are continued in effect for that purpose."

See, now, art. 5181.1.

## Art. 5181h. Violations

Any parent or guardian of any child, or any person who has custody of any child, who knowingly permits such child to accept or continue employment in violation of Articles 1573, 1574, 1575, 1576, or 1577 (Vernon's Penal Code of Texas)<sup>1</sup> shall be fined or imprisoned, or both, in such manner as would be any person, or agent, or employee of any person, firm, or corporation who violates the provisions of any of such Articles.

[Acts 1963, 58th Leg., p. 676, ch. 249, § 3.]

<sup>1</sup> Repealed.

## CHAPTER NINE. PROTECTION OF WORKMEN ON BUILDINGS

## Art.

5182. Protection of Workmen on Buildings.

5182-1. Protection of Workmen on Buildings.

## Art. 5182. 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 repair, 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 foot 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 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 buildings 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.

[Acts 1925, S.B. 84.]

#### Art. 5182-1. 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 floor-

WTSC Civil Statutes—18

ing 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

[1925 P.C.]

#### CHAPTER NINE A. OCCUPATIONAL SAFETY

Art.

5182a. Occupational Safety.

#### Art. 5182a. Occupational Safety

##### Findings and Policies

Sec. 1. It is hereby declared the policy of the State of Texas to protect the health and welfare of its people, to reduce and, where reasonable, to eliminate the causes of loss of production, reduction of man-hours of work, temporary and permanent disability of working men and women, and increases in certain insurance rates by promoting the adoption, application, and implementation of safety measures in industry and enterprise, by protecting working men and women against unsafe and hazardous working conditions and by encouraging correction of any such working conditions that may exist in industry and enterprise.



## Definitions

Sec. 2. When used in this Act,

(1) "board" means the Occupational Safety Board created herein;

(2) "engineer" means the State Safety Engineer;

(3) "director" means the Director of the Division of Occupational Safety of the State Department of Health;

(4) "division" means the Division of Occupational Safety of the State Department of Health;

(5) "employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative or foreman or any other person having control or custody of any employment, place of employment or any employee; except carriers regulated by the Interstate Commerce Commission;

(6) "employee" means a person who works for an employer for wages, compensation, or other things of value, but shall not include any person employed in the domestic services of another in a private residence;

(7) "safe" and "safety" as applied to employment or places of employment, mean such freedom to employees from occupational injury as the nature of the employment reasonably permits;

(8) "safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing occupational injury; and

(9) "place of employment" means every place where, either temporarily or permanently, any trade, industry, or business is carried on, or where any person is directly or indirectly employed by another for direct or indirect gain or profit, but not including domestic service performed in a private residence.

## Duties of Employers

Sec. 3. (a) Every employer shall furnish and maintain employment and a place of employment which shall be reasonably safe and healthful for employees. Every employer shall install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, as are reasonably necessary to protect the life, health, and safety of such employees, and shall do every other thing reasonably necessary to render safe such employment and place of employment.

(b) Every employer shall comply with every rule lawfully made by the board in accordance with the provisions of this Act; provided, however, any employer or group of employers in the same or similar industry, trade, or business may from time to time be exempt by the board from application of any rule or rules in accordance with his safety classification as determined by the board pursuant to Section 7(a) of this Act.

(c) However, no rule or standard promulgated under this Act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.

## Occupational Safety Board

Sec. 4. (a) For the purpose of administering the provisions of this Act there is hereby created within the State Department of Health a Division of Occupational Safety to be administered by an Occupational Safety Board consisting of three members, one to be the Commissioner of Labor Statistics, one to be the Commissioner of Health, and the third to be the public member who shall also serve as chairman of the board. The public member shall be appointed by the governor to serve for a term of two years, or until his successor is appointed and qualified. Vacancies in the position of public member shall be filled for an unexpired term by appointment by the governor in the same manner as the original appointment. The terms on the board of the Commissioner of Labor Statistics and the Commissioner of Health shall be coextensive with their tenure as such Commissioners, respectively.

(b) The members of the board created hereby shall receive no salary but the public members shall be allowed the sum of \$25 for each day or part thereof actually spent in the discharge of his official duties, including time spent in traveling to and from the place of meeting or other authorized business of the board, and all members of the board shall be reimbursed for their reasonable and necessary traveling and other expenses while in performance of official duty, to be evidenced by vouchers approved by the engineer. The engineer is hereby authorized and directed to provide such board with such technical, clerical, and other assistance as shall be necessary to permit said board to perform its duties as provided in this Act.

(c) After due notice of meetings, a majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Occupational Safety Board, Department of Health, State of Texas." Any order, rule or proceeding of said board when duly attested by any member of the board shall be admissible as evidence of the act of said board in any court of this state.

(d) The Occupational Safety Board is subject to the Texas Sunset Act,<sup>1</sup> and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

<sup>1</sup> Article 5429k.

**Safety Engineer**

Sec. 5. (a) The board shall employ a State Safety Engineer who shall be the director of the Division of Occupational Safety, under the control of the board, and who shall have the following qualifications:

(1) he shall have a degree in engineering from an accredited college or university or shall be a registered professional engineer and, in addition, shall have been engaged in safety engineering with at least three years' experience; or

(2) he shall have a college degree other than that specified in (1) hereof and, in addition, shall have been engaged in safety engineering with at least five years' experience; or

(3) in lieu of a college degree as specified in (1) and (2) hereof, he shall have been engaged in safety engineering for a period of not less than 10 years.

(b) The engineer shall administer the operation of the division, under control of the board. He shall employ and supervise such personnel as may be necessary for the proper conduct of the operation of the division. He shall devote full time to his duties as engineer and may not accept additional employment from any other source.

(c) The engineer shall make annual reports to the board and to the Governor of the State of Texas at the close of each fiscal year. The reports shall contain the following information to be obtained from the records:

- (i) accident frequency rates,
- (ii) accident severity rates,
- (iii) time loss from industrial accidents,
- (iv) location and cause of industrial accidents, and
- (v) all of such information shall be reported by industrial and occupational classification.

(d) The engineer shall cause to be inspected any plant or facility when he has reason to believe that the plant or facility has not complied with the rules, standards and regulations established by the board. No plant or facility shall be subject to this paragraph when it is entitled to credit on its workmen's compensation insurance rate.

**Confidential Information**

Sec. 6. No information relating to secret processes or methods of manufacture or products shall be disclosed at any public hearing or otherwise, and all such information shall be kept strictly confidential by the engineer, the board, and all employees thereof. Wilful disclosure or conspiracy to disclose confidential information disclosed under this section constitutes an offense against the state. The engineer, the board, or any employee thereof, who, having knowledge of confidential information, wilfully discloses or conspires to disclose such information is guilty of a misdemeanor and upon conviction

shall be subject to a fine not to exceed \$1,000 and forfeiture of his appointment.

**Classification, Consultative and Educational Powers**

Sec. 7. (a) For purposes of establishing a safety classification for employers, the board is authorized, empowered, and directed to secure medical and compensation costs data regularly compiled by the State Board of Insurance in carrying out its rate-making duties and functions with respect to the employers' liability and workmen's compensation insurance law, to obtain from the Commissioner of Labor Statistics such statistical details as are collected by him and to collect and compile information relating to employers' accident frequency rate, existence and implementation of private safety programs, man-hour losses due to injuries, and other facts reflecting accident experience and, based upon all such factors to separate employers into such classifications as the board deems appropriate in order to carry out the purposes of this Act.

(b) The board is authorized and empowered, through any member, the engineer or any agent or employee in the division authorized by it for such purpose to endeavor to eliminate any impediment to occupational or industrial safety called to its attention, and to otherwise effectuate the purposes of this Act, by means of conference, conciliation, and persuasion; in carrying out such endeavor it is authorized and empowered to advise and consult with any employer directly involved and with representatives of employers and employees and public officials.

(c) The board is empowered to issue or cause to be issued such publications and such reports of study and research as in its judgment will tend to promote occupational and industrial safety and minimize or eliminate any impediment to safety called to its attention, and to otherwise effectuate the purposes and policies of this Act.

**Rule-making Power**

Sec. 8. (a) In addition to such other powers and duties as may be conferred upon it by law, the board shall have authority to make and to modify reasonable rules and standards not inconsistent with this Act for the prevention of accidents and occupational injuries in every employment or place of employment, and for the construction, repair, and maintenance of places of employment, as the board shall find, upon the basis of substantial evidence presented at a public hearing held in accordance with the provisions of Section 9, to be reasonably necessary for the protection of the safety of employees. In making such findings, the board may consider among other relevant factors:

(1) the cause of industrial accidents and occupational injuries and the extent to which they may result from the use of, or failure to use, particular equipment, devices, processes, plant layouts, and methods of inspection, maintenance and construc-

tion and from the existence of particular working conditions;

(2) the effectiveness of particular equipment, devices, processes, plant layouts, and methods of inspection, maintenance, and construction in preventing industrial and occupational injuries;

(3) the applicable code, if any, formulated and/or approved by the American Standards Association.

(b) It shall be the duty of the engineer to propose to the board such rules or amendments thereof as he may deem necessary to carry out the provisions of this Act. The board shall appoint a General Advisory Occupational Safety Committee which shall be composed of 10 representatives of employers, 10 representatives of employees, and the engineer who shall act as chairman.

(c) Such committee shall propose for appointment by the engineer, and for final approval of the board, the members of subcommittees, to whom shall be delegated the details of developing new rules and standards, deletions and amendments or changes in existing rules and standards. Such amendments, deletions, or changes shall be referred to the General Advisory Committee for final recommendation to the board for its consideration and official adoption or rejection. The members of such subcommittees shall be selected primarily for their general qualifications to cope expertly with the various subjects assigned to them, and, to the extent practicable, the same impartial balance of representation by employer members and employee members shall be preserved. Qualification to serve on subcommittees shall not require membership on the General Advisory Occupational Safety Committee, but members of such safety committee shall also be assigned to serve on such subcommittees by the engineer. The public member of the board shall be available to the subcommittees, upon their request or the request of the engineer, to aid the subcommittees in formulating their programs, recommended rules, and reports. The services of all such subcommittee members shall be voluntary and without compensation except as provided for the public member of the board under Section 4(b).

(d) Every rule or standard promulgated under this Act shall have the force and effect of law and shall be enforced by the engineer through the Division of Occupational Safety of the Department of Health; provided, however, that notwithstanding any other provision of this Act, evidence that an alleged act or omission is violative of any rule or standard promulgated under this Act shall not be admissible in any civil proceeding wherein such evidence is offered to prove or tend to prove that such act or omission is negligent or grossly negligent.

#### Public Hearing on Proposed Rules

Sec. 9. Before any rule or standard is adopted, amended, changed or repealed by the board, there shall be a public hearing thereon, notice of which shall be published at least once, not less than 10

days preceding such hearing, in such newspaper or newspapers of general circulation as the board may prescribe.

#### Hearings of Reasonableness of Safety Regulations

Sec. 10. (a) Any employer or other person directly affected by any safety rule, standard or regulation, or by an amendment, modification, change or repeal thereof, may petition the engineer for a hearing on the reasonableness of such resulting rule, standard, or regulation.

(b) Such petition for hearing shall be by verified petition filed with the engineer, setting out specifically the regulation, standard, amendment, modification, change or repeal, upon which a hearing is desired, and the reasons why the same is unreasonable. All hearings shall be open to the public.

(c) Upon receipt of such petition, the engineer, after consultation with the board, may determine the same by *confirming without hearing* his previous determination. If the material issues presented by the petition have not been previously considered at a hearing, the engineer shall refer the matter to the board for hearing for consideration of the issues involved and for its recommendations. Notice of the time and place of such hearing shall be given to the petitioner and to such other persons as the engineer may find directly interested in the issues involved in the petition.

(d) If the board shall find that the rule, standard, regulation, amendment, modification, change or repeal complained of is unreasonable, it shall, in accordance with the procedure set forth in the provisions of this Act, formulate and propose such substitute rule, standard or regulation as the board shall determine to be reasonable, and a hearing shall be directed and held upon such substitute rule as provided in Section 9 hereof.

#### Effective Date of Rules: Publication

Sec. 11. (a) Every rule, standard, or regulation and all amendments, substitutions, changes and repeals thereof shall, unless otherwise prescribed by the board, take effect 30 days after the first publication thereof and certified copies thereof shall be filed in the office of the Secretary of State.

(b) Every rule, standard, or regulation adopted and every amendment, change or repeal thereof shall be published in such manner as the board may determine and the board shall deliver a copy to every person making application therefor. The engineer shall include the text of each rule or amendment thereto in an appendix to the Biennial Report of the Department of Health next following the adoption or amendment of such rule.

#### Judicial Review

Sec. 12. (a) Any person aggrieved by a rule, standard, or regulation issued or changed by the board under this Act shall, within 10 days after issuance or change of said rule, commence an action

in a court of competent jurisdiction in Travis County, Texas, and not elsewhere, against said board as defendant, to set aside or suspend such rule or other action on the ground that the same is unlawful, arbitrary or unreasonable, or for any other proper ground. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal as in other civil cases to the court having jurisdiction of said causes; and said action so appealed shall have precedence in said appellate court of all causes of different character therein pending. Provided further that no preliminary injunction shall be issued without notice to the opposite party and a hearing had thereon.

#### Enforcement and Penalties

Sec. 13. (a) The engineer shall administer and enforce the provisions of this Act through his powers and authority under the provisions of this Act, and under such powers as may be lawfully delegated to him by the board under this Act.

(b) Any person, firm, or corporation violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and shall upon conviction be fined in a sum no less than \$50 nor more than \$500.

(c) Whenever called to his attention, and upon investigation, the engineer shall have reasonable cause to believe that an employer has violated or is violating the provisions of this Act, he shall at once give written notice of the facts thereof to the proper county or district attorney for institution of such proceedings as are appropriate under the provisions of this Act.

#### Accident Reports

Sec. 14. The board may require of employers and of any other source, including the Industrial Accident Board of the State of Texas, which it may determine to be appropriate such accident, personal injury, fatality, or such other accident statistical reports and information on forms prescribed by and covering periods of time designated by the board.

#### Cooperation with Other State Agencies

Sec. 15. (a) The board, the engineer, and the General Advisory Committee shall cooperate with, assist and secure the assistance of the State Board of Insurance, the Industrial Accident Board, and the Commissioner of Health and such other agencies as may be capable of providing assistance in the accumulation and compilation of industrial injury and occupational health statistics and other data and reports and these agencies shall cooperate with the board and the engineer in achieving the purposes of this section.

(b) Nothing in this Act shall be construed as conflicting in any manner with the provisions of Chapter 178, Acts of the 49th Legislature, 1945, and particularly with Section 19 thereof (Section 19,

Article 4477-1, Vernon's Texas Civil Statutes); nor with the provisions of Chapter 68, Acts of the 48th Legislature, 1943, as amended (Article 5172a, Vernon's Texas Civil Statutes); nor with Articles 5173 through 5180 and Article 5182, Revised Civil Statutes of Texas, 1925; nor with Chapter 436, Acts of the 45th Legislature, Regular Session 1937, as amended (Article 5221c, Vernon's Texas Civil Statutes); nor with Article 5144 through Article 5151, Revised Civil Statutes of Texas, 1925; but this Act shall be construed in harmony with same so that the provisions of this Act and of these previously existing articles shall complement each other insofar as specifically provided therein as if the same had been passed at one and the same time.

#### Labor Disputes

Sec. 16. It is not intended that this Act, or any part thereof or act thereunder shall be an issue or be involved in any labor dispute, or be used or asserted to advantage in collective bargaining by employers or employees, and their respective representatives. To implement this section it is therefore provided, anything to the contrary elsewhere herein notwithstanding, that no provision of this Act shall apply to a place of employment while the same is subjected to picketing, strike, slowdown or other work stoppage.

[Acts 1967, 60th Leg., p. 441, ch. 201, eff. May 11, 1967. Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.115, eff. Aug. 29, 1977.]

### CHAPTER TEN. INDUSTRIAL COMMISSION

- Art.  
 5183. Appointment of Members; Qualifications; Terms.  
 5183a. Application of Sunset Act.  
 5183b. Removal From Commission.  
 5184. Meetings and Expenses.  
 5185. Officers and Duties.  
 5185a. Conflict of Interest.  
 5185b. Audit.  
 5185c. Information for the Public.  
 5186. Rural Business Development Division.  
 5186a. Small and Minority Business Enterprise Division.  
 5187. Rural Economic Development Fund.  
 5188. Open Meetings.  
 5189. Report to Governor and Legislature.  
 5190. Notice of Standards of Conduct.  
 5190½. Additional Duties of Commission.  
 5190.1. Development of Employment, Industrial and Health Resources Act.  
 5190.2. Rural Industrial Development Act.  
 5190.3. Small Business Assistance Act of 1975.  
 5190.4. Expired.  
 5190.5. Loans for Manufacture of Fuel From Agricultural Products.  
 5190.6. Development Corporation Act of 1979.  
 5190.7. Texas Enterprise Zone Act.

#### Art. 5183. Appointment of Members; Qualifications; Terms

Sec. 1. The Texas Economic Development Commission is composed of fifteen members, each of whom shall be from a different geographical area of

the state, two of whom shall be employers of labor, two of whom shall be employees or laborers, three of whom shall be residents of rural areas, and eight of whom shall be from the general public. For the purposes of this article, a person resides in a rural area if he resides in a county which has no city located on or within its boundaries with a population of 50,000 or more, according to the last preceding federal census, and he does not reside in an incorporated city or town which has a population of more than 10,000, according to the last preceding federal census.

Sec. 2. The members of this commission shall be appointed by the Governor with the advice and consent of the Senate on or before February 15 of odd-numbered years. Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Sec. 3. The term of office of each member shall be six years. The terms of five members shall expire every two years. Vacancies occurring in the commission shall be filled by appointment of the Governor for the unexpired term.

[Acts 1925, S.B. 84. Amended by Acts 1959, 56th Leg., p. 702, ch. 322, § 1; Acts 1973, 63rd Leg., p. 1180, ch. 432, § 1, eff. June 14, 1973; Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1973 amendatory act provided:

"When this Act takes effect, the governor shall appoint three residents of rural areas to the Industrial Commission in order to bring its total membership to 12 members. Of the three persons appointed, one of them shall be appointed to a term which expires on February 15, 1975, one to a term which expires on February 15, 1977, and one to a term which expires on February 15, 1979. Terms of the incumbent members of the commission are not affected by this Act."

Section 8 of the 1983 amendatory act provides:

"(a) A member of the Texas Industrial Commission who was appointed before the effective date of this Act and was eligible to be a member of the commission under the law as it existed at the time of his appointment may serve the remainder of the term for which he was appointed. The grounds for removal from the commission in Article 5183b do not apply to a member of the commission who was appointed before the effective date of this Act.

"(b) In making the initial appointments of the three additional public members required by Article 5183, Revised Statutes, as amended by this Act, the governor shall designate one for a term expiring February 15, 1985, one for a term expiring February 15, 1987, and one for a term expiring February 15, 1989."

#### Art. 5183a. Application of Sunset Act

The Texas Economic Development Commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1995.

[Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.057, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

#### Art. 5183b. Removal From Commission

Sec. 1. It is a ground for removal from the commission that a member:

(1) does not have at the time of appointment the qualifications required by Section 1, Article 5183, Revised Statutes, for appointment to the commission;

(2) does not maintain during the service on the commission the qualifications required by Section 1, Article 5183, Revised Statutes, for appointment to the commission; or

(3) violates the prohibition established by Article 5185a, Revised Statutes.

Sec. 2. The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal for a member of the commission existed.

[Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

Section 8(a) of the 1983 Act provides:

"A member of the Texas Industrial Commission who was appointed before the effective date of this Act and was eligible to be a member of the commission under the law as it existed at the time of his appointment may serve the remainder of the term for which he was appointed. The grounds for removal from the commission in Article 5183b do not apply to a member of the commission who was appointed before the effective date of this Act."

#### Art. 5184. Meetings and Expenses

The commission shall meet quarterly or at the call of the chair. The members of the commission shall serve without pay or salary. The actual expenses incurred during hearings had by or before the commission and railway fare and hotel bills incurred by them shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law, until such time as the Legislature may make appropriations to cover such items.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

#### Art. 5185. Officers and Duties

##### Commission Chair; Appointment of Committees

Sec. 1. The governor shall designate one of the members as chair of the commission, to preside at all hearings had under the provisions of this law, with power and authority usually exercised by chairs in such capacity. The chair may appoint committees to perform various functions but these committees may not act for the commission in exercising any official duties or performing functions of the agency.

##### Executive Director

Sec. 2. The commission shall appoint an executive director who shall serve as executive head of the agency. He shall keep full and accurate minutes of all transactions and proceedings of the commission; he shall be the custodian of all files and

records of the commission; and he shall perform such other duties as may be required by the commission. The executive director shall be the administrator of the Texas Economic Development Commission's activities.

#### Intraagency Career Ladder Program

Sec. 3. The executive director of the commission or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

#### Annual Performance Evaluations

Sec. 4. The executive director of the commission or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

#### Equal Employment Opportunity Implementation Plan

Sec. 5. The executive director shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plans shall include:

- (1) a comprehensive analysis of all the agency's work force by race, sex, ethnic origin, class of position, and salary or wage;
- (2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;
- (3) steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's work force; and
- (4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement.

The plans shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. Progress reports shall be submitted to the governor's office within 30 days of November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements.

[Acts 1925, S.B. 84. Amended by Acts 1969, 61st Leg., p. 69, ch. 27, § 1, eff. March 26, 1969; Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

Section 9 of the 1983 amendatory act provides:

"The requirements under Sections 3 and 4, Article 5185, Revised Statutes, as added by this Act, that the executive director of the Texas Economic Development Commission develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1984. The requirement of Section 4, Article 5185, that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985."

#### Art. 5185a. Conflict of Interest

A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities performed for compensation in or on behalf of a profession related to the operation of the commission may not serve as a member of the commission or act as the general counsel to the commission.

[Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

#### Art. 5185b. Audit

The State Auditor shall audit the financial transactions of the commission during each fiscal year.

[Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

#### Art. 5185c. Information for the Public

The commission shall prepare information of consumer interest describing the functions of the commission and describing the commission's procedures by which consumer complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

[Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

#### Art. 5186. Rural Business Development Division

The Rural Business Development Division is established as a division of the Texas Industrial Commission. Under the direction of a Deputy Director for Rural Business Development who shall serve under the direction and at the pleasure of the Executive Director of the Texas Industrial Commission, the Division shall prepare and administer a state-wide rural business development program designed to revitalize the rural economies and create rural job opportunities through business and industrial development in rural areas of the state. The Division shall be responsible to the Texas Industrial Commission for the administration of the Texas Rural Industrial Development Act.<sup>1</sup> The Division is authorized to cooperate with the Federal Government and with any political or legal subdivision of the State in research designed to aid in rural business and industrial development and to accept any Federal funds available for this purpose. The Texas Rural Business Development Program shall include:

- (a) Plans, methods, and programs for encouraging the location of new industries and the expansion of existing industries in rural areas;
- (b) Plans, methods, and programs for advertising the specific advantages to industries to locate facilities in the rural areas of Texas;

(c) Administration of the Texas Rural Industrial Development Act.

[Acts 1925, S.B. 84. Amended by Acts 1973, 63rd Leg., p. 1181, ch. 432, § 3, eff. June 14, 1973.]

<sup>1</sup> Article 5190.2.

**Art. 5186a. Small and Minority Business Enterprise Division**

Sec. 1. The Small and Minority Business Enterprise Division is established as a division of the Texas Industrial Commission.

Sec. 2. The Small and Minority Business Enterprise Division shall be under the direction of a director for Small and Minority Business Enterprise who shall serve under the direction and at the pleasure of the executive director of the Texas Industrial Commission.

Sec. 3. The division shall be responsible to the Texas Industrial Commission for implementation of the Small Business Assistance Act of 1975 (Article 5190.3, Vernon's Texas Civil Statutes), and for the *encouragement, support, and development of small and minority business ownership throughout the state*. The division is authorized to cooperate with the federal government and with any political subdivisions of the state in research designed to encourage small and minority business ownership and to accept any federal funds available for this purpose.

[Acts 1977, 65th Leg., p. 2074, ch. 825, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 1851, ch. 434, § 1, eff. Aug. 31, 1981.]

**Art. 5187. Rural Economic Development Fund**

The Rural Economic Development Fund is established in the State Treasury to be financed by revenue allocated to it by law and other funds made available to it. The Rural Economic Development Fund may only be used by the Rural Development Division of the Texas Industrial Commission in carrying out the provisions of this Act. The Legislature may appropriate additional funds to the Division for the purposes of this Act.

[Acts 1925, S.B. 84. Amended by Acts 1973, 63rd Leg., p. 1181, ch. 432, § 4, eff. June 14, 1973.]

**Art. 5188. Open Meetings**

The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

**Art. 5189. Report to Governor and Legislature**

During January of each year, the commission shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds re-

ceived and disbursed by the commission during the preceding year.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

**Art. 5190. Notice of Standards of Conduct**

The commission shall provide to its members and employees as often as is necessary information regarding their qualifications and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

[Acts 1925, S.B. 84. Amended by Acts 1983, 68th Leg., p. 2678, ch. 464, § 1, eff. Sept. 1, 1983.]

**Art. 5190½. Additional Duties of Commission**

(a) Additional duties of the Commission in addition to its other duties, the State Industrial Commission is hereby authorized to plan, organize and operate a program for attracting and locating new industries in the State of Texas.

(b) The Industrial Commission may accept contributions from private sources, all of which may be deposited in a bank or banks to be used at the discretion of the Commission in compliance with the wishes of the donors. All moneys in the State Treasury at the time of enactment of this Act which have been donated to the Commission may be withdrawn from the State Treasury and deposited in like accord, so as to free these funds for use by the Commission in accord with the donor's desires, and such funds are hereby appropriated for such purposes.

[Acts 1957, 55th Leg., p. 782, ch. 319, § 1. Amended by Acts 1959, 56th Leg., p. 431, ch. 193, § 5.]

**Art. 5190.1. Development of Employment, Industrial and Health Resources Act**

**Citation of Act**

Sec. 1. This Act may be cited as the "Act for Development of Employment, Industrial and Health Resources of 1971."

**Definitions**

Sec. 2. When used in this Act, unless otherwise apparent from the context:

(a) "City" means any municipality of this State incorporated under the provisions of (i) any general or special law provided the municipality has the power to levy an ad valorem tax of not less than \$1.50 on each \$100 valuation of taxable property therein, or (ii) the home rule amendment to the Constitution.

(b) "Commission" means the Texas Industrial Commission.

(c) "Cost" as applied to a project or medical project means and embraces the cost of acquisition, including the cost of the acquisition of all land, rights-of-way, property rights, easements and interests acquired for such construction, the cost of all

machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any such project or medical project, administrative expense and such other expense as may be necessary or incident to the acquisition thereof, the financing of such acquisition and the placing of the same in operation.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas;

(e) "District" means a conservation and reclamation district established under authority of Article XVI, Section 59 or Article III, Section 52 of the Constitution of Texas.

(f) "Governing body" means the board, council, commission or legislative body of the issuer.

(g) "Issuer" means a city, county or district.

(h) "Lessee" means a corporation established under the Texas Non-Profit Corporation Act<sup>1</sup> that incurs a contractual obligation with an issuer as the lessor.

(i) "Medical project" means the land, buildings, equipment, facilities and improvements (one or more) found by the governing body to be required for public health, research, and medical facilities, any one or all, within this State, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the governing body.

(j) "Project" means the land, buildings, equipment, facilities and improvements (one or more) found by the governing body to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the governing body.

(k) "Ultimate lessee" means the person, firm, corporation, or company which leases a project or medical project from a lessee.

<sup>1</sup> Article 1396-1.01 et seq.

#### Bonds Payable From Revenue

Sec. 3. Bonds issued under the provisions of this Act shall not be deemed to constitute a debt of the State, the issuer or of any other political subdivision or agency of this State or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State, the issuer or any political subdivision or agency of the State shall be obligated to pay the same or the interest thereon except from revenues of the particular project or medical project

for which they are issued and that neither the faith and credit nor the taxing power of the State, the issuer or any political subdivision or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The issuer shall not be authorized to incur financial obligations which cannot be paid from revenues realized from the lease of a project or medical projects.

#### Powers of Issuers

Sec. 4. (a) In addition to any other powers which it may now have, each issuer shall have without any other authority the following powers:

(1) to acquire, whether by construction, purchase, devise, gift, or lease or any one or more of such methods, one or more medical projects or projects, located within this State, and within or partially within its limits, provided that as to a city, such project or medical project may be situated outside its territorial limits if within its extraterritorial jurisdiction as provided by the Municipal Annexation Act;<sup>1</sup>

(2) to lease to a lessee any or all of its projects and medical projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this Act;

(3) to issue revenue bonds for the purpose of defraying all or part of the cost of acquiring or improving any project or medical project, and to secure the payment of such bonds as provided in this Act;

(4) to sell and convey all or any part of any real or personal property acquired as provided by Subdivision (a) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the issuer. No issuer shall have the power to operate any project as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by the exercise of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold, leased or otherwise utilized under the provisions of this Act, provided the governing body determines (a) that such use will not interfere with the purpose for which such land was originally acquired or is no longer needed for such purpose, and (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended.

<sup>1</sup> Article 970a.

#### Lease Agreements; Commission Approval; Rules and Regulations; Filing; Appeal

Sec. 5. No issuer shall institute proceedings to authorize bonds under the provisions of Section 6(a) or 6(c) until the Commission has given tentative



approval to the suggested contents of the lease agreement, and if a lessee is permitted to sublease, the Commission has also tentatively approved the financial responsibility of the ultimate lessee.

The Commission shall prescribe rules and regulations setting forth minimum standards for lease agreements and guidelines with respect to financial responsibilities of the lessee and ultimate lessee, if any, but in no event shall the Commission give final approval to any agreement unless it affirmatively finds the lessee and ultimate lessee have the business experience, financial resources and responsibility to provide reasonable assurance that all bonds and interest thereon to be paid from or by reason of such agreement will be paid as the same become due.

Appeal from any adverse ruling or decision of the Commission under this section may be made by an issuer to the District Court of Travis County. The substantial evidence rule shall apply.

Rules, regulations and guidelines promulgated by the Commission, and amendments thereto, shall be effective only after they have been filed with the Secretary of State.

**Issuance of Bonds; Resolution of Intent, Publication; Protest; Election, Procedures**

Sec. 6. (a) Before issuing any bonds hereunder the governing body shall adopt a resolution declaring its intention to do so, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date upon which the governing body proposes to authorize the issuance of such bonds. Such resolution shall be published once a week for at least two consecutive weeks in at least one newspaper of general circulation in the territorial limits of the issuer. The first publication shall be made not less than 14 days prior to the tentative date fixed in such resolution for the authorization of the bonds. If 10 percent of the qualified electors of the issuer shall file a written protest against the issuance of such bonds on or before the tentative date specified for the authorization of such bonds, then an election on the question of the issuance of such bonds shall be called and held as herein provided.

If no such protest be filed, then such bonds may be issued without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, the governing body of such issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds.

(b) Where an election is called, notice thereof shall be published once a week for at least two consecutive weeks, in at least one newspaper of general circulation within the territorial limits of the issuer. The first publication of such notice shall be made not less than 14 days prior to the date fixed for such election. The election shall be conducted in

accordance with the general laws of Texas pertaining to general elections, except as modified by the provisions of this Act. The order calling the election shall specify the date, place or places of holding the election, the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the Election Code. Only qualified property taxpaying electors who own taxable property which has been duly rendered for taxation shall be permitted to vote at such election.

The form of ballot shall be in conformity with Sections 61, 62, and 63, Texas Election Code, as amended (Article 6.05, 6.06, 6.07, Vernon's Texas Election Code), so that ballots provide for voting for or against the proposition: "The issuance of revenue bonds for the (medical project or project)."

Within 10 days after such election is held, or as soon thereafter as possible, the governing body of the issuer shall convene and canvass the returns of the election, and in the event such election results are favorable (majority vote) to the proposition such governing body shall so find and declare and shall be (subject to the provisions of Section 5) authorized to proceed with the authorization of bonds.

(c) A series of bonds may be issued for each project or medical project and any of such projects may be combined in a single series of bonds if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each project or medical project shall be considered separately with respect to the provisions of Section 5, 6(a), 6(b) and 6(c).

(d) Bonds shall be issued and delivered within three years of the tentative approval of the Commission, or within three years of the final judgment in any litigation affecting the validity of the bonds or the provision made for their payment, whichever date is later. Nothing herein shall be construed as prohibiting the Commission from conditioning its approval of the project or medical project upon the completion of the financing thereof within a lesser period of time.

**Form of Bonds; Use of Proceeds; Interim Receipts or Temporary Bonds; Approval and Registration**

Sec. 7. Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of revenue bonds for the purpose of paying all or any part of the cost of acquiring, constructing, enlarging or improving a project, including a project in an enterprise zone designated under the Texas Enterprise Zone Act,<sup>1</sup> or medical project. However, revenue bonds for a medical project may not be authorized by a district. The principal of and the interest on such bonds shall be payable solely from the funds provided for such payment and from the revenues of the particular project for which such bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times, not exceeding forty years from their date, as may be

determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be fixed by the issuer prior to the issuance of the bonds.

The issuer shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the State. Provision may be made for execution of the bonds and coupons (if any) under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j-1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form, or both, as the issuer may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. If the duty of such reconversion is imposed on the Trustee in a Trust Agreement the substituted coupon bonds need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer may sell bonds so the net interest cost (as defined in Chapter 3, Acts of the 61st Legislature, 1969, as amended, Article 717k-2, Vernon's Texas Civil Statutes) shall not exceed 10 percent per annum and such bonds shall be sold to the highest bidder for cash (not exchanged for property).

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or medical project for which issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds of any issue shall exceed the cost of the project or medical project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the issuer may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable or definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued under the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Act.

Before any issuer may deliver any bonds authorized hereunder to the purchaser thereof, the proceedings authorizing their issuance and securing the bonds shall be presented to the Attorney General of Texas for examination and approval. If the bonds shall have been duly authorized in accordance with the Constitution and laws of the State and constitute valid and binding obligations of the Authority, according to their tenor and effect, and proper revenues have been pledged to their payment, he shall approve the bonds. Without such approval the bonds cannot be so issued and delivered to the purchaser. The bonds when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration the bonds shall be incontestable.

<sup>1</sup> Article 5190.7.

#### Refunding Bonds

Sec. 8. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project or medical project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the issuer, for the additional purpose of constructing improvements, extensions or enlargements to the project or medical project in connection with which the bonds to be refunded shall have been issued. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

#### Trust Agreement as Security

Sec. 9. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State. Any such trust agreement may pledge or assign lease revenues to be received from a lessee or ultimate lessee.

The trust agreement may evidence a pledge of the lease income to be received for the use of any project or medical projects for the payment of principal of and interest on such bonds as the same shall become due and payable and may provide to create and maintain reserves for such purposes. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and

proper and not in violation of law, including covenants setting forth the duties of the issuer, or lessee in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the project or medical project in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the issuer. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project or medical project.

**Default in Payment; Enforcement; Option to Purchase**

Sec. 10. Each bond issued under the provisions of this Act shall contain substantially the following language: "No pecuniary obligation is or may be imposed upon the issuer of this bond in the event there is a failure to pay all or part of the principal or interest thereon, except the issuer is obligated to apply rental income it receives from the project (or medical project) to such purposes."

Any agreement between a lessee and ultimate lessee relating to any project shall be for the benefit of the issuer as shall any agreement between the issuer and the lessee. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal or of the interest on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such resolution, mortgage or instrument.

Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

An issuer may grant a lessee or ultimate lessee an option to purchase all or any part of a project or medical project when all bonds of the issuer delivered to provide such facilities have been paid or provision has been made for their final payment, provided during the time the bonds or interest thereon remains unpaid there is no failure to pay the lease rentals at the time and in the manner as the same become due, provided a payment shall be deemed paid when and as due if no event of default is declared and the payment is made within 15 calendar days of the date it was scheduled to become due. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

**Removal of Business from Existing Facilities**

Sec. 11. No issuer may acquire or construct any project or medical project for any individual, firm, partnership, or corporation, or make or permit any lease to any individual, firm, partnership, or corporation where the effect of such lease shall be to remove lessee's business from existing facilities within the State of Texas.

**Authority of Governing Body; Conditions of Approval**

Sec. 12. Except as limited by the provisions of this law or as limited by the rules, regulations and guidelines of the Commission, each governing body shall have full and complete authority with respect to bonds, lease agreements and the provisions thereof.

No bonds shall be approved by the Attorney General until the Commission has given final approval to the lease agreement, nor shall such bonds be approved if any authorizing proceedings or provisions for security and payment of lease payments are not in conformity with this law.

**Advertising for Contracts; Performance Bonds; Leasing Restriction**

Sec. 13. All contracts for construction or purchases involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts let by the issuer.

Bonds shall not be issued to acquire existing facilities for the purpose of again leasing the same to the same industrial concern or one controlled by such industrial concern and it shall be the duty of the Commission to investigate such matters before giving its tentative approval of any project or medical project.

**Bonds and Profits Not Taxable; Bonds and Coupons Deemed Security**

Sec. 14. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds issued by it and their transfer and the issuance therefrom, including any profits made in the sale thereof, shall at all times be free from taxation by the State or any municipality or political subdivision thereof.

Bonds issued under the provisions of this Act, and coupons (if any) representing interest thereon, shall when delivered be deemed and construed (i) to be a "Security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),<sup>1</sup> and shall be exempt securities under the Texas Securities Act. A lease agreement under this Act shall not be a security within the meaning of the Texas Securities Act.

<sup>1</sup> Business and Commerce Code, § 8.101 et seq.

**Legal and Authorized Investments; Security for Deposit of Public Funds**

Sec. 15. Bonds approved by the Attorney General shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for any sinking funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas, and shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmailed coupons, if any, appurtenant thereto.

**Relocation of Highway, etc. at Sole Expense of Political Subdivision**

Sec. 16. In the event any city, county, navigation district or other political subdivision, in the exercise of the power of relocation, or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the city, county, navigation district or other political subdivision. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

**Qualification of Electors**

Sec. 17. The Legislature hereby recognizes there is some confusion as to the proper qualification of electors in the light of recent court decisions. It is the intention of this Act to provide a permitted procedure for an election to authorize the issuance of revenue bonds, but in each instance the authority shall be predicated upon the expression of the will of the majority of those who cast valid ballots at an election called for the purpose. Should the governing body calling an election determine that all qualified electors, including those who own taxable property which has been duly rendered for taxation, should be permitted to vote at an election (by reason of the aforesaid court decisions), nothing herein shall be construed as a limitation upon the power to call and hold an election, provided provision is made for the voting, tabulating, and counting of the ballots of the resident qualified property taxpaying electors who own taxable property which has been duly rendered for taxation separately from those who are qualified electors, and in any election so called a majority vote of the resident qualified property taxpaying voters who own taxable property which has been duly rendered for taxation and a majority vote of the qualified electors, including those who own taxable property which has been duly rendered for taxation, shall be required to sustain the proposition.

**Purpose and Effectiveness of Act**

Sec. 18. It is hereby found, determined and declared:

(a) that the present and prospective health, safety, right to gainful employment and general welfare of the people of this State requires as a public purpose the promotion and development of new and expanded industrial manufacturing, medical and research enterprises;

(b) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and experience difficulty in undertaking additional such projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans;

(c) that communities in this State are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives, therefore, the issuance of revenue bonds by political subdivisions of the State as hereinafter provided for the promotion of industrial development, employment, public health and research is hereby declared to be in the public interest and a public purpose.

This law shall be effective without the necessity of a constitutional amendment to the full extent permitted by present provisions of the Texas Constitution. With respect to the powers granted herein, any provision of this law which may be effective only as the result of a change in the Texas Constitution shall become effective upon the adoption of the amendment proposed by Senate Joint Resolution No. 33 in the 62nd Legislature, the Legislature recognizing such constitutional amendment may be required to enable districts to proceed under this law. In no event shall any appropriation be made by the Legislature to pay all or any part of the obligation of any issuer under the provisions of this Act, and any expenses incurred by the Commission shall be paid out of funds appropriated to that agency.

#### Construction of Act; Severability

Sec. 19. Nothing in this Act shall be construed to violate any provision of the federal or State constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the Legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1971, 62nd Leg., p. 2555, ch. 840, eff. June 9, 1971. Amended by Acts 1983, 68th Leg., p. 4794, ch. 841, § 8, eff. Sept. 1, 1983.]

#### Art. 5190.2. Rural Industrial Development Act

##### Citation of Act

Sec. 1. This Act may be cited as the "Texas Rural Industrial Development Act."

##### Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

(a) "Commission" means the Texas Industrial Commission.

(b) "Cost" as applied to a project means and embraces the cost of acquisition, including the rights, easements and interests acquired for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of constructing any project, administrative expense and such other expense as may be necessary or incident to the acquisition thereof,

the financing of such acquisition and the placing of the same in operation.

(c) "Federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(d) "Industrial Development Agency" means a corporation established under the Texas Non-Profit Corporation Act<sup>1</sup> to promote and encourage industrial development within the State or a designated area of the State whose articles of incorporation provide that upon dissolution or winding up of its corporate affairs any property remaining after payment of debts of the corporation shall be conveyed, transferred, or vest in the Rural Industrial Development Fund of the State, a school district, a city, or county or be conveyed to a nonprofit corporation established for similar purposes.

(e) "Project" means the land, buildings, equipment, facilities and improvements (one or more) found by the Commission to be required or suitable for the promotion of industrial development and for use by manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the Commission. A project must be located in a rural area, and more than one project may be located in the same rural area.

(f) "Responsible buyer" shall mean any person, partnership, or corporation found by the Commission to be financially responsible to assume the obligation prescribed by an industrial development agency in connection with the acquisition and operation of a project.

(g) "Responsible tenant" shall mean any person, partnership, or corporation found by the Commission to be financially responsible to assume all rental and all other obligations prescribed by an industrial development agency in connection with the leasing and operation of a project.

(h) "Rural area" means an area which is predominantly rural in character, being one which the Commission after public hearing defines and declares to be a rural area in that it (1) sustained out-migration of population between the then last two federal censuses, or (2) an area that sustained a gain in population less than the average for standard State statistical metropolitan areas between the then last two federal censuses, or (3) an area in which manufacturing employment is less than the average for standard State statistical metropolitan areas according to the then preceding federal census, or (4) an incorporated city with a population of less than 20,000 according to the then preceding federal census; provided, however, no area of the State shall be included in more than one rural area, nor shall any one rural area contain territory in more than four counties. Rural areas may be defined and

redefined by the Commission from time to time, after public hearing.

<sup>1</sup> Article 1396-1.01 et seq.

**Loan to Agency from Commission; Amount,  
Interest, Etc.**

Sec. 3. When it has been determined by the Commission (upon application of an industrial development agency and hearing thereon) that the establishment of a particular project of such industrial development agency has accomplished or will accomplish the public purposes of this Act, the Commission may contract to loan such industrial development agency an amount not in excess of a percentage of the cost of such project, as established or to be established as hereinafter set forth, subject, however, to the following conditions:

The Commission may contract to loan the industrial development agency an amount not in excess of 40% of the cost of such project if it has determined that the industrial development agency holds funds or property in an amount or value equal to not less than 10% of the cost of the project, which funds or property are then available for and are pledged to be applied to the establishment of such project.

Prior to the making of any loan the Commission shall have determined that the industrial development agency has obtained from other independent and responsible financial sources a firm commitment for all other funds, over and above the loan of the Commission and such funds or property as the industrial development agency may hold necessary for payment of all of the cost of establishing the project, and that the sum of all these funds, together with the machinery and equipment to be provided by the responsible tenant or responsible buyer, is adequate for the completion and operation of the industrial development project.

Any such loan of the Commission shall be for such period of time and shall bear interest at such rate as shall be determined by the Commission and shall be secured by bond or note of the industrial development agency and by mortgages on the project for which such loan was made, such mortgage to be second and subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds from the aforesaid independent and responsible sources and used in the financing of the project.

In those instances where a federal agency participates in the financing of a project through a loan or a grant such participation shall be considered an independent and responsible source to the extent of the obligation of the federal agency to so participate under a loan or grant or similar agreement, and in such instance the Commission may accept a bond or note of the industrial agency and a mortgage on the project inferior to all first and second lien obligations, provided (a) the participation of the federal agency exceeds the loan by the Commission and (b)

the federal agency's participation is conditioned upon its participation being secured by a lien superior to that of the Commission.

Money loaned by the Commission to the industrial development agencies shall be withdrawn from the Industrial Development Fund and paid over to the industrial development agency in such manner as shall be provided and prescribed by the rules and regulations of the Commission.

All payments of interest on said loans and installments of principal shall be deposited by the Commission as received in the Industrial Development Fund.

**Loan Application; Hearings and Examinations**

Sec. 4. No loan shall be made by the Commission except upon application by an industrial development agency, (in such form as may be required by the Commission) which shall include the following:

(a) A general description of the industrial development project and a general description of the industrial or manufacturing enterprise for which the project has been or is to be established.

(b) A legal description of all real estate necessary for the project.

(c) Such plans and other documents as may be required to show type, structure and general character of the project.

(d) A general description of the type, classes and number of employees employed or to be employed in the operation of the industrial development project.

(e) Cost or estimates of cost of establishing the project.

(f) A general description and statement of value of any property, real or personal, of the industrial development agency applied or to be applied to the establishment of the project;

(g) A statement of cash funds previously applied, or then held by the industrial development agency which are available for and are to be applied to the establishment of the project;

(h) Evidence of the arrangement made by the industrial development agency for the financing of all cost of the project over and above the participation of the industrial development agency;

(i) Information on the responsible tenant to which the industrial development agency has leased or will lease the project or of the responsible buyer to which the industrial development agency has sold or will sell the project.

(j) A copy of the lease or sales agreement entered into or to be entered into by and between the industrial development agency and its responsible tenant or responsible buyer.

The Commission shall hold such hearings and examinations as to each loan application received as shall be necessary to determine whether the public

purposes of this Act will be accomplished by the granting of a loan.

**Powers of Commission; Staff Services**

Sec. 5. In addition to other powers conferred upon the Commission by the provisions hereof the Commission through its staff shall:

(a) cooperate with industrial development agencies in their efforts to promote the expansion of industrial, manufacturing and development activity in rural areas;

(b) determine, upon proper application of industrial development agencies, whether the declared public purpose of this Act has been accomplished or will be accomplished by the establishment by such industrial development agencies of an industrial development project in rural areas;

(c) conduct examinations and investigations and hear testimony and take proof, under oath or affirmation, at public hearings, on any matter material for its information and necessary to the determination and designation of rural areas and the establishment of industrial development projects therein;

(d) make, upon proper application of industrial development agencies, loans to such industrial development agencies of money held in the Industrial Development Fund for projects in rural areas and to provide for the repayment and redeposit of such allocation and loans in its manner hereinafter provided;

(e) accept grants from and enter into contracts with any federal agency in the accomplishment of the purposes of this Act;

(f) take title by foreclosure to any project where such acquisition is necessary to protect any loan previously made therefor by the Commission and to pay all costs arising out of such foreclosure and acquisition from moneys held in the Industrial Development Fund and sell, transfer and convey any such project to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the Commission may, in order to minimize financial losses and sustain employment, lease such projects to a responsible tenant or tenants;

(g) purchase first mortgages and make payments on first mortgages on any industrial development project where such purchase or payment is necessary to protect any loan previously made therefor by the Commission and sell, transfer, convey and assign any such first mortgage. Moneys so used in the purchase of any first mortgages or any payments thereon, shall be withdrawn from the Industrial Development Fund, and any moneys derived from the sale of any first mortgages shall be deposited in the Industrial Development Fund.

The Texas Industrial Commission shall provide staff services for the program herein provided, including liaison between the Commission and industrial development agencies and related organiza-

tions, and between the Commission and other agencies of the State whose facilities and services may be useful to the Commission in its work. The Commission may employ counsel, engineering, financial or other consultants as required in the carrying out of its duties and responsibilities hereunder. The Commission may obtain such professional services in cooperation with other State agencies or may retain persons or firms that may or may not be employed full, part-time, or as consultants for other agencies.

The Commission shall have no power at any time to borrow money, incur pecuniary obligations, or in any manner to pledge the credit or taxing power of the State of Texas or any of its municipalities or political subdivisions.

**Default in Payment; Enforcement; Advertising for Contracts; Performance Bonds; Leasing Restriction; Benefit Demonstrated**

Sec. 6. When the Commission makes a loan to an industrial development agency, it shall be provided in the instruments evidencing such loan that in the event of default in the payment of the principal or of the interest on such obligation or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such mortgage or instrument.

In instances where the Commission makes a loan, all contracts for construction of a project involving the expenditure of more than \$2,000 may be made only after advertising in the manner provided by Chapter 163, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts.

No loan shall be made to acquire existing facilities for the purpose of again leasing the same to the same industrial concern or one controlled by such industrial concern.

The Commission shall not approve any loan unless it finds that the benefit to the rural area in which the project is situated will exceed the financial commitment of the Commission and that the approval of the particular project will aid in the alleviation of unemployment within the State or assist in the industrial development of the State and that such project will be of benefit to the State and its taxpayers.

**Hearing, Notice; Rules and Regulations, Filing; Appeal**

Sec. 7. In those instances where the Commission is required to make a determination or ruling, the same shall only be made after a public hearing.

Notice of such hearing shall be given to the Secretary of State, Austin, Texas, at least 12 hours before the hearing is scheduled to begin but any hearing may be recessed from time to time (without the giving of additional notice) as the regulations of the Commission may provide.

Rules, regulations and guidelines promulgated by the Commission, and amendments thereto, shall be effective only after they have been filed with the Secretary of State.

Appeal from any adverse ruling or decision of the Commission under this section may be made by an issuer to the District Court of Travis County. The substantial evidence rule shall apply.

#### Purpose of Act

Sec. 8. It is hereby found, determined and declared:

(a) that the present and prospective health, safety, right to gainful employment and general welfare of the people of this State requires as a public purpose the promotion and development of new and expanded industrial and manufacturing enterprises;

(b) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and experience difficulty in undertaking additional such projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable mortgage loans;

(c) that communities in this State are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, this Act provides for the promotion of industrial development and employment and is hereby declared to be in the public interest and a public purpose.

#### Appropriations; Special Revolving Fund

Sec. 9. Funds for the implementation and administration of this Act shall be provided by the General Appropriations Bill.

A special account in the Treasury of the State of Texas to be known as the Rural Industrial Development Fund is hereby created and the amount so appropriated hereby and any subsequent appropriation made by the Legislature for such purpose, as well as such other deposits as principal and interest on loans are repaid shall be deposited in said fund. It is the intent of this Act that the Industrial Development Fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this Act. To the extent the constitution requires such funds be appropriated and reapropri-

ated for the aforesaid purpose, such action is hereby taken and such funds are hereby appropriated and reapropriated and it shall be the duty of the Legislature to take the same action in the future to the extent required by the constitution.

#### Construction of Act; Severability

Sec. 10. Nothing in this Act shall be construed to violate any provision of the federal or State constitutions and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the issuer shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the Legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1971, 62nd Leg., p. 2570, ch. 843, eff. June 9, 1971. Amended by Acts 1975, 64th Leg., p. 626, ch. 257, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1511, ch. 611, § 1, eff. Aug. 29, 1977.]

#### Art. 5190.3. Small Business Assistance Act of 1975

##### Title of Act

Sec. 1. This Act may be cited as the Small Business Assistance Act of 1975.

##### Legislative Intent

Sec. 2. The legislature finds that an indispensable element of the American economic system is free and vigorous competition and that the preservation and expansion of economic competition is essential to the economic well-being of this state and of the United States. The legislature further finds that the continuing vitality of small business entities is of utmost importance to economic competition and that it is the policy of this state to insure economic competition by assisting small business entities to the greatest extent possible. It is the intent of the legislature, by this Act, to provide that assistance to small business entities and, by doing so, to promote economic competition to the benefit of all persons in this state. It is the intent of the legislature that each state agency shall attempt to award ten percent of all purchases of articles, supplies, commodities, materials, services, or contracts for services to small business.

##### Definitions

Sec. 3. In this Act:

(1) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annu-



al gross receipts, and is designated a small business as provided by this Act.

(2) "Council" means the Advisory Council on Small Business Assistance.

(3) "State agency" means all agencies, departments, councils, commissions, or boards of the State of Texas.

**Advisory Council on Small Business Assistance**

Sec. 4. (a) The Advisory Council on Small Business Assistance is created.

(b) The council consists of nine members, appointed by the governor with the advice and consent of the senate. Five members must be owners or employees of small businesses, one member must be an officer of a financial institution, one member must be an officer of an insurance company, and two members must be members of the general public.

(c) The governor shall designate one member as chair of the council.

**Members**

Sec. 5. Members of the council are appointed for staggered terms of six years with three members' terms expiring on February 1 of odd-numbered years.

**Meetings; Quorum**

Sec. 6. (a) The council shall meet at least once each quarter at the call of the chairman.

(b) Five members constitute a quorum.

**Expenses**

Sec. 7. Members of the council receive no salary for service on the council, but each is entitled to reimbursement for his expenses incurred in attending a meeting of the council.

**Assistance to Industrial Commission**

Sec. 8. The council shall provide assistance, guidance, and expertise to the industrial commission in the administration of this Act.

**Administration by Industrial Commission**

Sec. 9. (a) The industrial commission has the primary responsibility for the administration of the provisions of this Act. In order to meet this responsibility the industrial commission may:

(1) provide technical and managerial assistance to small businesses by offering advice and counsel with particular emphasis on how to bid on state supply requirements to which end the board of control may also help;

(2) provide technical and managerial assistance to small businesses by offering advice and counsel on sound management procedures;

(3) cooperate with business, professional, educational, and other organizations and with agencies of

this state, and make available to any of these information concerning the management, financing, and operation of small businesses; and

(4) promulgate rules necessary for the proper administration of this Act.

(b) The industrial commission and the board of control may conduct research necessary to:

(1) ascertain which business associations qualify as small businesses under the terms of this Act, designate each as a small business, maintain a master list of small businesses, and revoke the designation when an entity ceases to be a small business;

(2) determine the methods and practices of prime contractors and encourage the letting of subcontracts to small businesses; and

(3) ascertain the means by which the productive capacity of small businesses can be used most effectively.

**Assistance by State Agencies**

Sec. 10. (a) The industrial commission shall obtain from the agencies of this state appropriate information needed by the industrial commission to carry out its responsibilities under this Act.

(b) The agencies of this State, including, but not limited to, the State Highway Department, Department of Mental Health and Mental Retardation, Texas Youth Commission, Texas Department of Corrections, State Building Commission, and State Board of Control, are charged by this Act with the responsibility to assist the industrial commission in furthering the purposes of this Act; and shall take positive steps to include small businesses on master bid lists, shall take positive steps to inform small businesses of state procurement opportunities, waive bond requirements where feasible, inform small business entrepreneurs as to applicable rules and procedures relating to bidding and the procurement of contracts, and continually monitor the effectiveness of this Act in improving the ability of designated small businesses to do business with the State.

(c) Each state agency shall prepare a written report of its performance each year and shall submit it to the Texas Industrial Commission who will consolidate the reports and, on or before December 1 of each year, shall deliver a copy of the consolidated report to the governor, the lieutenant governor, and the speaker of the house of representatives.

**Adoption of Rules by State Agencies; Reduction of Adverse Economic Impact**

Sec. 10A. (a) A state agency considering adoption of a rule that would have an adverse economic effect on small businesses shall reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. To reduce the adverse effect on small businesses the agency may:

(1) establish separate compliance or reporting requirements for small businesses;

(2) use performance standards in place of design standards for small businesses; or

(3) exempt small businesses from all or part of the rule.

(b) Before adopting a rule governed by this section an agency shall prepare a statement of the effect of the rule on small businesses. The statement must include:

(1) an analysis of the cost of compliance with the rule for small businesses; and

(2) a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rule, based on at least one of the following standards:

- (A) cost per employee;
- (B) cost per hour of labor; or
- (C) cost per \$100 of sales.

(c) On request by a state agency the industrial commission shall provide assistance and available information for use in preparing the statement of effect.

(d) The agency shall include the statement of effect as part of the notice of the proposed rule that it files with the secretary of state for publication in the Texas Register.

#### Procurement and Assistance Goals by State Agencies

Sec. 11. Each state agency shall establish annually small business procurement and assistance goals for which positive action will be taken by the state agency.

#### Inapplicability of Act

Sec. 12. This Act does not apply to purchases made pursuant to Article XVI, Section 21, of the Texas Constitution.

#### Effective Date

Sec. 13. This Act takes effect September 1, 1975.

[Acts 1975, 64th Leg., p. 2301, ch. 718, §§ 1 to 13, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 185, ch. 44, art. IV, § 4, eff. April 26, 1983; Acts 1983, 68th Leg., p. 2682, ch. 464, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4528, ch. 743, § 1, eff. Sept. 1, 1983.]

Section 7 of Acts 1983, 68th Leg., p. 2686, ch. 464, provides:

"(a) A member of the Advisory Council on Small Business Assistance who was appointed before the effective date of this Act and was eligible to be a member of the council under the law as it existed at the time of his appointment may serve the remainder of the term for which he was appointed.

"(b) As incumbent members of the council vacate their offices or as their terms expire, the governor shall appoint members to the council to achieve as soon as possible the membership scheme established by Section 4, Small Business Assistance Act of 1975 (Article 5190.3, Vernon's Texas Civil Statutes), as amended by this Act."

Sections 2 and 3 of Acts 1983, 68th Leg., p. 4529, ch. 743 provide:

"Sec. 2. (a) Before September 1, 1984, each state agency subject to this Act shall prepare a plan for review of its rules in effect on September 1, 1983, that have an adverse effect on small businesses. The agency shall complete the review before September 1, 1993. The agency shall review each rule considering:

- "(1) the continued need for the rule;
- "(2) public comments received by the agency concerning the rule;
- "(3) complexity of the rule;
- "(4) duplication and inconsistency with other law; and
- "(5) ways to reduce the rule's adverse effect on small businesses.

"(b) The agency shall rescind or amend the rule to reduce the adverse effect on small businesses, if the change is appropriate.

"(c) The agency shall deliver a copy of its plan to the Texas Industrial Commission and to any person requesting a copy.

"(d) The agency shall report the progress of its revision plan in its annual performance report submitted under Section 10(c) of the Small Business Assistance Act of 1975 (Article 5190.3, Vernon's Texas Civil Statutes).

"Sec. 3. This Act does not apply to rules promulgated under the authority of Title 2, Tax Code."

#### Art. 5190.4. Expired.

This article, relating to the Metric Advisory Council was derived from Acts 1977, 65th Leg., p. 1380, ch. 552, §§ 1 to 9; Acts 1981, 67th Leg., p. 2217, ch. 519, § 1, and expired by its own terms on August 31, 1983.

#### Art. 5190.5. Loans for Manufacture of Fuel From Agricultural Products

##### Definition

Sec. 1. In this Act, "agricultural product" includes a processed or refined agricultural product, such as molasses or sugar, as well as an agricultural product in its natural state.

##### Loans for Fuel Development

Sec. 2. (a) The Texas Industrial Commission may make loans from the industrial development fund to individuals or other legal entities for the establishment of plants in this state to manufacture alcohol or other fuels from agricultural products as authorized by law. The commission may contract to loan to one or more legal entities an amount not in excess of 90 percent of the cost of any one plant and no more than \$25,000 may be loaned to any one legal entity for the establishment of a plant or plants, except that a loan not exceeding \$500,000 may be made to a small business corporation as defined by the Internal Revenue Code, Chapter 1, Subchapter S.<sup>1</sup>

(b) A recipient of a loan may use the proceeds of the loan only for the following purposes related to the establishment of a plant of the type described in Subsection (a) of this section:

- (1) the purchase of land; and
- (2) the acquisition of buildings, machinery, and fixtures.

(c) The Industrial Commission may include in the loan agreement any conditions not inconsistent with this Act that the commission considers proper. The commission shall require that the loan be wholly

secured by a first lien on real property. Each loan must be payable to the state.

(d) All loans must be repayable not later than 10 years from the date of the loan. The Industrial Commission may require that a loan agreement provide for a shorter repayment period.

(e) Interest shall be charged on a loan made under this Act at a rate determined by the Industrial Commission.

126 U.S.C.A. § 1371 et seq.

#### Maximum Amount of Loans

Sec. 3. (a) The Industrial Commission may not make a loan that will cause the total unpaid principal balance of all loans made under this Act then outstanding to exceed \$15 million.

(b) In applying the limit prescribed by Subsection (a) of this section, the unpaid principal balance of a loan is not counted if the loan:

- (1) is in default; and
- (2) the state has obtained a final judgment against the borrower or the borrower's heirs or assigns for the amount owed.

#### Loan Repayments

Sec. 4. The Industrial Commission shall deposit all repayments on loans made under this Act in the state treasury to the credit of the industrial development fund.

#### Rules

Sec. 5. The Industrial Commission may adopt rules to implement this Act.

[Acts 1979, 66th Leg., p. 1073, ch. 503, §§ 1 to 5, eff. June 7, 1979.]

### Art. 5190.6. Development Corporation Act of 1979

#### Short Title

Sec. 1. This Act may be cited as the "Development Corporation Act of 1979."

#### Definitions

Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

- (1) "Board of directors" shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.
- (2) "Commission" shall mean the Texas Industrial Commission.
- (3) "Corporation" shall mean any industrial development corporation organized pursuant to the provisions of this Act.
- (4) "Cost" as applied to a project shall mean and embrace the cost of acquisition, construction, recon-

struction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding any such project, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.

(5) "City" shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.

(6) "County" shall mean a county of this state.

(7) "District" shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

(8) "Governing body" shall mean the board, council, commission, commissioners court, or legislative body of the unit.

(9) "Industrial development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

(10) "Project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of development and expansion of manufacturing and industrial facilities, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the commission, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term "development areas" shall mean any area or areas of a city that the city finds and determines, after a public hearing, should be developed in order to meet the development objectives of the city. In addition, in blighted or economically depressed areas or federally assisted new communities located within a home-rule city or a federally designated economically depressed coun-

ty of less than 50,000 persons according to the last federal decennial census, a project may include the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial development and expansion and in furtherance of the public purposes of this Act, or for use by commercial enterprises, all as defined in the rules of the commission, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term blighted or economically depressed areas shall mean those areas and areas immediately adjacent thereto within a city which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes),<sup>1</sup> or any combination of the foregoing, the city finds and determines, after a hearing, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and are a menace to the public health, safety, or welfare in their present condition and use. The commission shall adopt guidelines that describe the kinds of areas that may be considered to be blighted or economically depressed. The city shall consider these guidelines in making its findings and determinations. Notice of the hearing at which the city considers establishment of a development area or an economically depressed or blighted area shall be posted at the city hall before the hearing.

"Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act<sup>2</sup> and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.<sup>3</sup>

(11) "Resolution" shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

(12) "Unit" shall mean a city, county, or district which may create and utilize a corporation.

(13) "Bonds" includes bonds, notes, and other evidences of indebtedness.

<sup>1</sup> Repealed; see, now, art. 1066e.

<sup>2</sup> 12 U.S.C.A. § 1749aa et seq.

<sup>3</sup> 42 U.S.C.A. § 5307(a)(1).

#### Findings and Construction

Sec. 3. It is hereby found, determined, and declared:

(1) that the present and prospective right to gainful employment and general welfare of the people of this state require as a public purpose the promo-

tion and development of new and expanded industrial and manufacturing enterprises;

(2) that the existence, development, and expansion of industry are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(3) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the welfare of the citizens of the state economically by the securing and retaining of private industrial and manufacturing enterprises and the resulting maintenance of a higher level of employment, economic activity, and stability;

(4) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

(5) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded industrial and manufacturing enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

This Act shall be liberally construed in conformity with the intention of the legislature herein expressed.

#### Creation of Corporation and Texas Small Business Industrial Development Corporation

Sec. 4. (a) Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. The governing body of the unit may not charge a filing fee for the application. If the governing body by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as hereinafter provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the

public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.

(b) There is hereby created the Texas Small Business Industrial Development Corporation which shall act on behalf of the state to carry out the public purposes of this Act. The Texas Small Business Industrial Development Corporation shall be considered to be a corporation within the meaning of this Act, shall be organized and governed in accordance with the provisions of this Act, and shall have all of the powers, and shall be subject to all of the limitations, provided for corporations by this Act. For purposes of this Act, the state shall be considered to be the unit under whose auspices the Texas Small Business Industrial Development Corporation is created and the commission shall be considered to be the governing body. The articles of incorporation of the Texas Small Business Industrial Development Corporation shall be signed by at least three members of the commission, shall set forth the information requested by Subdivisions (1) through (9), Section (6), of this Act, and shall be approved by the commission, as governing body. The corporate existence of the Texas Small Business Industrial Development Corporation shall begin upon the issuance of a certificate of incorporation by the secretary of state. To the extent that the provisions of this section are inconsistent with other provisions of this Act, the provisions of this section shall control as to the creation, organization, administration, operation, and affairs of the Texas Small Business Industrial Development Corporation.

#### Form of Corporation

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

#### Articles of Incorporation

Sec. 6. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a nonprofit corporation;
- (3) the period of duration which may be perpetual;
- (4) the specific purpose or purposes for which the corporation is organized and may issue bonds on behalf of the unit;
- (5) that the corporation has no members and is a nonstock corporation;
- (6) any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws,

for the regulation of the internal affairs of the corporation;

(7) the street address of its initial registered office and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(9) the name and street address of each incorporator; and

(10) a recital that the unit has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

#### Certificate of Incorporation

Sec. 7. (a) Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each original the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of incorporation to each of which he shall affix one of such originals.

(b) A certificate of incorporation together with an original of the articles of incorporation affixed thereto by the secretary of state shall be delivered to the incorporators or their representatives and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.

#### Registered Office and Agent

Sec. 8. Each corporation shall have and continuously maintain in this state:

- (1) a registered office which may be, but need not be, the same as its principal office; and
- (2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a

principal or business office identical with such registered office.

#### Change of Registered Office or Agent

Sec. 9. (a) A corporation may change its registered office or change its registered agent or both upon filing in the office of the secretary of state a statement setting forth:

- (1) the name of the corporation;
- (2) the post-office address of its then registered office;
- (3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent is to be changed, the name of its successor registered agent;
- (6) that the post-office address of its registered office and the post-office address of the business office of its registered agent as changed will be identical; and
- (7) that such change was authorized by its board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Duplicate originals of such statement shall be executed by the corporation by its president or vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) return the other original to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign:

- (1) by giving written notice to the corporation at its last known address; and
- (2) by giving written notice in triplicate to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office;
- (3) return one original to such resigning registered agent; and
- (4) return one original to the corporation at the last known address of the corporation as shown in such written notice.

#### Service of Process on President or Vice-President; Service on Secretary of State

Sec. 10. (a) The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him or with the assistant secretary of state or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this article and shall record therein the time of such service and his action with reference thereto.

#### Board of Directors

Sec. 11. (a) The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the governing body of the unit under whose auspices the corporation was created for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

(b) The board of directors is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

#### Organizational Meeting of Board

Sec. 12. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

#### Adoption and Approval of Initial Bylaws

Sec. 13. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the unit under whose auspices the corporation was created.

#### Quorum; Actions of Majority at Meeting; Action Without Meeting

Sec. 14. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Any action required by this Act to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

#### Application of Open Records Act

Sec. 14A. The board of directors is subject to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

#### Indemnification of Directors and Officers; Notice of Meetings; Waiver of Notice

Sec. 15. (a) The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(c) Regular meetings of the board of directors may be held within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(d) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

#### Officers

Sec. 16. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time

and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. One person may hold more than one office, except that the president may not hold the office of secretary.

#### Amendment of Articles

Sec. 17. (a) The articles of incorporation may at any time and from time to time be amended, provided that the board of directors files with the governing body of the unit under whose auspices the corporation was created a written application requesting that the unit approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles as hereinafter provided.

(b) The articles of incorporation may also be amended at any time by the governing body of the unit under whose auspices the corporation was created at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

#### Execution and Verification of Amendments

Sec. 18. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the unit under whose auspices the corporation was created, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the fact that such amendment was adopted or approved by the governing body of the unit and the date of the meeting at which the amendment was adopted or approved by such governing body.

#### Certificate of Amendment; Effect of Amendment

Sec. 19. (a) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the arti-

cles of amendment conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of amendment to each of which he shall affix an original.

(b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(d) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than members; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

#### Restated Articles of Incorporation and Restated Certificate of Incorporation

Sec. 20. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act including obtaining the approval of the governing body of the unit under whose auspices the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial



board of directors, and the name and address of each incorporator may be omitted.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and shall further set forth the statements required by this Act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and

(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(f) Upon the issuance of the restated certificate of incorporation by the secretary of state, the origi-

nal articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

**Authority to Issue Bonds; Approval of Programs and Expenditures; Financial Statements, Books and Records**

Sec. 21. Every unit is hereby authorized to utilize a corporation to issue bonds on its behalf to finance the cost of projects, including projects in enterprise zones designated under the Texas Enterprise Zone Act,<sup>1</sup> to promote and develop industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

<sup>1</sup> Article 5190.7.

**Bonds Not Debt of State or Political Subdivision; Corporation as Constituted Authority and Instrumentality but Not Political Subdivision or Corporation**

Sec. 22. Bonds issued under the provisions of this Act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the bonds or from revenues realized from the lease or sale of a project or realized from a loan made by the corporation to finance or refinance in whole or in part a project. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended)<sup>1</sup> and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the

Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

126 U.S.C.A. § 103.

#### Powers of Corporation

Sec. 23. (a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to projects together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve, maintain, equip, and furnish one or more projects located within the state or within the coastal waters of the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit where the governing body thereof requests the corporation to exercise its powers therein;

(2) to lease to a lessee all or any part of any project for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(3) to sell by installment payments or otherwise and convey all or any part of any project for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(4) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(5) to issue bonds for the purpose of defraying all or part of the cost of any project, to secure the payment of such bonds as provided in this Act, and to sell bonds at a price or prices determined by the board of directors or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates determined by the board of directors, subject to the limitations set forth in this Act;

(6) as security for the payment of the principal of and interest on any bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

(7) to sue and be sued, complain and defend, in its corporate name;

(8) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

(9) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

(10) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

(11) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

(b) The corporation shall not have the power to own or operate any project as a business other than as lessor, seller, or lender or pursuant to the requirements of any trust agreement securing the credit transaction. Accordingly, the lessee, purchaser, or borrower pursuant to any lease, sale, or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales, and use taxes or any other taxes levied or imposed by this state or any political subdivision of this state. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project.

#### Leases, Sales, and Loan Agreements; Approval of Bonds, Leases, Sales, or Loan Agreements; Permit for Offer and Sale of Securities; Fee Schedules and Bond Procedures; Rules and Regulations

Sec. 24. (a) The commission shall approve the contents of any lease, sale, or loan agreement made under this Act. The commission shall prescribe rules and regulations setting forth minimum standards for project eligibility and for lease, sale, and loan agreements and guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the

commission approve any agreement unless it affirmatively finds that the project sought to be financed is in furtherance of the public purposes of this Act. Appeal from any adverse ruling or decision of the commission under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the commission and amendments thereto shall be effective only after they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the commission and request that the commission approve the bonds. On filing a request for the commission's approval of issuance of the bonds, the corporation shall pay to the commission a non-refundable filing fee. The commission shall set the amount of the fee at an amount reasonable in relation to the costs of administration, but not greater than \$1,500. If the commission refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chair of the commission shall be considered a state officer as provided in Article 1733, Revised Civil Statutes of Texas, 1925.

(c) The commission may delegate to the executive director of the commission the authority to approve a lease, sale, or loan agreement made under this Act or bonds issued by a corporation or any documents submitted as provided herein.

(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

(e) The commission by rule shall require corporations to file fee schedules and bond procedures. Bond counsel and financial advisors participating in an issue shall be mutually acceptable to the corporation and the user.

(f) The commission shall adopt rules and regulations governing programs for small businesses receiving loans guaranteed in whole or in part by the Small Business Administration or other federal agencies. The commission may also adopt rules and regulations governing the terms and conditions of loans by a corporation to banks or other lending institutions the proceeds of which are reloaned as permanent or temporary financing of a project.

#### Bonds and Proceeds of Bonds

Sec. 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates that are fixed, variable, floating, or otherwise, shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds.

(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes is the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

(c) The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available

for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein.

(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project so financed or from the loan made by the corporation with respect to the project so financed or refinanced and may be secured by a mortgage covering all or any part of such project, including any enlargements of and additions to such project thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions hereof. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

(f) No issue of bonds, including refunding bonds, shall be delivered by the corporation without a resolution of the governing body adopted no more than 60 days prior to the date of delivery of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds.

(g) Bonds issued under this Act, and coupons, if any, representing interest on the bonds, are securities as defined by Chapter 8, Business & Commerce Code, as amended, and are negotiable if issued in accordance with this Act.

#### Refunding Bonds

Sec. 26. Each corporation is hereby authorized to provide by resolution for the issuance of its refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corpora-

tion, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

#### Trust Agreements

Sec. 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

#### Enforcement of Agreements or Mortgages

Sec. 28. (a) Any agreement relating to any project shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in ac-

cordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

#### Option to Purchase Granted to Lessee

Sec. 29. A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

#### Authority of Corporation Regarding Bonds, Lease, Sale, or Loan Agreements

Sec. 30. Except as limited by the provisions of this Act or as limited by the rules, regulations, and guidelines of the commission, each corporation shall have full and complete authority with respect to bonds, lease, sale, or loan agreements and the provisions thereof.

#### Bonds as Legal and Authorized Investments

Sec. 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

#### Exemption from Taxation

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas

Constitution. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

#### Nonprofit Nature of Corporation

Sec. 33. The corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the unit under whose auspices the corporation was created.

#### Authority to Alter or Dissolve Corporation

Sec. 34. At any time the unit may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the governing body of the unit and as hereinafter provided.

#### Dissolution Upon Completion of Purposes

Sec. 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided.

#### Dissolution and Certificate of Dissolution

Sec. 36. (a) Articles of dissolution shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and secretary or clerk of the governing body under whose auspices the corporation was created. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the governing body of the unit. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

(c) Whenever dissolution occurs, whether instituted by the governing body unit or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the unit under whose auspices the corporation was created.

#### Construction With Other Laws and Federal and State Constitutions; Severability

Sec. 37. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, any unit and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any police power thereover of any official or agency of the state and its governmental subdivisions as may be otherwise provided by law.

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this

Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1979, 66th Leg., p. 1675, ch. 700, §§ 1 to 37, eff. June 13, 1979. Amended by Acts 1981, 67th Leg., p. 1777, ch. 389, § 25, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3025, ch. 792, §§ 1 to 12, eff. June 17, 1981; Acts 1983, 68th Leg., p. 2683, ch. 464, §§ 3 to 6, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4796, ch. 841, § 9, eff. Sept. 1, 1983.]

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2 of the Tax Code.

Sections 15 and 16 of Acts 1981, 67th Leg., p. 3036, ch. 792, provide:

"Sec. 15. All corporations for which certificates of incorporation were issued under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), before the effective date of this Act are validated in all respects and such a corporation may not be held invalid because the incorporation proceedings were not in accordance with the requirements of the Development Corporation Act of 1979.

"Sec. 16. If a resolution is adopted by the board expressing its intent to issue bonds for the purpose of financing a project or other similar official action is taken by a corporation toward the issuance of such bonds, under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and the regulations of the commission in effect before the effective date of this Act, the corporation may issue such obligations, and any obligations to refund the same, for the purpose of such project as if the Development Corporation Act of 1979 had not been amended by this Act."

#### Art. 5190.7. Texas Enterprise Zone Act

The Texas Enterprise Zone Act is adopted to read as follows:

##### Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Enterprise Zone Act.

##### Legislative Findings and Purpose

Sec. 2. (a) The legislature finds that:

(1) the health, safety, and welfare of the people of this state are dependent on the continual encouragement, development, growth, and expansion of the private sector within this state; and

(2) there are certain depressed urban and rural areas of this state that need the particular attention of government to help attract private sector investment to them; and

(3) the state and local governments have a legitimate interest in furthering the development of the depressed areas so that they become economically viable thus providing jobs and income to their residents and, therefore, contribute to the general health and welfare as well as to the health and welfare of their residents.

(b) Based on these findings, the legislature declares the purpose of this Act to stimulate and encourage business and industrial growth and to stimulate neighborhood revitalization of residential units and public services in these depressed areas of the state by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives.

## Definitions

Sec. 3. In this Act:

(1) "Administrative authority" means a board, commission, or committee appointed by a governing body to administer this Act in a local enterprise zone.

(2) "Board" means the Enterprise Zone Board created by this Act.

(3) "Commission" means the Industrial Commission.

(4) "Depressed area" means an urban or rural area that is within the jurisdiction of a county or municipality designated by ordinance or resolution and that meets the criteria set by this Act.

(5) "Economically disadvantaged individual" means an individual who for at least the entire year before obtaining employment with a qualified business:

(A) was unemployed; or

(B) received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty.

(6) "Enterprise zone" means an area of the state declared by the board to be eligible for the benefits of this Act.

(7) "Governing body" means the governing body of a city, town, or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(8) "Neighborhood enterprise association" means a private sector neighborhood organization within an enterprise zone that meets the criteria set by this Act.

(9) "Qualified business" means a person, corporation, or other entity that:

(A) meets the criteria of a qualified business under a federal enterprise zone act;

(B) is engaged in the active conduct of a trade or business:

(i) with at least 80 percent of its income attributed to trade or business within an enterprise zone; and

(ii) with individuals from one or more of the following two categories constituting at least 25 percent of the business's employees in the zone: residents of the enterprise zone; or economically disadvantaged individuals; or

(C) has a business location that is already active within the enterprise zone at the time it is designated and that operates continuously after that time, if the business has hired residents of the zone or economically disadvantaged workers after the designation so as to make it eligible for tax benefits under federal enterprise zone laws.

(10) "Qualified employee" means an employee who works for a qualified business and who per-

forms at least 50 percent of his service for the business within the enterprise zone.

(11) "Qualified property" means:

(A) tangible personal property located in the zone that was acquired by a taxpayer after designation of the area as an enterprise zone and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer after designation of the zone and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

## Designation of an Enterprise Zone

Sec. 4. (a) An area of a city, town, county, or combination of these local governments may be designated as an enterprise zone if it:

(1) has a contiguous boundary;

(2) is at least one square mile but not more than 10 square miles in area (exclusive of lakes and waterways) if in an urban area, or is 50 square miles or smaller in area if located in a rural area;

(3) has been designated as an enterprise zone in a resolution adopted by the legislative body of the applicable city, town, or county;

(4) is an area with pervasive property, unemployment, and economic distress; and

(5) meets any additional requirements set by the federal agency responsible for administering a federal enterprise zone program before it is approved as a state-federal enterprise zone.

(b) An area is an area of pervasive poverty, unemployment, and economic distress if it meets one or more of the following criteria:

(1) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the state average for that period;

(2) the area was a low-income poverty area according to the most recent federal census;

(3) at least 70 percent of the residents of the area have an income below 80 percent of the median income of the residents of the county;

(4) the population of all census tracts in the area decreased by at least 10 percent between 1970 and 1980; or

(5) the designating government establishes to the satisfaction of the board that either:

(A) chronic abandonment or demolition of commercial or residential structures exists in the area; or

(B) substantial tax arrearages for commercial or residential structures exist in the area.

(c) An urban enterprise zone is an area that:

(1) meets the criteria of Subsection (a) of this section;

(2) is located within a central city of a standard metropolitan statistical area (SMSA); and

(3) has a minimum population of 4,000 individuals, according to the most recent federal census.

(d) A rural enterprise zone is an area that:

(1) meets the criteria of Subsection (a) of this section;

(2) is not located in a central city of a standard metropolitan statistical area (SMSA); and

(3) has a population of at least 2,500 individuals, according to the most recent federal census.

(e) A local enterprise zone is an area that:

(1) meets the criteria of Subsections (a)(1) through (a)(4) of this section; and

(2) has been designated as a local enterprise zone by the board.

(f) A state-federal enterprise zone is an area that:

(1) meets the criteria of Subsection (a) of this section;

(2) has been previously designated as a local enterprise zone by the board;

(3) has been designated as an enterprise zone by the federal agency responsible for administering a federal enterprise zone program; and

(4) has been designated as a state-federal enterprise zone by the board.

(g) Local enterprise zones are not eligible for the state tax incentives provided by this Act. State-federal enterprise zones are eligible for the state tax incentives provided by this Act.

(h) A city, town, or county may designate only one enterprise zone within its jurisdiction. For the purposes of this subsection, the area of a city's or town's extraterritorial jurisdiction is considered to be within the city's or town's jurisdiction.

(i) An area may be designated as an enterprise zone for a maximum period of 20 years with an additional phaseout period of four years or for the maximum period specified in the federal enterprise zone law, whichever is shorter. A designation remains in effect until September 1 of the final year of the designation.

(j) The board may remove the designation of any area as an enterprise zone if the area no longer meets the criteria for designation as set out in this Act or by rule adopted under this Act by the board.

#### Initial Designation by Counties and Municipalities

Sec. 5. The legislative body of any city, town, county, or combination of these local governments may designate by resolution any economically distressed area within its jurisdiction as a potential enterprise zone, if the area meets the criteria established in Section 4 of this Act. The city, town, county, or combination of these local governments, if it first has obtained the consent of any municipality in which all or part of the potential designated area is located, may then make written application to the board to have the area declared to be an enterprise zone.

#### Creation of Board

Sec. 6. (a) The Enterprise Zone Board is created. It is composed of nine members. Members of the board shall be appointed by the governor with the advice and consent of the senate for staggered terms of six years with the terms of three members expiring on February 1 of each odd-numbered year. The members must have the following qualifications:

(1) one member must be a member of the Industrial Commission;

(2) one member must be a member of the Texas Employment Commission;

(3) one member must be a director or the executive director of the Texas Department of Community Affairs;

(4) one member must have experience in the administration or governance of a municipal government and must represent municipal governments;

(5) one member must have experience in the administration or governance of a county government and must represent county governments;

(6) one member must have experience in the administration or governance of an independent school district and must represent school districts;

(7) one member must represent small businesses;

(8) one member must represent employees; and

(9) one member must represent the public interest and is the presiding officer of the board.

(b) An appointee to a vacancy on the board must have the same qualifications as his predecessor.

(c) A member of the board may not receive compensation. A member is entitled to reimbursement for actual and necessary expenses incurred while attending board meetings from funds appropriated to the Industrial Commission.

(d) The staff of the Industrial Commission shall serve as the staff for the board and shall carry out administrative duties and functions as directed by the board.

(e) The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act,



the board is abolished and this Act expires September 1, 1995.

#### Powers and Duties of the Board

Sec. 7. (a) The board shall administer this Act and shall:

(1) establish criteria and procedures for determining the qualified areas that shall be designated as enterprise zones;

(2) monitor the implementation of this Act and submit reports evaluating the effectiveness of the program and making suggestions for legislation to the governor and the legislature by October 1 of each year preceding a regular session of the legislature;

(3) conduct a continuing evaluation of the programs of enterprise zones;

(4) adopt all rules necessary to carry out the purposes of this Act;

(5) assist units of local government in obtaining status as a federal enterprise zone;

(6) assist qualified employers in obtaining the benefits of any incentive or inducement program provided by law and certify qualified employers to be eligible for the benefits of this Act;

(7) assist the governing body of an enterprise zone in obtaining assistance from any other agency of state government, including assistance in providing training and technical assistance to qualified businesses in a zone;

(8) review all state agency regulations and recommend to the appropriate state agencies the exemptions from regulations adopted by the agencies to contribute to the implementation of this Act; and

(9) designate and certify private sector neighborhood enterprise associations within a zone as defined in this Act.

(b) The board shall provide information and appropriate assistance to persons desiring to locate and engage in business in an enterprise zone regarding state licenses, permits, certificates, approvals, registrations, charters, and any other forms of permission required by law to engage in business in the state.

(c) The board, with the cooperation of the appropriate state agencies, shall develop a uniform application form for the state tax exemptions offered under this Act. The uniform application form must be used by qualified businesses and qualified employees in enterprise zones instead of any other appropriate application form required by law or by agency rules.

#### Procedure for Designation of Zones by Board

Sec. 8. (a) A city, town, county, or combination of these local governments that has designated a qualified economically distressed area within its jurisdiction as a potential enterprise zone shall make

written application to the board to have the area declared to be a local enterprise zone. The application shall include a description of the location of the area in question and other information as the board may require.

(b) On receipt of an application from a city, town, county, or combination of these local governments, the board shall review the application to determine if the area described in the application qualifies to be designated as an enterprise zone under the criteria of Section 4 of this Act.

(c) If the area is found to be qualified to be an enterprise zone, the board or its designee shall, not later than the 45th day after the day the application is received, hold at least one public hearing in a central location within the proposed zone on the question of whether the area proposed to be an enterprise zone should be so designated. Not later than the 15th day before the day of the hearing, the board shall place a notice of the hearing in at least two newspapers circulated in the area of the proposed zone and shall notify public officials, community and neighborhood organizations, and public agencies located within the proposed zone of the public hearing.

(d) After the public hearing, the board shall begin negotiations for an agreement with the governing body or bodies filing the application. The negotiated agreement must designate the enterprise zone. The negotiated agreement must designate the administrative authority, if any, and its functions and duties. The board shall complete the negotiations and sign the agreement not later than the 120th day after the day of the conclusion of the public hearing. The board may extend this deadline for an additional 30 days. If an agreement is not completed within the stated period, the board shall provide the applicant with the specific areas of concern and a final proposal for the agreement. If the agreement is not signed before the 30th day after the day of the receipt by the applicant of the final proposal, the application is considered to be denied. The board shall inform the governing body or bodies of the specific reasons for the denial.

(e) The governing body or bodies of an area that previously had been designated as a local enterprise zone by the board may make written application to the board for designation as a state-federal enterprise zone. The governing body or bodies and the board must follow the procedures established by this section. The board may only grant a state-federal designation to an area contingent on the area's designation as a federal enterprise zone by the federal agency responsible for administering the federal enterprise zone program.

(f) If the board designates two or more areas of the state as state-federal enterprise zones, at least one-third of the areas must be rural enterprise zones.

(g) In deciding the areas that should be designated as local or state-federal enterprise zones, the board shall give preference to:

(1) areas with the highest levels of poverty, unemployment, and general distress;

(2) areas that have the widest support from the government seeking designation and the community, residents, local businesses, and private organizations; and

(3) areas for which the government seeking the designation has made or will make the greatest effort to encourage economic activity and remove impediments to job creation, including a reduction of tax rates or fees, an increase in the level or efficiency of local services, and a simplification or streamlining of governmental requirements on employers or employees, taking into account the resources available to the government to make the efforts.

(h) During any 12-month period, the board may not designate more than five local enterprise zones nor more than three state-federal enterprise zones. The total number of local enterprise zones in existence at any one time may not exceed 20; the total number of state-federal enterprise zones in existence at any one time may not exceed 10.

#### Exemption From Sales and Use Tax

Sec. 9. To encourage the development of areas designated as enterprise zones, certain items are exempt from the sales and use taxes as provided by Section 151.333, Tax Code.

#### Exemption From Motor Vehicle Sales Tax

Sec. 10. To encourage the development of areas designated as enterprise zones, certain motor vehicles are exempt from the state motor vehicle sales tax as provided by Section 152.090, Tax Code.

#### Benefit Under Franchise Tax

Sec. 11. To encourage the development of areas designated as enterprise zones, certain corporations may make calculations resulting in a reduced state franchise tax as provided by Section 171.1045, Tax Code.

#### Reinvestment Zone

Sec. 12. A local or state-federal enterprise zone may be designated a reinvestment zone for tax increment financing or tax abatement purposes as provided by the Texas Tax Increment Financing Act of 1981 (Article 1066e, Vernon's Texas Civil Statutes) or the Property Redevelopment and Tax Abatement Act (Article 1066f, Vernon's Texas Civil Statutes).

#### Refund of Sales and Use Tax

Sec. 13. To encourage the development of areas designated as enterprise zones, a city or town may refund local sales and use taxes as provided by

Section 8(b), Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

#### Reduction or Elimination of Fees and Taxes

Sec. 14. To promote the public health, safety, or welfare, the governing body of a city, town, or county may establish a program by which it reduces or eliminates any fees or taxes, other than property taxes, that it imposes on a qualified business or qualified employee.

#### State and Local Regulatory Incentives

Sec. 15. (a) State agencies may exempt from their regulations qualified businesses, qualified property, qualified employees, and neighborhood enterprise associations in enterprise zones, if the exemptions are consistent with the purposes of this Act and with the protection and promotion of the general health and welfare. This power does not apply to:

(1) a regulation relating to:

(A) civil rights;

(B) equal employment;

(C) equal opportunity;

(D) fair housing rights; or

(E) preservation or protection of historical sites or historical artifacts;

(2) a regulation the relaxation of which is likely to harm the public safety or public health, including environmental health; or

(3) a regulation specifically imposed by law.

(b) Regardless of a statute of limitations to the contrary, a contractor or architect who constructs or rehabilitates a building in an enterprise zone is liable for any structural defects in the building for a period of 10 years after the day beneficial occupancy of the building begins following the construction or the rehabilitation.

(c) Within an enterprise zone designated by the board, a local government may suspend local ordinances, rules, regulations, or standards relating to zoning, licensing, or building codes unless the ordinance, rule, regulation, or standard relates to one of the proscribed topics in Subsection (a) of this section.

(d) The suspension of or exemption from a rule, regulation, standard, or local ordinance under this section must be adopted in the same manner that the rule, regulation, standard, or ordinance was adopted.

#### Preference for Grants or Loans Administered by State Agency

Sec. 16. A governing body of an enterprise zone or a qualified business or qualified employee located in an enterprise zone shall be given preference over other eligible applicants for grants or loans that are administered by a state agency, if:

(1) at least 50 percent of the grant or loan will be expended for the direct benefit of the enterprise zone; and

(2) the purpose of the loan or grant is to:

(A) promote economic development in the community; or

(B) construct, improve, extend, repair, or maintain public facilities within the community.

#### Development Bonds

Sec. 17. Bonds may be issued to finance projects in enterprise zones as provided by the Act for Development of Employment, Industrial and Health Resources of 1971 (Article 5190.1, Vernon's Texas Civil Statutes) and by the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

#### Sale of Publicly Owned Real Property in Enterprise Zone

Sec. 18. (a) Once an area becomes an enterprise zone, the state and a city, town, or county that owns any surplus building or vacant land within the enterprise zone may dispose of the surplus building or vacant land in one of the following ways:

(1) sell the surplus building or vacant land at a public auction;

(2) sell the vacant land to the neighborhood enterprise association corporations, as established under this Act; or

(3) establish an urban homestead program that provides:

(A) that the state or the city, town, or county will sell an individual a residence or portion of a residence it owns for a sum not to exceed \$100;

(B) that the individual agrees to live in the residence for a period of at least seven years;

(C) that the individual agrees to renovate or remodel the property to meet the level of maintenance stated in the agreement between the individual and the state or the city, town, or county; or

(D) that the state or the city, town, or county shall assign the property to the individual at the end of the seven-year residency requirement and after satisfactory improvements to the property have been made.

(b) A commitment to dispose of real property by the methods described in this section gives preference to a proposed enterprise zone in the selection process by the board as set forth in Section 4 of this Act.

#### Neighborhood Enterprise Associations

Sec. 19. (a) Individuals residing in an enterprise zone may establish, under this section, a neighborhood enterprise association. There may be only one neighborhood enterprise association for any geographic neighborhood area.

(b) The association must have a membership composed of residents of the enterprise zone. The association must be a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and must be eligible for federal tax exemption status under Section 501(c) of the U.S. Internal Revenue Code.<sup>1</sup>

(c) The articles of incorporation must describe the geographic neighborhood area to which the incorporating association applies and authorize the association to engage in business only within the particular enterprise zone in which the neighborhood area of the association is located.

(d) The incorporators shall send to all registered voters of the association's neighborhood area by the same means as for the service of process:

(1) an explanation of the proposed new association and their rights in it; and

(2) a copy of the association's articles of incorporation and bylaws.

(e) Each voting age individual who has been a resident of the association's neighborhood area for at least one year is entitled to be a member of the association with voting rights. Other voting age residents of the area are entitled to be members of the association but are not entitled to vote.

(f) Following the organization of the association, its board of directors must apply to the governing body for certification as a neighborhood enterprise association.

(g) The governing body may not grant its approval unless the association has hired a suitable chief executive officer.

(h) After granting its certification, the governing body shall forward the application to the board for the board's final certification. The board may not grant its certification unless the board determines that the association has complied with all requirements of this section. On granting certification, the board shall place the association's articles of incorporation and bylaws in a public file. The board may suspend the association's certification or any of the leases issued under Subsection (p) of this section if the association fails to continue to comply with the requirements of this section. The board shall give technical assistance to enterprise zone residents attempting to start such an association.

(i) A neighborhood enterprise association may provide the following public services with the approval of and in coordination with the existing responsible governmental entities:

(1) establishment of crime watch patrols within the neighborhood area;

(2) establishment of volunteer day-care centers;

(3) organization of recreational activities for neighborhood area youth;

(4) garbage collection;

- (5) street maintenance and improvements;
- (6) bridge maintenance and improvements;
- (7) maintenance and improvements of water and sewer lines;
- (8) energy conservation projects;
- (9) health and clinic services;
- (10) drug abuse programs;
- (11) senior citizen assistance programs;
- (12) park maintenance;
- (13) rehabilitation, renovation, and operation and maintenance of low and moderate income housing; and
- (14) other types of public services as provided by law or regulation.

(j) These services may be provided by the association or, after agreement with the relevant local government, by private firms and organizations when feasible and prudent. An existing responsible unit of government may contract with a neighborhood enterprise association to provide services in an amount corresponding to the amount of money saved by the unit of government through this method of providing a service.

(k) The association may carry out other projects or types of projects as approved by the governing body and the board. The board shall adopt rules regarding the projects. The rules may include types of activities that will be given automatic approval by the board. In other cases, an application must be submitted by the association to the governing body and the board that describes the nature and benefit of the project, specifically:

- (1) how it will contribute to the self-help efforts of the residents of the area involved;
- (2) how it will involve the residents of the area in project planning and implementation;
- (3) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and
- (4) how it will enhance the enterprise zone in one of the following ways:
  - (A) by creating permanent jobs;
  - (B) by physically improving the housing stock;
  - (C) by stimulating neighborhood business activity; or
  - (D) by preventing crime.

(l) If the governing body and the board do not specifically disapprove of the project before the 45th day after the day of the receipt of the application, it shall be considered approved. If the governing body or the board disapproves of the application, it shall specify its reasons for this decision and allow 60 days for the applicant to make amendments. The board shall provide assistance upon request to applicants of such process.

(m) The neighborhood enterprise association shall furnish an annual statement to the governing body and the board on the programmatic and financial status of any approved project and an audited financial statement of the project.

(n) The association may purchase or lease publicly owned or privately owned real property.

(o) The association has other powers as established by law or regulation, as well as all powers available to similar corporations under state law.

(p) All real property within the neighborhood area of the association that is owned by state or local government and which is not in current use by the government may be leased to the association. The term of the lease may not be less than 20 years and the full amount of rental fees under the lease shall not exceed \$1 a year. The lease must be renewed upon expiration if the association has continuously complied with the requirements of this section during the terms of the lease.

(q) The association is exempt from any state or local taxes during the life of the enterprise zone in which it is located. The exemption also applies to any tax arrearages or other back assessments on any property leased to the association under Subsection (p) of this section.

126 U.S.C.A. § 501(c).

#### Zone Administration

Sec. 20. The administration of an enterprise zone is under the jurisdiction of the appropriate unit of local government, either a city, town, or county, or any combination of these local governments consistent with its function as specified in the state constitution. The governing body may delegate its administrative duties to an administrative authority. The administrative authority, if any, must be composed of 3, 5, 7, 9, 11, or 15 members, and must include representatives of the governing body, local businesses, and enterprise zone residents. The functions and duties of an administrative authority must be specified in the agreement negotiated by the governing body and the board, or in amendments to the negotiated agreement.

#### Coordination of Enterprise Zone Programs With Other Programs of the Federal and State Government

Sec. 21. The board shall work together with the responsible federal and state agencies to promote the coordination of other relevant programs, including housing, community and economic development, small business, banking, financial assistance, and employment training programs that are carried out within an enterprise zone. It shall further work to expedite, to the greatest extent possible, the consideration of applications for the programs through the consolidation of forms or otherwise and shall work, whenever possible, for the consolidation of

periodic reports required under the programs into one summary report.

[Acts 1983, 68th Leg., p. 4771, ch. 841, § 1, eff. Sept. 1, 1983.]

**CHAPTER TEN A. TEXAS RELIEF COMMISSION [REPEALED]**

**Art. 5190a. Repealed by Acts 1934, 43rd Leg., 3rd C.S., p. 59, ch. 34, § 39**

**CHAPTER ELEVEN. STEVEDORES**

**Art.**

5191. "Contracting Stevedore."

5192. Bond.

5193. Suits on Bond.

5194. License.

5195. Bond and License.

5195a. Penalty for Violation of Act.

**Art. 5191. "Contracting Stevedore"**

A contracting stevedore, within the meaning of this chapter, is any person, firm or association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or having loaded or unloaded any vessel, ship or water craft.

[Acts 1925, S.B. 84.]

**Art. 5192. Bond**

Each contracting stevedore shall make bond in the sum of five thousand dollars, with two or more good and sufficient sureties, who are residents of this State, or with any surety company authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in office, as trustee for all persons who may become entitled to the benefits of this law; conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with each of said laborers in respect to the loading and unloading of said water craft, will be faithfully and truly performed. Such bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded.

[Acts 1925, S.B. 84.]

**Art. 5193. Suits on Bond**

Suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned. The same may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond are pending, and when so exhausted, said contracting

stevedore shall make and file a new bond in amount and conditioned as provided for the first.

[Acts 1925, S.B. 84.]

**Art. 5194. License**

Said contracting stevedore shall, before beginning such business, file written application to such county clerk for a license to pursue the occupation of a contracting stevedore for the county mentioned. On approval of the bond and payment of an occupation tax of five dollars the clerk shall issue a license to pursue said occupation, the license fee to be paid into the general fund of the county.

[Acts 1925, S.B. 84.]

**Art. 5195. Bond and License**

Such bond shall be made and such license shall be obtained in each county in which said contracting stevedore pursues said occupation. Said contracting stevedore shall be required to execute a new bond and to obtain a new license at the expiration of every year from the issuance of the former license.

[Acts 1925, S.B. 84.]

**Art. 5195a. Penalty for Violation of Act**

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.

[1925 P.C.]

**CHAPTER TWELVE. RESTRICTIONS ON LABOR**

**Art.**

5196. Discrimination.

5196a. Discrimination.

5196b. Penalty.

5196c. "Blacklisting" Defined.

5196d. Blacklisting Prohibited.

5196e. Penalty.

5196f. Exceptions.

5196g. Servants or Employé Not To Be Coerced.

5197. Discrimination Prohibited, etc.

5198. Foreign Corporations to Forfeit Permit.

5199. Liability.

5200. Fees of Attorney.

5201. Prima Facie Evidence of Agency.

5201a. Prima Facie Proof of Agency.

5202. May Examine Witnesses.

5203. Sworn Statement.

5204. Failure of Witness to Appear.

5205. Immunity of Witness.

5205a. Witness Must Testify.

5206. Statement of Cause of Discharge.

5207. Detectives.

## Art.

5207a. Right to Bargain Freely Not To Be Denied; Membership in Labor Union.

5207b. Jury Service; Right to Reemployment.

**Art. 5196. Discrimination**

Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employee, or any employee who may have voluntarily left said corporation's services, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employee or other persons to whom such former employee has applied for employment, the reason why such employee was discharged, and why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver shall, by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement thereof if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made; provided that if such information is furnished at the request of a person other than the employee, a copy of the information so furnished, shall be mailed to such employee at his last known address.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employee of such corporation or receiver, shall have discharged an employee and such employee demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employee thereof fails to furnish a true statement of the same to such discharged employee, within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation or receiver shall fail, within ten days after written demand for the same, to furnish to any employee voluntarily leaving the service of such corporation or receiver, a statement in writing that such employee did leave such service voluntarily, or where any corporation or receiver of the same, doing business within this state, shall fail to show in any statement under the provision of this title the number of years and months during which such employee was in the service of the said corporation or receiver in each and every separate capaci-

ty or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail within ten days after written demand for the same to furnish to any such employee a true copy of the statement originally given to such employee for his use in case he shall have lost or is otherwise deprived of the use of the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing, or calculated to prevent, the employment of a person seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employee, shall have failed to give such employee a true statement of the causes of his discharge, within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employee.

6. 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.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall give any information or communication in regard to a person seeking employment having participated in any strike, unless such person violated the law during his participation in such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of this article.

[Acts 1925, S.B. 84. Amended by Acts 1929, 41st Leg., p. 509, ch. 245, § 1.]

**Art. 5196a. Discrimination**

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.

[1925 P.C.]

**Art. 5196b. 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.

[1925 P.C.]

**Art. 5196c. "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.

[1925 P.C.]

**Art. 5196d. 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.

[1925 P.C.]

**Art. 5196e. 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.

[1925 P.C.]

**Art. 5196f. 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.

[1925 P.C.]

**Art. 5196g. Servants or Employé 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.

[1925 P.C.]

**Art. 5197. Discrimination Prohibited, etc.**

Any and all discriminations against persons seeking employment as defined in this chapter are hereby prohibited and are declared to be illegal.

[Acts 1925, S.B. 84.]

**Art. 5198. Foreign Corporations to Forfeit Permit**

Any foreign corporation violating any provision of this chapter is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision, by injunction or other proceeding in the district court of Travis County, in the name of the State of Texas.

[Acts 1925, S.B. 84.]

**Art. 5199. Liability**

Each person, company or corporation, who shall in any manner violate any provision of this chapter shall, for each offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the State of Texas, in any county where the offense was committed, or where the offender resides, or in Travis County; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to sue for the recovery of the same.

[Acts 1925, S.B. 84.]

**Art. 5200. Fees of Attorney**

The fees of the prosecuting attorney for representing the State in proceedings under this chapter shall not be accounted for as fees of office.

[Acts 1925, S.B. 84.]

**Art. 5201. Prima Facie Evidence of Agency**

In prosecutions for the violation of any provision of this chapter, 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.

[Acts 1925, S.B. 84.]

**Art. 5201a. Prima Facie Proof of Agency**

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.

[1925 P.C.]

**Art. 5202. May Examine Witnesses**

Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice is an officer, knows of a violation of any provision of this chapter, the justice to whom such application is made shall have summoned and examined such witness in relation to such violations.

[Acts 1925, S.B. 84.]

**Art. 5203. Sworn Statement**

Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such statement shall be delivered to the attorney upon whose application the witness was summoned.

[Acts 1925, S.B. 84.]

**Art. 5204. Failure of Witness to Appear**

If the witness summoned as aforesaid fails 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 shall make a full statement of all facts within his knowledge with reference to the matter inquired about.

[Acts 1925, S.B. 84.]

**Art. 5205. Immunity of Witness**

Any person so summoned and 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 1925, S.B. 84.]

**Art. 5205a. 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.

[1925 P.C.]

**Art. 5206. Statement of Cause of Discharge**

Any written statement of cause of discharge, if true, when made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same.

[Acts 1925, S.B. 84.]

**Art. 5207. Detectives**

Any person, corporation, or firm who shall employ any armed force of detectives, or other persons not residents of this State, in the State of Texas, shall be liable to pay to the State as a penalty not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this State. Nothing herein shall be construed to deprive any person, firm or corporation of the right of self-defense, or defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense.

[Acts 1925, S.B. 84.]

**Art. 5207a. Right to Bargain Freely Not To Be Denied; Membership in Labor Union**

Sec. 1. The inherent right of a person to work and bargain freely with his employer, individually or collectively, for terms and conditions of his employment shall not be denied or infringed by law, or by any organization of whatever nature.

Sec. 2. No person shall be denied employment on account of membership or nonmembership in a labor union.

Sec. 3. Any contract which requires or prescribes that employees or applicants for employment in order to work for an employer shall or shall not be or remain members of a labor union, shall be null and void and against public policy. The provisions of this Section shall not apply to any contract or contracts heretofore executed but shall apply to any renewal or extension of any existing contract and to any new agreement or contract executed after the effective date of this Act.

Sec. 4. Definitions. By the term "labor union" as used in this Act shall mean every association, group, union, lodge, local, branch or subordinate organization of any union of working men, incorporated or unincorporated, organized and existing for the purpose of protecting themselves and improving their working conditions, wages, or employment re-



relationships in any manner, but shall not include associations or organizations not commonly regarded as labor unions.

Sec. 5. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstances, shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act and the application thereof, but shall be confined in its operation to the portion of the Act directly involved in the controversy in which judgment shall have been rendered and to the person or circumstances involved.

[Acts 1947, 50th Leg., p. 107, ch. 74.]

**Art. 5207b. Jury Service; Right to Reemployment**

(a) No private employer may terminate the employment of a permanent employee because such employee serves as a juror. The employee is entitled to return to the same employment that he or she held at the time he or she was summoned for jury service.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the employee must, as soon as practical upon his or her release from jury service, give actual notice of his or her intention to return to his or her employment.

(c) A person who is injured because of a violation of this section is entitled to just damages, recoverable at law, in an amount not to exceed six months' compensation at the rate at which he or she was compensated at the time he or she was summoned for jury duty. In addition to damages, the injured person is entitled to recover reasonable attorney's fees, to be approved by the court.

(d) It is a defense in an action brought under this section that the employer's circumstances changed to such an extent during the time that the employee served as a juror that reemployment was impossible or unreasonable.

[Acts 1975, 64th Leg., p. 244, ch. 94, § 1, eff. Sept. 1, 1975.]

**CHAPTER THIRTEEN. EMPLOYMENT AGENTS**

**Art.**

- 5208 to 5210. Repealed.
- 5210a. Expired.
- 5211 to 5221a-1. Repealed.
- 5221a-2. State System of Public Employment Officers.
- 5221a-3. Political Subdivisions May Contract With State Employment Service.
- 5221a-4. Repealed.
- 5221a-5. Labor Agency Law.
- 5221a-6. Repealed.
- 5221a-7. Personnel Employment Services.

Arts. 5208 to 5210. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

Art. 5210a. Expired

Arts. 5211 to 5221. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

Art. 5221a-1. Repealed by Acts 1943, 48th Leg., p. 86, ch. 67, § 22

Art. 5221a-2. State System of Public Employment Officers

**Acceptance of Federal Act**

Sec. 1. The State of Texas accepts the provisions of the Wagner-Peyser Act approved June 6, 1933 (48 Stat. 113, U.S. Code Title 29, Section 49) "an act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes," in conformity with Section 4 thereof, and will observe and comply with the requirements of said Act.

**Bureau of Labor Statistics as State Agency**

Sec. 2. The Bureau of Labor Statistics<sup>1</sup> is hereby designated and constituted the agency of the State of Texas for the purposes of such Act. Said Bureau, its officers and employees, are hereby given full power to cooperate with all authorities of the United States having powers or duties under such Act and to do and perform all things necessary to secure to the State of Texas the provisions of such Act in the promotion and maintenance of a system of public employment offices.

**Division of State Employment Service**

Sec. 3. There is hereby created within the Bureau of Labor Statistics a division to be known as the Texas State Employment Service, responsible for administering a system of public employment offices for the purpose of assisting employers to secure employees, and workers to secure employment. The Commissioner of Labor Statistics is authorized and directed to establish such offices in such parts of the State as he deems necessary and to prescribe rules and regulations not inconsistent with any of the provisions of this Act.

**Commissioner of Labor Statistics to Appoint Officers and Employees**

Sec. 4. The Commissioner of Labor Statistics, in accordance with the regulations prescribed by the Director of the United States Employment Service, shall appoint the officers and other employees of the Texas State Employment Service created under this Act.

**Federal Funds Payable to State Treasurer**

Sec. 5. All Federal funds made available to this State under said Act of Congress shall be paid into the Treasury of this State, and said funds are

hereby appropriated and made available to the Bureau of Labor Statistics to be expended as provided by said Act of Congress and this Act.

[Acts 1935, 44th Leg., p. 552, ch. 236.]

<sup>1</sup> Name changed to Texas Department of Labor and Standards; see art. 5151a.

**Art. 5221a-3. Political Subdivisions May Contract With State Employment Service**

The Commissioners Court of any county of this State or the governing body of any other political subdivision of this State is authorized to enter into agreements with the agents of the Texas State Employment Service for the purpose of establishing or maintaining or assisting in the establishing or maintaining of a free public employment service within such county or political subdivision, upon such terms and conditions as may be agreed upon by the Commissioners Court or other governing body and the agent of the Texas State Employment Service, and may employ such means and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such free public employment service in such county or political subdivision. As a part of such agreement the Commissioners Court or governing body of any other political subdivision of this State may enter into agreements with the Texas State Employment Service or its agents and as a part of such agreement may provide for the payment of agreed sums of money for rent of premises, payment for services rendered, purchase of equipment, or other purposes as may be deemed advisable by said Commissioners Court or other governing body.

[Acts 1939, 46th Leg., p. 4613, § 1.]

**Art. 5221a-4. Repealed by Acts 1949, 51st Leg., p. 434, ch. 234, § 15**

**Art. 5221a-5. Labor Agency Law**

**Definitions as Used in the Act**

Sec. 1. (a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by a Labor Agent or Agency from or on behalf of any person seeking employment, or employers seeking employees, in payment for any service, either directly or indirectly. The term "fee" includes the difference between the amount received by a Labor Agent and the amount paid out by him to persons employed to render personal services to, for, or under the direction of a third person.

(c) "Employer" means any person employing or seeking to employ any employee.

(d) "Employee" means any person performing or seeking to perform work or service of any kind for compensation.

(e) "Labor Agent" means any person in this State who, for a fee, offers or attempts to procure, or procures employment for employees, or without a fee offers or attempts to procure, or procures employment for common or agricultural workers; or any person who for a fee attempts to procure, or procures employees for an employer, or without a fee offers or attempts to procure common or agricultural workers for employers, or any person, regardless whether a fee is received or due, offers or attempts to supply or supplies the services of common or agricultural workers to any person. The term "Labor Agent" includes any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures the work; or disburses wage payments to the workers.

(f) "Commissioner" shall mean the Commissioner of Bureau of Labor Statistics.

(g) "Deputy or Inspector" shall mean any person who is duly authorized by the Commissioner to act in that capacity.

**Exceptions**

Sec. 2. The provisions of this Act shall not apply to persons who charge a fee of not more than Two Dollars (\$2) for registration only for procuring employment for school teachers; provisions of this Act shall not apply to any employment agency established and operated by this State, the United States Government, or any municipal government of this State; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within this State, nor to any common carrier operating in this State who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided, that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly, is exacted of the worker, then said employer is deemed an employment or labor agent and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given;

the provisions of this Act shall not apply to any farm labor contractor registered under the Farm Labor Contractor Registration Act of 1963, as amended (7 USC 2041 et seq.); the provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency; nor to any veterans' organization or labor union; nor to any nurses' organizations operated not for profit, to be conducted by recognized professional registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; nor shall the provisions of this Act apply to employers, their representatives and/or crew leaders engaged in agricultural production and/or agricultural related services (packing, packaging, and processing), who recruit workers through the Texas Employment Commission.

#### Application and Bond

Sec. 3. (a) Application and Bond for a Labor Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Labor Agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which said applicant resides for at least three (3) years prior thereto, to the effect that applicant or applicants are persons of good moral character. The application must state the names and addresses of all partners, associates, and profit sharers of the business and shall list the amount of their respective interests.

(b) The Commissioner shall investigate each applicant and the Department of Public Safety shall make available to the Commissioner all arrest and conviction records, of their files, on any applicant for license under this Act.

(c) The application shall be examined by the Commissioner. If he finds that the same complies with the law and that the applicant is entitled to a license and pays the annual license fee of Fifty Dollars (\$50), then he shall issue a license to the applicant. Each license issued by the Commissioner shall be good for a period of one year from date of issuance.

(d) Each application for a labor agency license must be accompanied by a surety or cash performance bond in the principal amount of Two Thousand Five Hundred Dollars (\$2,500). The bond shall be payable to the State for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the State, or any political subdivision thereof in any suit for damages, penalties or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's labor agency activities.

#### Fees

Sec. 3A. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three Dollars (\$3), which may be collected from the applicant only after employment has been obtained and accepted by the applicant. A labor agent may not charge a registration fee.

#### Persons Disqualified

Sec. 3B. No license to operate as a labor agent may be granted to:

- (1) a person who sells or proposes to sell alcoholic beverages in a building or on premises where he operates or proposes to operate as a labor agent; or
- (2) a person whose license has been revoked within three (3) years preceding the date of application.

#### Notice of Cancellation of Bond

Sec. 3C. Where the surety intends to cancel a bond, thirty (30) days' notice of the cancellation shall be furnished by the surety to the Commissioner prior to the effective date of the cancellation.

Sec. 4. Repealed by Acts 1979, 66th Leg., p. 259, ch. 134, § 9, eff. May 9, 1979.

#### Revocation or Suspension of License

Sec. 5. The Commissioner shall have the authority, and it shall be his duty, to revoke the license of any labor agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license. The Commissioner shall have the authority, and it shall be his duty, to revoke or suspend the license of any labor agent when it shall appear to his satisfaction, upon hearing, that the agent has violated any provision of this Act.

The Commissioner shall not revoke or suspend the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed revocation or suspension, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against of the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10)

days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner, which must be in accordance with the terms and provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Any appeal from the decisions of the Commissioner shall be filed in the District Court of Travis County and said appeal shall not have the effect of automatically staying the decisions of the Commissioner.

#### Failure to File Bond; Suspension of License

Sec. 5A. If a licensee fails to file a bond with the Commissioner within 30 days after notice of cancellation by the surety of the bond, the license issued to the principal under the bond is automatically suspended until such time as a bond is filed. A person whose license is suspended pursuant to this section shall not operate as a labor agent during the period of the suspension.

#### Out-of-State Agencies

Sec. 6. No foreign labor agent, labor bureau or labor agency or other person or corporation resident of or domiciled in any other State or territory of the United States shall enter this State and attempt to hire, entice, or solicit or take from this State any common or agricultural workers, singly or in groups, for any purpose without first applying to the Commissioner of the Bureau of Labor Statistics for a license as an employment or labor agent as provided by this Act.

#### Reports to Workers

Sec. 7. Any labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall provide to each person who was hired, enticed, or solicited to be employed beyond the limits of this State a report correctly showing:

- (a) The name and address of the person.
- (b) The name and address of the employer.
- (c) The kind of work to be performed.
- (d) The place where the person is to be employed.

(e) The term of employment.

(f) The wages to be paid, and

(g) Whether or not transportation is to be furnished, arranged for, or paid for any such common laborer or agricultural worker either leaving or returning to this State.

The said Commissioner shall have the authority and it shall be his duty to issue the forms necessary for this section.

#### Duties of Licensee

Sec. 7A. (a) In addition to the duties inherent in being a labor agent and the duties required by this Act or any other provision of law, a licensee has the duties set forth in this section if he employs workers to render services for third persons.

(b) A licensee shall promptly pay or distribute to the proper individuals all money or other things of value entrusted to the licensee by a third person for such purpose.

(c) A licensee shall comply with the terms and provisions of legal and valid agreements and contracts entered into between the licensee in his capacity as a labor agent and third persons.

(d) A licensee shall have available for inspection by his employees and by the third persons with whom he has contracted a written statement in English and Spanish showing the rate of compensation he receives from the third persons and the rate of compensation he is paying to his employees for services rendered to, for, or under the control of such third persons.

(e) A licensee shall take out a policy of insurance with an insurance carrier authorized to do business in the State of Texas in an amount satisfactory to the Commissioner, which insures the licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any motor vehicle for the transportation of individuals in connection with his business, activities, or operations as a labor agent.

(f) A licensee shall have displayed prominently at the site where the work is to be performed and on all vehicles used by the licensee for the transportation of employees the rate of compensation the licensee is paying to his employees for their services, printed in both English and Spanish.

(g) All vehicles used by a licensee for the transportation of individuals in his operations as a labor agent shall have displayed prominently at the entrance of the vehicle the name of the labor agent and the number of his license issued by the Commissioner.

(h) Each licensee shall, semimonthly or at the time of each payment of wages, furnish each worker employed by him either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writ-

ing showing in detail each and every deduction made from the wages.

#### Certain Acts Prohibited

Sec. 7C.<sup>1</sup> No 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 labor office; nor shall any such licensed person use any letterheads or blanks not containing the name of such labor agent and the address of his labor office.

(c) Publish or cause to be published any false or misleading advertisement or notice relating to his labor 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 labor 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 labor 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.

<sup>1</sup> So in enrolled bill. There is no Section 7B.

#### License as Evidence

Sec. 8. Any application made by an employment or labor agent for a license, or a certified copy thereof under the hand and seal of the Commissioner, shall be received as evidence in any Court in this State without the necessity of proving the execution thereof.

#### Disposition of License Fees Collected

Sec. 9. License fees collected under the provisions of this Act shall be deposited by the Commis-

sioner in the State Treasury to the credit of the General Revenue Fund.

#### To Display License

Sec. 10. (a) A labor agent shall keep conspicuously posted in his office the license issued to him under this law.

(b) A labor agent shall display a duplicate of his license to each person with whom he deals in his capacity as a labor agent.

#### Doing Business Without License

Sec. 11. Any person acting as a Labor Agent, as defined by this Act, without having first filed with the Commissioner of Labor and Standards of the State of Texas, an application for license as Labor Agent, as provided by this Act, and without having first secured a State license as provided, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Fifty Dollars (\$50) nor more than Three Hundred Dollars (\$300).

#### Authority of the Commissioner

Sec. 12. The Commissioner of Labor and Standards and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; and when such arrest has been made, the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such employment or labor agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment or labor agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to suspend or revoke the license of such agent in accordance with the provisions of Section 5 of this Act.

#### Rules and Regulations

Sec. 12A. The Commissioner shall promulgate rules and regulations to carry out the provisions of this Act.

#### Punishment

Sec. 13. 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).

#### Providing a Saving Clause

Sec. 14. That in the event any section, or part of section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections, or parts of

sections of this Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative section, or part of section or provision, had not been included. In the event any penalty, right or remedy created or given in any section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the Section thereof containing such invalid, unconstitutional or inoperative part, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions.

#### Repealing Conflicting Laws

Sec. 15. Chapter 67, Page 86, General Laws of the Forty-eighth Legislature, 1943,<sup>1</sup> is specifically repealed, and all laws or parts of laws in conflict with provisions of this Act are hereby repealed, except that all valid licenses heretofore issued by the Bureau of Labor Statistics and in force at the time of the effective date of this Act shall continue in force until their expiration date, or are cancelled according to the provisions of this Act.

<sup>1</sup> Article 5221a-4 and Penal Code (1925), art. 1593a.

[Acts 1949, 51st Leg., p. 434, ch. 234. Amended by Acts 1961, 57th Leg., p. 267, ch. 142, § 1; Acts 1975, 64th Leg., p. 409, ch. 182, §§ 1, 2, eff. May 13, 1975; Acts 1979, 66th Leg., p. 256, ch. 134, §§ 1 to 9, eff. May 9, 1979; Acts 1981, 67th Leg., p. 3221, ch. 846, § 1, eff. Aug. 31, 1981.]

**Art. 5221a-6. Repealed by Acts 1979, 66th Leg., p. 574, ch. 263, § 9, eff. Aug. 27, 1979**

See, now, art. 5221a-7.

#### Art. 5221a-7. Personnel Employment Services

##### Definitions

Sec. 1. In this Act:

(1) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(2) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services received directly or indirectly by a personnel service from a person seeking employment in payment for a service.

(3) "Employer" means a person employing or seeking to employ an employee.

(4) "Applicant" means a person engaging the services of a personnel service for the purpose of securing employment or a person placed by a personnel service with an employer.

(5) "Personnel service" means a person who for a fee or without a fee offers or attempts to procure directly or indirectly permanent employment for an

employee or procures or attempts to procure a permanent employee for an employer.

(6) "Counselor" means an individual who interviews and refers an applicant to a prospective employer or who solicits job orders from an employer.

(7) "Owner" means a person possessing a proprietary interest in a personnel service.

(8) "Service file" means a job order, resume, application, workpaper, or other record containing any information relating to an applicant, employer, or position or the operations of a personnel service.

(9) "Job order" means a verbal or written notification from an employer of a job opening.

(10) "Principal location" means the place at which the day-to-day business of the personnel service is operated. An owner may have more than one principal location.

(11) "Management search consultant" means a personnel service that is retained by, acts solely on behalf of, and is compensated only by an employer and that does not collect directly or indirectly any fee from an applicant on account of any service performed by the personnel service.

(12) "Commissioner" means the commissioner of labor and standards.

##### Exemption

Sec. 2. (a) This Act does not apply to:

(1) a person regulated by Chapter 234, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-5, Vernon's Texas Civil Statutes);

(2) a personnel service operated by this state, the United States government, or any municipal government of this state;

(3) a personnel service operated by a person in conjunction with the person's own business for the exclusive purpose of employing help for use in the business; or

(4) a labor union.

(b) Section 7 of this Act does not apply to a management search consultant.

##### Conduct

Sec. 3. (a) A person who acts as a personnel service in the capacity of an owner, operator of the service, counselor, or agent or employee of the service may not:

(1) impose a fee for the registration of an applicant for employment or other fee on an applicant except for the furnishing of an employment referral that results in the applicant obtaining employment;

(2) engage or attempt to engage in splitting or sharing with an employer, an agent or other employee of an employer, or other person to whom the personnel service has furnished services a payment

received by a personnel service from a person seeking employment or from an employer;

(3) make, give, or cause to be made or given to any applicant for employment any false promise, misrepresentation, or misleading statement or information;

(4) refer any applicant for employment except on a valid job order for the referral;

(5) advertise a position without there first being a valid job order verifiable by the employer;

(6) procure or attempt to procure the discharge of a person from his or her current employment;

(7) induce, solicit, or attempt to induce or solicit an employee to terminate his or her employment in order to obtain new employment if the employee's present employment was obtained by the efforts of the inducing or soliciting personnel service or any other personnel service having a common ownership with the inducing or soliciting personnel service unless the employee initiates the new contact;

(8) deliver, disclose, distribute, receive, or otherwise communicate any service file or any information contained in a service file to or from a person except as authorized by the personnel service owning the file;

(9) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, and any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(10) refer an applicant to a place where a strike or lockout exists without first furnishing the applicant a written statement of the existence of the strike or lockout if the personnel service has knowledge of the fact of the strike or lockout;

(11) refer an applicant to employment deleterious to his or her health or morals if the personnel service has knowledge of the deleterious condition of the employment; or

(12) charge a fee of more than 20 percent of the applicant's gross wages if the position that the applicant accepted as a result of a referral by a personnel service lasts less than 30 calendar days and if the applicant leaves the position with good cause.

(b) An employer seeking employees or a person seeking employment may not:

(1) make any false statement or conceal any material fact for the purpose of obtaining employees or employment by or through a personnel service; or

(2) engage or attempt to engage in the splitting or sharing of fees or payments for services of a personnel service with any person to whom this Act is applicable.

#### Service File as Trade Secret

Sec. 4. A service file and its contents are trade secrets as defined by Section 31.05 of the Penal Code.

#### Criminal Penalty

Sec. 5. A person who knowingly or intentionally violates or fails to comply with a provision of this Act commits an offense. An offense under this section is a Class A misdemeanor.

#### Civil Remedy

Sec. 6. (a) A person who violates a provision of this Act is liable to a person adversely affected by the violation for the amount of all actual damages produced by the violation. In the event a person adversely affected establishes that a violation was committed knowingly, the person shall be awarded three times the amount of actual damages. In this subsection, "knowingly" means actual awareness of the act or practice that is the alleged violation, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(b) In an action filed under this section, a plaintiff who prevails shall receive court costs and attorney's fees reasonable in relationship to the amount of reasonably necessary work expended.

(c) In an action filed under this section, a plaintiff may seek and the court in its discretion may grant:

(1) an order enjoining the defendant in the suit from violating this Act;

(2) any order necessary to restore to the person any property acquired by the defendant in the suit in violation of this Act; or

(3) other relief that the court considers proper, including the appointment of a receiver if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the revocation of a certificate authorizing the defendant in the suit to engage in business in this state, or an order enjoining the defendant in the suit from acting as a personnel service.

(d) If a court finds that a civil action filed under this section is groundless and brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

(e) This Act does not affect any public or private remedy or enforcement power available under other laws.

#### Certificate of Authority

Sec. 7. (a) Any person desiring to own a personnel service that is to operate in this state shall file notification of that fact with the commissioner. The notice shall be filed by the owner of the personnel service not later than the 30th day before the com-

mencement of the operation. The notice shall include the principal location of the personnel service, the name and residence address of each owner, the assumed name, if any, under which the personnel service is to operate, and a statement that each owner has read and is familiar with the provisions of this Act. The notice shall be signed and sworn to by the owner before a notary public or other officer authorized to administer oaths.

(b) The notice shall be accepted by the commissioner, and on payment of a filing fee, the commissioner shall issue to the owner a certificate of authority to do business as a personnel service in this state not later than the 15th day after the day of the filing. The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative costs, not to exceed \$75.

(c) The owner shall file with each notification or renewal a good and sufficient bond executed by the applicant with a good and sufficient surety in the sum of \$5,000 payable to the State of Texas, conditioned that the obligor will not violate any of the provisions of this Act. The bond shall recite that any person injured or aggrieved by any violation of this Act by the principal or his or her agents or representatives is entitled to bring suit on the bond. One bond is sufficient if an owner has more than one principal location. The commissioner may not issue the certificate of authority until the bond is filed. An owner may deposit \$5,000 in cash in lieu of the bond.

(d) The certificate of authority shall be valid for a period of one year from the date of its issuance. It shall be displayed in a prominent place in the principal location of the personnel service.

(e) Renewals of the certificate of authority shall be issued by the commissioner on the filing by an owner of a notice containing the same information specified in Subsection (a) of this section and on the receipt by the commissioner of a filing fee. The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative costs, not to exceed \$75.

(f) Each person who holds on the effective date of this Act a license under the terms of Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-6, Vernon's Texas Civil Statutes), must file the notice required by this section not later than the 60th day after the effective date of this Act if the person is required to do so by this Act. The commissioner shall notify these persons of this Act and shall furnish, not later than the 30th day after the effective date of this Act, the persons with the forms necessary for filing in compliance with this section.

#### Disposition of Fees

Sec. 8. The commissioner shall deposit all money received by him or her from fees under this Act

WTSC Civil Statutes—19

in the State Treasury to the credit of the General Revenue Fund.

[Acts 1979, 66th Leg., p. 570, ch. 263, §§ 1 to 8, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 377, ch. 81, § 11(a), eff. Sept. 1, 1983.]

Section 9 of the 1979 Act repealed art. 5221a-6.

Section 11(b) of the 1983 amendatory act provides:

"Until the commissioner of labor and standards sets different fees, the filing fees required by Subsections (b) and (e), Section 7, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), are those that were in effect on August 31, 1983."

#### CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION

Art.	
5221b-1.	Benefits.
5221b-1a.	Repealed.
5221b-2.	Benefit Eligibility Conditions.
5221b-2a.	Prohibitions Against Denial of Benefits.
5221b-3.	Disqualification for Benefits.
5221b-4.	Claims for Benefits.
5221b-4a.	Extended Benefits.
5221b-5.	Contributions.
5221b-5a.	Reimbursements.
5221b-5b.	Special Contributions for Governmental Employers.
5221b-6.	Duration of Coverage and Elections.
5221b-6a.	Repealed.
5221b-7.	Unemployment Compensation Fund.
5221b-7a.	Transfer of Funds.
5221b-7b.	Moneys Appropriated to Pay Benefits and Refunds.
5221b-7c.	Advances from Federal Fund.
5221b-8.	Texas Employment Commission.
5221b-9.	Administration.
5221b-9a.	Use of Records.
5221b-9b.	Destruction of Records.
5221b-10.	Employment Service.
5221b-11.	Unemployment Compensation Administration Fund.
5221b-12.	Collection of Contributions.
5221b-12A.	Liens.
5221b-13.	Protection of Rights and Benefits.
5221b-14.	Penalties.
5221b-15.	Representation in Court.
5221b-15a.	Reciprocal Arrangements.
5221b-16.	Nonliability of State.
5221b-17.	Definitions.
5221b-17a.	Repeal; Saving Clause.
5221b-18.	Repealed.
5221b-19.	Repeal or Amendment.
5221b-20.	Partial Invalidity; Separability of Provisions.
5221b-21.	Powers of Commission.
5221b-22.	Termination of Act.
5221b-22a.	Unemployment Compensation Special Administration Fund.
5221b-22aa.	Use of Fund for Payment of Legislative Expenses.
5221b-22b.	Title.
5221b-22c.	Unemployment Compensation Commission.
5221b-22d.	Coverage of State Employees.
5221b-22dd.	Coverage for Out-of-State Employees.
5221b-22e.	Conformity With Federal Statutes.
5221b-23.	Expired.
5221b-24.	Repeal; Saving Clause.



**Art. 5221b-1. Benefits**

(a) **Payment of Benefits:** On and after January 1, 1938, benefits shall become payable from the fund. All benefits shall be paid through the Texas Employment Commission, in accordance with such regulations as the Commission may prescribe.

(b) **Benefit Amount for Total Unemployment:** Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-fifth ( $\frac{1}{25}$ ) of his wages received from employment by employers during that quarter in his base period in which wages were highest, provided that:

(1) If such rate is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1); and

(2) Such rate shall not be more than Eighty-four Dollars (\$84) per benefit period nor less than Fifteen Dollars (\$15) per benefit period on valid initial claims filed on or after October 1, 1977; provided that if the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars (\$10) the average weekly wage for those workers in 1976 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit amount shall be increased by Seven Dollars (\$7) and the minimum weekly benefit amount shall be increased by One Dollar (\$1) above the maximum and minimum amounts established herein, the increases to become effective on valid initial claims filed on or after October 1 following publication of "The Average Weekly Wage" report. Thereafter, each cumulative (additional) Ten Dollar (\$10) increase in the average weekly wage for manufacturing production workers in Texas, as annually determined and reported by the Texas Employment Commission, shall cumulatively increase the maximum weekly benefit amount by an additional Seven Dollars (\$7) and the minimum weekly benefit amount by an additional One Dollar (\$1) beginning with the next October 1 following publication of "The Average Weekly Wage" report. The maximum benefit amount payable per benefit period under this section to any individual on the effective date of a valid claim shall remain the maximum benefit amount payable to that individual until that individual establishes a new benefit year.

(c) **Benefit for partial unemployment:** Each eligible individual who is partially unemployed in any benefit period shall be paid with respect to such benefit period a partial benefit, provided that such individual shall meet the requirements of subsection 4(a) of this Act.<sup>1</sup> Such partial benefit shall be the benefit amount plus (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater, less the wages earned during such benefit period, provided that if the result of such computation is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1).

(d) **Duration of Benefits:** The Commission shall establish wage credits for each individual by crediting him with the wages for employment received by him during his base period from employers. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of:

(1) Twenty-six (26) times his benefit amount, or

(2) Twenty-seven per cent (27%) of such wage credits; provided that if such is not an even multiple of One Dollar (\$1), it shall be adjusted to the next higher multiple of One Dollar (\$1).

(e) **Benefit Wage Credits:** "Benefit wage credits" means those wages as defined in this subsection of the Act, which are used in determining an individual's right to benefits. "Wages" as used in this Section shall be as defined in subsection (n) of Section 19 of this Act,<sup>2</sup> except that the six-thousand-dollar limitation on wages as set out in subsection (n)(1) of Section 19 shall not be applicable for the purposes of this Section 3; provided that, for the purposes of this Section 3, wages received by an individual in any calendar year shall include all remuneration from each employer for employment up to the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code of 1954),<sup>3</sup> as amended, or as it may hereafter be amended; and provided further, that wages which have been used to qualify an individual for regular benefits under this Act or under any other unemployment compensation law shall not be used again to qualify such individual for regular benefits.

If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

(f) **Equal Treatment:** Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; except that:

(1) with respect to services in an instructional, research, or principal administrative capacity for an educational institution; benefits shall not be payable based on those services for any week commencing during the period between two (2) successive academic years or terms (or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period) to any individual if the individual performs those services in the first of the academic years (or terms) and if there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years (or terms);

(2) with respect to services in any other capacity for an educational institution:

(A) benefits shall not be payable on the basis of those services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms; except that

(B) if benefits are denied to any individual for any week under Paragraph (A) of this subdivision and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of Paragraph (A); and

(3) with respect to any services described in Paragraphs (1) and (2), benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(g) Athletes: Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed those services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform those services in the later of the seasons (or similar periods).

(h) Aliens: Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act),<sup>4</sup> provided that:

(1) any data or information required of individuals applying for benefits to determine whether or not benefits are payable to them because of their alien status shall be uniformly required from all applicants for benefits; and

(2) in the case of an individual whose application for benefits would otherwise be approved, no determination that benefits are not payable to that individual because of his alien status may be made except on a preponderance of the evidence.

Provided that any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act as provided by Public Law 94-566<sup>5</sup> which specify other conditions or other effective date for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be considered applicable under the provisions of this Section.

(i) Previously Uncovered Services: With respect to weeks of unemployment beginning after December 31, 1977, benefit wage credits shall include wages for previously uncovered services, provided that benefit payments based on those services are reimbursable from the federal government in accordance with provisions of Public Law 94-566 and provided that no employer's account shall be charged with payments based on those benefit wage credits either as chargebacks or reimbursements. For the purpose of this subsection, the term "previously uncovered services" means services which were not employment and which were not services for an employer under any provision of this Act at any time during the one-year period ending December 31, 1975, and which constitute employment and services for an employer after December 31, 1977, in accordance with the provisions of Section 19 of this Act as services in agricultural labor, domestic services, services for a governmental employer, or services for a nonprofit educational institution which is not an institution of higher education, except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974<sup>6</sup> was paid on the basis of those services.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 3. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 1; Acts 1939, 46th Leg., p. 436, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 1; Acts 1949, 51st Leg., p. 282, ch. 148, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 1; Acts 1955, 54th Leg., p. 1310, ch. 517, § 1; Acts 1957, 55th Leg., p. 1350, ch. 460, § 1; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 1; Acts 1967, 60th Leg., p. 683, ch. 287, § 1, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2733, ch. 892, § 1, eff. Jan. 1, 1972; Acts 1971, 62nd Leg., p. 2777, ch. 900, § 1, eff. Jan. 1, 1972; Acts 1975, 64th Leg., p. 897, ch. 334, § 9, eff. June 6, 1975; Acts 1977, 65th Leg., p. 981, ch. 363, §§ 1, 2, eff. Jan. 1, 1978; Acts 1983, 68th Leg., p. 3065, ch. 527, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5221b-2(a).

<sup>2</sup> Article 5221b-17(n).

<sup>3</sup> 26 U.S.C.A. § 3121.

<sup>4</sup> 8 U.S.C.A. §§ 1153(a)(7), 1182(d)(5).

<sup>5</sup> 26 U.S.C.A. § 3304(a)(14).

<sup>6</sup> Public Law 93-567; see 26 U.S.C.A. § 3304 note.

Sections 20 to 22 of the 1977 amendatory act provided:

"Sec. 20. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal may in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including but not limited to the right to collect contributions, interest, or penalties that have accrued and

the right of prosecution for violation of any provision thereof; nor may this repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1978, shall be effective for the remainder of that benefit year.

"Sec. 21. The amendment to Subsection (b), Section 3, Texas Unemployment Compensation Act, as amended (Article 5221b-1, Vernon's Texas Civil Statutes), contained in Section 1 of this Act takes effect on October 1, 1977. All other provisions of this Act take effect on January 1, 1978.

"Sec. 22. If any provision of this Act is held invalid, the invalidity does not affect any provision of this Act which can be given effect without the invalid provision. Provided further, should any part or parts of Public Law 94-566 or the federal acts it amends be finally adjudged unconstitutional or invalid by any court of competent jurisdiction, then this Act is automatically repealed to the extent of such invalidity."

Section 7 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to claims for unemployment compensation benefits filed on or after that date. Claims filed before that date are governed by the law in effect on the filing date, and that law is continued in effect for that purpose."

**Art. 5221b-1a. Repealed by Acts 1955, 54th Leg., p. 399, ch. 116, § 14**

**Art. 5221b-2. Benefit Eligibility Conditions**

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Subsection 6(a) of this Act;<sup>1</sup>

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received benefit wage credits for employment by employers of not less than Five Hundred Dollars (\$500) and has total benefit wage credits in his base period of not less than one and one-half (1½) times his high quarter benefit wage credits in his base period, or within at least one quarter of his base period received wages for employment by employers equal to two-thirds (⅔) of the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code),<sup>2</sup> as amended, or as it may hereafter be amended, provided that any claimant who has had a prior benefit year must have earned wages of Two Hundred Fifty Dollars (\$250) or more subsequent to the beginning date of the prior benefit year.

(f) Prior to the first payment of benefits following an initial claim he has been totally or partially unemployed for a waiting period of seven (7) consecutive days. No week shall be counted as a waiting period week for the purposes of this Subsection:

(1) Unless he has registered for work at an employment office in accordance with Subsection (a) of this Section;

(2) Unless it is a week following the filing of an initial claim;

(3) Unless he reports at an office of the Commission and certifies that he has met the waiting period requirements herein prescribed for the preceding seven (7) days;

(4) If benefits have been paid or are payable with respect thereto;

(5) If the individual does not meet the eligibility conditions of Subsections (c) and (d) of this Section 4;

(6) If the individual has been disqualified for benefits for such seven (7) day period under the provisions of Subsections (a), (b), (c), or (d) of Section 5 of this Act;<sup>3</sup>

(7) Provided, notwithstanding any other provision of this Subsection (f), when an individual has been paid benefits in his current benefit year equal to three times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of the Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 4. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 2; Acts 1939, 46th Leg., p. 436, § 2; Acts 1943, 48th Leg., p. 585, ch. 343, § 2; Acts 1945, 49th Leg., p. 589, ch. 347, § 2; Acts 1949, 51st Leg., p. 282, ch. 148, § 2; Acts 1955, 54th Leg., p. 399, ch. 116, § 2; Acts 1955, 54th Leg., p. 1310, ch. 517, § 2; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 4; Acts 1967, 60th Leg., p. 683, ch. 287, § 2, eff. Oct. 1, 1967; Acts 1969, 61st Leg., p. 2054, ch. 709, § 1, eff. June 12, 1969; Acts 1977, 65th Leg., p. 984, ch. 368, § 3, eff. Aug. 29, 1977.]

<sup>1</sup> Article 5221b-4(a).

<sup>2</sup> 26 U.S.C.A. § 3121.

<sup>3</sup> Article 5221b-3.

**Art. 5221b-2a. Prohibitions Against Denial of Benefits**

(a) Benefits shall not be denied to an individual because he is in training with the approval of the Commission, nor shall such individual be denied benefits with respect to any benefit period in which he is in training with the approval of the Commission by reason of the application of provisions in this Act relating to availability for work, active search for work, or refusal to apply for, or a refusal to accept, suitable work. Approval of training shall be in accordance with rules prescribed by the Commission.

(b) Benefits shall not be denied or reduced to an individual solely because he files a claim in another state (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for unemployment compensation.

(c) Benefits shall not be denied to an individual solely on the basis of pregnancy or termination of pregnancy.

(d) Notwithstanding any other provision of this Act, an otherwise eligible individual may not be denied benefits for any weeks because he is in training approved under Section 236(a)(1), Trade Act of 1974 (Pub.L. 93-618),<sup>1</sup> and the individual may not be denied benefits by reason of leaving work to enter that training if the work left is not suitable employment, or because of the application to any week in training of provisions in this Act or in any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work. In this subsection 'suitable employment' means, with respect to an individual, work which is of a substantially equal or higher skill level than the individual's past adversely affected employment, as that term is used by the Trade Act of 1974, and for which the wages are not less than 80 percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

[Acts 1971, 62nd Leg., p. 2734, ch. 892, § 2, eff. Jan. 1, 1972. Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 4, eff. Jan. 1, 1978; Acts 1983, 68th Leg., p. 3066, ch. 527, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> 19 U.S.C.A. § 2296(a)(1).

Section 7 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to claims for unemployment compensation benefits filed on or after that date. Claims filed before that date are governed by the law in effect on the filing date, and that law is continued in effect for that purpose."

#### Art. 5221b-3. Disqualification for Benefits

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount, unless the individual left work to move with a spouse from the area in which the individual worked. In that case, the disqualification shall be for not less than six (6) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case. Provided no claimant shall be disqualified because of his or her leaving due to medically verified illness, injury, disability, or pregnancy and is still available for work. Military personnel who do not reenlist may not be considered to have left work voluntarily without good cause connected with work.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were mem-

bers employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,<sup>1</sup> or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

(f) For a benefit period occurring from the date of the sale of a business until the date that an individual is employed and is eligible for benefits based on the wage credits received through the new employment, if:

(1) the business is a corporation and the individual is:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) the business is a limited or general partnership and the individual is a limited or general part-

ner who is involved in the sale of the partnership; or

(3) the business is a sole proprietorship and the individual is the proprietor who sells the business.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar (\$1), they shall be adjusted to the next higher multiple of One Dollar (\$1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566<sup>2</sup> requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

(i) This Section does not disqualify a claimant whose work-related reason for separation from employment was urgent, compelling, and of a necessary nature so as to make separation involuntary.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 5. Amended by Acts 1939, 46th Leg., p. 436, § 3; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1(a); Acts 1943, 48th Leg., p. 585, ch. 343, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, § 3; Acts 1955, 54th Leg., p. 399, ch. 116, § 3; Act 1955, 54th Leg., p. 1211, ch. 484, § 1; Acts 1955, 54th Leg., p. 1310, ch. 517, § 3; Acts 1957, 55th Leg., p. 1350, ch. 460, § 2; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 5; Acts 1963, 58th Leg., p. 543, ch. 200, § 1; Acts 1971, 62nd Leg., p. 2734, ch. 892, § 3, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 985, ch. 368, § 5, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 15, ch. 12, § 1, eff. March 20, 1981; Acts 1983, 68th Leg., p. 4539, ch. 750, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> 42 U.S.C.A. § 401 et seq.

<sup>2</sup> 26 U.S.C.A. § 3304(a)(15).

Section 3 of the 1981 amendatory act provides:

"The disqualification for benefits of a person who, on the effective date of this Act, is disqualified under Subsection (a), (b), or (c), Section 5, Texas Unemployment Compensation Act, as amended [this article], is governed by the law as it existed before amendment by this Act. For that purpose, the prior law is continued in effect as if it had not been amended by this Act."

Prior to amendment in 1981, subses. (a) to (c) of this article read:

"(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

"(b) If the Commission finds he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the seriousness of the misconduct.

"(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than thirteen (13) benefit periods following the failure, as described above to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

"(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

"(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

#### Art. 5221b-4. Claims for Benefits

(a) Filing: Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Each employer shall post and maintain in places accessible to individuals in his employ printed notices giving general information about filing a claim for unemployment benefits. Such notices shall be supplied by the Commission to each employer without cost to him.

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the

branch or division where claimant last worked shall constitute due notice to such individual or organization. A governmental employer may designate in writing to the Commission an address for mail service. When a governmental employer has so designated a mailing address, mailing of notice of claims, determinations, or other decisions to such address shall constitute due notice to the governmental employer. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act,<sup>1</sup> except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 (Article 5221b-3) of this Act, as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked, or to the address for mail service designated by a governmental employer. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after

such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits, or if the last employer is a reimbursing employer, and the modification or reversal occurred before the employer was billed for the benefits subject to the modification or reversal, then the last employer shall not be billed for reimbursements with respect to such benefits. Any benefits paid to the claimant which were not in accordance with the final decision shall be refunded by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act, and the amount of benefits paid which were not in accordance with the final decision shall also be collectible in the manner provided in Section 14(b) of this Act for the collection of past due contributions.

(c) Appeals: Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the determination of the examiner. The parties to the appeal shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten (10) days after the date of mailing of such decision, further appeal is initiated pursuant to subsection (e) of this Section.

(d) Appeal Tribunals: To hear and decide disputed claims, the Commission, if it is necessary to insure prompt disposal of cases on appeal, shall establish one or more impartial appeal tribunals consisting in each case of a salaried examiner.

(e) Commission Review: The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof. The Commission shall promptly mail to the parties before it a copy of its findings and decision.

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim and all testimony at any hearing upon a disputed claim shall be recorded.

(g) Witness Fees: Witnesses subpoenaed pursuant to this Section shall be allowed fees at a rate fixed by the Commission, and such fees shall be deemed a part of the expense of administering this Act.

(h) Appeal to Courts: Any decision of the Commission shall become final ten (10) days after the date of mailing thereof, unless, within such ten (10) days, the appeal is reopened by Commission order or a party to the appeal files a written motion for rehearing, and judicial review of any final decision of the Commission shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies (not including a motion for rehearing) before the Commission as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the Commission and has been designated and appointed for that purpose by the Attorney General of Texas.

(i) Court Review: Within ten (10) days after the decision of the Commission has become final, and not before, any party aggrieved thereby may secure judicial review thereof by commencing an action in any court of competent jurisdiction in the county of claimant's residence against the Commission for the review of its decision, in which action any other party to the proceeding before the Commission shall be made a defendant, provided that if a claimant is a non-resident of the State of Texas such action

may be filed in a court of competent jurisdiction in Travis County, Texas, or in the county in Texas in which the last employer has his principal place of business, or in the county of claimant's last residence in Texas. Such trial shall be de novo. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the Commission or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. Such action shall be given precedence over all other civil cases except cases arising under the Workmen's Compensation law of this State. An appeal may be taken from the decision of the trial court, in the same manner, as is provided in other civil cases. It shall not be necessary, in any judicial proceedings under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the Commission shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 6. Amended by Acts 1939, 46th Leg., p. 436, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, § 4; Acts 1955, 54th Leg., p. 399, ch. 116, § 4; Acts 1957, 55th Leg., p. 1350, ch. 460, § 3; Acts 1967, 60th Leg., p. 683, ch. 287, § 3, eff. Oct. 1, 1967; Acts 1977, 65th Leg., p. 987, ch. 368, § 6, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 940, ch. 354, § 1, eff. June 10, 1981; Acts 1983, 68th Leg., p. 4926, ch. 878, § 1, eff. Sept. 1, 1983.]

1 Article 5221b-5(c)(2).

Section 3 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to unemployment compensation claims filed with the Texas Employment Commission on or after that date."

#### Art. 5221b-4a. Extended Benefits

(a) Definitions: As used in this Section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) begins with the third (3rd) week after a week for which there is a State "on" indicator; and

(B) ends with either of the following weeks, whichever occurs last:

(i) the third (3rd) week after the first (1st) week for which there is a State "off" indicator, or

(ii) the thirteenth (13th) consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a State "on" indicator before the fourteenth (14th) week following the end of a prior extended benefit period which was in effect with respect to this State.

(2) There is a State "on" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this Act:

(A) equaled or exceeded one hundred and twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded five percent (5%).

(3) There is a State "off" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, either paragraph (A) or (B) of subdivision (2) is not satisfied. Provided that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this section as if subdivision (2) did not contain paragraph (A) thereof, and as if the figure "five" (5) contained in paragraph (B) thereof were "six" (6); except that, notwithstanding any other provision of this Section, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

(4) "Rate of insured unemployment," for purposes of paragraphs (2) and (3) of this subsection, means the percentage derived by dividing:

(A) the average weekly number of individuals filing claims for regular compensation in this State for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the Commission on the basis of the Commission's reports to the United States Secretary of Labor, by

(B) the average monthly employment covered under this Act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period.

(5) "Regular benefits" means benefits payable to an individual under this Act or under any other state law (including benefits payable to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85<sup>1</sup>) other than extended benefits.

(6) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this Section for benefit periods of unemployment in his eligibility period.

(7) "Eligibility period" of an individual means the period consisting of the benefit periods in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended



benefit period, any benefit periods thereafter which begin in such period.

(8) "Exhaustee" means an individual who, with respect to any benefit period of unemployment in his eligibility period:

(A) has received, prior to such benefit period, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such benefit period;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or

(B) had a benefit year that expired prior to such benefit period and has no, or insufficient, wage credits on the basis of which he could establish a new benefit year that would include such benefit period; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act,<sup>2</sup> the Trade Expansion Act of 1962,<sup>3</sup> the Automotive Products Trade Act of 1965,<sup>4</sup> or such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and

(ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(9) "State Law" means the unemployment compensation law of any state that is approved by the United States Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954.<sup>5</sup>

(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and the Payment of, Extended Benefits: The provisions of this Act, and the rules or regulations of the Commission which apply to claims for, and the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits except when the result would be inconsistent with the other provisions of this Section.

(c) Eligibility Requirements for Extended Benefits: An individual shall be eligible to receive extended benefits with respect to any benefit period of unemployment in his eligibility period only if the Commission finds that with respect to such benefit period:

(1) he is an "exhaustee" as defined in subsection (a)(10) of this Section, and

(2) he satisfies the requirements of this Act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly Extended Benefit Amount: The weekly extended benefit amount payable to an individual for a week or total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total Extended Benefit Amount: The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be fifty percent (50%) of the total amount of regular benefits which were payable to him under this Act in his applicable benefit year.

(f)(1) Beginning and termination of extended benefit period: Whenever an extended benefit period is to become effective in this State (or in all states) as a result of a State or a national "on" indicator, or an extended benefit period is to be terminated in this State as a result of State and national "off" indicators, the Commission shall make a public announcement thereof in accordance with rules prescribed by the Commission.

(2) Computations required by the provisions of subsection (a)(6) of this Section shall be made by the Commission in accordance with regulations prescribed by the United States Secretary of Labor.

(g) Financing:

(1) Extended benefits shall be paid from the Unemployment Compensation Fund.

(2) Payments made by the Federal Government for its share of extended benefits shall be deposited into the Unemployment Compensation Fund.

(3) Fifty percent (50%) of the extended benefit payments based on wage credits from a reimbursing employer shall be charged to the account of such employer and reimbursed by such employer in the same manner as regular benefit payments, and such payments shall not be used in determining the replenishment ratio provided for in subsection 7(c)(5) of this Act.<sup>6</sup>

(4) Fifty percent (50%) of extended benefit payments based on wage credits from a taxed employer shall be deemed chargebacks and charged to the account of such employer and used in determining the benefit ratio of such employer unless it was determined that chargebacks were not to be made against the account of the employer when regular benefits with respect to an individual were paid. Fifty percent (50%) of extended benefit payments based on wage credits from a taxed employer (whether or not charged to an employer) shall be used in the numerator of the replenishment ratio. Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio.

(5) When a taxed base period employer is notified of a claim for benefits under subsection 7(c)(2) of this Act,<sup>7</sup> such notice shall state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as twenty-five percent (25%). No further notice of potential chargeback regarding extended benefit payments need be given to a taxed base period employer when the extended benefits are paid.

(6) Notwithstanding any other provision in this Act, with respect to weeks of unemployment beginning after December 31, 1978, extended benefit payments based on benefit wage credits earned from a state, or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions shall be charged to the employer at the rate of one hundred per cent (100%) rather than at the rate of fifty per cent (50%) as provided for other employers under this Act, and any such employer which is a taxed employer shall receive notice that its maximum potential chargeback may be increased by as much as fifty per cent (50%) rather than twenty-five per cent (25%) as provided for other employers.

(h)(1) Notwithstanding the provisions of Subsection (b) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commission finds that during such period:

(A) he failed to accept any offer of suitable work as defined under Subdivision (3) of this subsection or failed to apply for any suitable work to which he was referred by the commission; or

(B) he failed to engage actively in seeking work as prescribed under Subdivision (5) of this subsection.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions of Subdivision (1) of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(3) For purposes of this Subsection (h), the term "suitable work" means, with respect to any individual, any work which

(A) is within such individual's capabilities; provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(i) the individual's weekly extended benefit amount as determined under Subsection (d) of this section plus

(ii) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section

501(c)(17)(D) of the Internal Revenue Code of 1954,<sup>8</sup> payable to such individual for such week; and further,

(B) pays wages not less than the higher of

(i) the minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.A. Sec. 206), without regard to any exemption; or

(ii) the applicable state or local minimum wage.

(C) Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) the position was not offered to such individual in writing and was not listed with the employment service;

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Section 5(c) of this Act, as amended (Article 5221b-3, Vernon's Texas Civil Statutes), to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this Subdivision (3);

(iii) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Section 5(c) of this Act without regard to the definition specified by this Subdivision (3).

(4) Notwithstanding the provisions of Subsection (b) to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1954.

(5) For the purposes of Paragraph (B) of Subdivision (1) of this subsection, an individual shall be treated as actively engaged in seeking work during any week if

(A) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(B) the individual furnishes tangible evidence that he has engaged in such effort during such week.

(6) The employment service shall refer any claimant entitled to extended benefits under this Act to any suitable work which meets the criteria prescribed in Subdivision (3) of this subsection.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular or extended benefits under this Act because he or she voluntarily left work, was discharged for misconduct, or

failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this Act requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(i) Notwithstanding any other provision of this Act, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances under the Trade Act of 1974 (Pub.L. 93-618)<sup>9</sup> within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(j)(1) Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect: Except as provided by Subdivision (2) of this subsection, an individual is not eligible for extended benefits for any week if:

(A) extended benefits are payable for the week under an interstate claim filed in any state under an interstate benefit payment plan; and

(B) no extended benefit period is in effect for the week in that state.

(2) Subdivision (1) of this subsection does not apply with respect to the first two weeks for which extended benefits are payable determined without regard to this subsection under an interstate claim filed under an interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

[Acts 1943, 48th Leg., p. 585, ch. 343, § 4. Amended by Acts 1971, 62nd Leg., p. 2735, ch. 892, § 4, eff. Jan. 2, 1972; Acts 1975, 64th Leg., p. 1, ch. 1, § 1, eff. Jan. 20, 1975; Acts 1977, 65th Leg., p. 989, ch. 368, §§ 7, 8, 19, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 330, ch. 133, § 1, eff. May 13, 1981; Acts 1983, 68th Leg., p. 3067, ch. 527, §§ 3, 4, eff. Sept. 1, 1983.]

<sup>1</sup> 5 U.S.C.A. § 8501 et seq.

<sup>2</sup> 45 U.S.C.A. § 351 et seq.

<sup>3</sup> 19 U.S.C.A. § 1801 et seq.

<sup>4</sup> 19 U.S.C.A. § 2001 et seq.

<sup>5</sup> 26 U.S.C.A. § 3304.

<sup>6</sup> Article 5221b-5(c)(5).

<sup>7</sup> Article 5221b-5(c)(2).

<sup>8</sup> 26 U.S.C.A. § 501(c)(17)(D).

<sup>9</sup> 19 U.S.C.A. § 2101 et seq.

Acts 1971, 62nd Leg., p. 2751, ch. 892, in sections 12 to 14 provided:

"Sec. 12. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission, which have accrued thereunder, including, without limiting or without

being limited thereto, the right to collect contributions, interest, or penalties that have accrued, and the right of prosecution for violation of any provision thereof; nor shall such repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the Commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1972, shall be effective for the remainder of such benefit year, and provided further, that nothing in this Section shall be construed as preventing Section 6-A of the Act from being effective on and after January 1, 1972.

"Sec. 13. If any word, phrase, sentence, paragraph, subsection or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the Legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity.

"Sec. 14. This Act takes effect on January 1, 1972."

Sections 2 and 3 of Acts 1975, 64th Leg., p. 1, ch. 1, provided:

"Sec. 2. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder.

Sec. 3. "If any word, phrase, sentence, paragraph, subsection, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity."

Section 7 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to claims for unemployment compensation benefits filed on or after that date. Claims filed before that date are governed by the law in effect on the filing date, and that law is continued in effect for that purpose."

#### Art. 5221b-5. Contributions

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such rules or regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ. For agricultural employers subject to this Act, the Commission may require estimated contributions quarterly, but shall require a full report only once each year.

(b) Rate of contributions: Each employer shall pay contributions equal to two and seven-tenths percentum (2<sup>7</sup>/<sub>10</sub>%) of wages paid by him with respect to employment, except as provided in subsection (c) of this Section.

(c) Experience rating:

(1) Each employer's contribution rate shall be two and seven-tenths percent (2.7%) until his account has been chargeable with benefits throughout each calendar month of the four (4) consecutive calendar quarters immediately preceding the date as of which such employer's rate is determined. The contribution rate of each employer who has had at

least four (4) such calendar quarters of compensation experience shall be determined as provided below; except that the contribution rate of any employing unit which becomes an employer for the first time during the calendar year 1972, other than one which first becomes an employer because of the provisions of subsection 19(f)(2) of this Act,<sup>1</sup> shall be one percent (1%) rather than two and seven-tenths percent (2.7%) until such time as his account has been chargeable with benefits for four (4) consecutive calendar quarters and an experience rate is computed for him in accordance with this Act.

(2)(A) With respect to any benefit year beginning after September 30, 1967, the amount of benefit payments paid to a claimant shall be charged to the account of the claimant's base period employer or employers. With respect to any benefit year beginning prior to September 30, 1967, if the first benefit payment during such benefit year is not made until after September 30, 1967, then the amount of benefit payments shall be charged to the account of the claimant's base period employer or employers. When a benefit payment is made to a claimant who has two or more employers in his base period the chargeback to each employer shall be allocated in direct proportion to the percentage of the claimant's total benefit wage credits paid by such employer. This process may be designated as charging benefits to an employer's account, and benefits thus charged may be designated as chargebacks.

The chargebacks of each employer for a given calendar quarter shall be the benefits paid to all of his employees or former employees during such quarter; provided, that the chargebacks of an employer shall not include benefit payments which are based on wage credits of an employee or former employee, if the Commission finds that the employee's last separation from such employer's employment, prior to the benefit year in conjunction with which such base period was established, was (i) a separation required by a Federal or a Texas statute or a Texas municipal ordinance; or (ii) a separation for which a disqualification under subsections 5(a) or 5(b) of this Act<sup>2</sup> would have been imposed if such employer's employment of the employee or former employee had been the employee's last work; or (iii) a separation with respect to which a disqualification was imposed under subsection 5(a) or 5(b) of this Act,<sup>3</sup> and provided further that for the purpose of this paragraph the term "last separation" shall, with respect to an employee whose initial determination disqualified him for benefits under subsection 5(d) of this Act,<sup>4</sup> mean his next later separation from such employer's employment.

(2)(B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act,<sup>5</sup> and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential charge-

backs. If any such employer desires to protest his potential chargebacks, he shall, within twelve (12) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within twelve (12) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act<sup>6</sup> with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act,<sup>7</sup> the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within twelve (12) days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a decision on such protest and may appeal within twelve (12) days from the date notice of such decision was mailed to him.

(3) For the purposes of this Section, benefits shall be deemed to have been paid at the time the claim therefor shall have been certified by the Commission to the State Comptroller for payment.

(4) The benefit ratio of each employer shall be a percentage equal to the total of his chargebacks for the thirty-six (36) consecutive completed calendar months immediately preceding the date as of which the employer's tax rate is determined divided by his total taxable wages for the same months on which contributions have been paid to the Commission on or before the last day of the month in which the computation date occurs; provided that, in the event the employer has less than three (3) years but at least four (4) calendar quarters of compensation experience throughout which his account has been chargeable with benefits, his benefit ratio shall be a percentage equal to the total of all of his chargebacks for all completed calendar months immediately preceding the date as of which such employer's tax rate is determined divided by his total taxable wages for the same months on which contributions have been paid to the Commission on or before the

last day of the month in which the computation date occurs.

(5) The replenishment ratio for a calendar year is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator.

The numerator of the replenishment ratio shall be the amount of benefits that are effectively charged to employers' accounts and paid from the Unemployment Compensation Fund during the twelve (12) months ending September 30 of the preceding year, plus one-half of the amount of benefits paid during that period that are not charged to an employer's account, that are charged to employers' accounts after the employers have reached maximum liability because of the maximum tax rate, or that are charged but considered not collectible. In determining each amount, deductions shall be made for:

- (A) benefit warrants canceled,
- (B) repayment of benefits which have been overpaid, and
- (C) benefits paid which are repayable from reimbursing employers, the federal government, or any other governmental entity.

The denominator of the replenishment ratio shall be the total amount of benefits paid during the twelve (12) months ending September 30 of the preceding year that are effectively charged to employer's accounts.

The replenishment ratio for each calendar year shall be determined prior to the due date of the first contribution payment with respect to wages for employment paid in that year and such replenishment ratio thus determined shall not be affected or revised by virtue of any subsequent adjustment.

In this section, "effectively charged" means benefits other than those not charged to an employer's account, charged to employers' accounts after the employers have reached maximum liability because of the maximum tax rate, or charged but considered not collectible.

(6)(A) The general tax rate for each rated employer shall be in accordance with the following table based upon the replenishment ratio and the employer's benefit ratio:

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:										
	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90	
1.00	0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75	
1.20	0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74	
1.21	0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73	
1.22	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73	
1.23	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72	
1.24	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72	
1.25	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72	
1.26	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71	
1.27	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70	
1.28	0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70	
1.29	0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69	
1.30	0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69	
1.31	0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68	
1.32	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68	
1.33	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67	
1.34	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67	
1.35	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66	
1.36	0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66	
1.37	0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65	
1.38	0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65	
1.39	0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64	
1.40	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64	
1.41	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63	
1.42	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63	
1.43	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62	
1.44	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62	
1.45	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62	
1.46	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62	
1.47	0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61	
1.48	0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60	
1.49	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60	

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:									
	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51	0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59
1.52	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57	0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

...  
...

The Employer's Tax Rate Shall Be:

0.00% 0.1% 0.2% 0.3% 0.4% 0.5% 0.6% 0.7% 0.8% 0.9%

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:									
	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80	1.90
1.00	1.00	1.10	1.20	1.30	1.40	1.50	1.60	1.70	1.80	1.90
...										
1.20	0.83	0.91	1.00	1.08	1.16	1.25	1.33	1.41	1.50	1.58
1.21	0.82	0.90	0.99	1.07	1.15	1.23	1.32	1.40	1.48	1.56
1.22	0.81	0.90	0.98	1.06	1.14	1.22	1.31	1.39	1.47	1.55
1.23	0.81	0.89	0.97	1.05	1.13	1.21	1.30	1.38	1.46	1.54
1.24	0.80	0.88	0.96	1.04	1.12	1.20	1.29	1.37	1.45	1.53
1.25	0.80	0.88	0.96	1.04	1.12	1.20	1.28	1.36	1.44	1.52
1.26	0.79	0.87	0.95	1.03	1.11	1.19	1.26	1.34	1.42	1.50
1.27	0.78	0.86	0.94	1.02	1.10	1.18	1.25	1.33	1.41	1.49
1.28	0.78	0.85	0.93	1.01	1.09	1.17	1.25	1.32	1.40	1.48
1.29	0.77	0.85	0.93	1.00	1.08	1.16	1.24	1.31	1.39	1.47
1.30	0.76	0.84	0.92	1.00	1.07	1.15	1.23	1.30	1.38	1.46
1.31	0.76	0.83	0.91	0.99	1.06	1.14	1.22	1.29	1.37	1.45
1.32	0.75	0.83	0.90	0.98	1.06	1.13	1.21	1.28	1.36	1.44
1.33	0.75	0.82	0.90	0.97	1.05	1.12	1.20	1.27	1.35	1.43
1.34	0.74	0.82	0.89	0.97	1.04	1.12	1.19	1.26	1.34	1.42
1.35	0.74	0.81	0.88	0.96	1.03	1.11	1.18	1.25	1.33	1.41
1.36	0.73	0.80	0.88	0.95	1.02	1.10	1.17	1.25	1.32	1.40
1.37	0.72	0.80	0.87	0.95	1.02	1.09	1.16	1.24	1.31	1.39
1.38	0.72	0.79	0.86	0.94	1.01	1.08	1.15	1.23	1.30	1.38
1.39	0.71	0.79	0.86	0.93	1.01	1.08	1.15	1.22	1.29	1.37
1.40	0.71	0.78	0.85	0.93	1.00	1.07	1.14	1.21	1.28	1.36
1.41	0.70	0.78	0.85	0.92	0.99	1.06	1.13	1.20	1.27	1.35
1.42	0.70	0.77	0.84	0.91	0.98	1.05	1.12	1.19	1.26	1.34
1.43	0.69	0.76	0.84	0.91	0.97	1.04	1.11	1.18	1.25	1.33
1.44	0.69	0.76	0.83	0.90	0.97	1.04	1.11	1.18	1.25	1.33
1.45	0.68	0.76	0.82	0.89	0.96	1.03	1.10	1.17	1.24	1.32
1.46	0.68	0.75	0.82	0.89	0.95	1.02	1.09	1.16	1.23	1.31
1.47	0.68	0.74	0.81	0.88	0.95	1.02	1.08	1.15	1.22	1.30
1.48	0.67	0.74	0.81	0.87	0.94	1.01	1.08	1.14	1.21	1.29
1.49	0.67	0.73	0.80	0.87	0.93	1.00	1.07	1.14	1.20	1.28
1.50	0.66	0.73	0.80	0.86	0.93	1.00	1.06	1.13	1.20	1.27
1.51	0.66	0.72	0.79	0.86	0.92	0.99	1.05	1.12	1.19	1.26
1.52	0.65	0.72	0.78	0.85	0.92	0.98	1.05	1.11	1.18	1.25
1.53	0.65	0.71	0.78	0.84	0.91	0.98	1.04	1.11	1.17	1.24

When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.54	0.64	0.71	0.77	0.84	0.90	0.97	1.03	1.10	1.16
1.55	0.64	0.70	0.77	0.83	0.90	0.96	1.03	1.09	1.16
1.56	0.64	0.70	0.76	0.83	0.89	0.96	1.02	1.08	1.15
1.57	0.63	0.70	0.76	0.82	0.89	0.95	1.01	1.08	1.14
1.58	0.63	0.69	0.75	0.82	0.88	0.94	1.01	1.07	1.13
1.59	0.62	0.69	0.75	0.81	0.88	0.94	1.00	1.06	1.13
1.60	0.62	0.68	0.75	0.81	0.87	0.93	1.00	1.06	1.12

...  
...

The Employer's Tax Rate Shall Be:

	1.0%	1.1%	1.2%	1.3%	1.4%	1.5%	1.6%	1.7%	1.8%
When the Replenishment Ratio is	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	1.90	2.00	2.10	2.20	2.30	2.40	2.50	2.60	2.70
...									
1.20	1.58	1.66	1.75	1.83	1.91	2.00	2.08	2.16	2.25
1.21	1.57	1.65	1.73	1.81	1.90	1.98	2.06	2.14	2.23
1.22	1.55	1.63	1.72	1.80	1.88	1.96	2.04	2.13	2.21
1.23	1.54	1.62	1.70	1.78	1.86	1.95	2.03	2.11	2.19
1.24	1.53	1.61	1.69	1.77	1.85	1.93	2.01	2.09	2.17
1.25	1.52	1.60	1.68	1.76	1.84	1.92	2.00	2.08	2.16
1.26	1.50	1.58	1.66	1.74	1.82	1.90	1.98	2.06	2.14
1.27	1.49	1.57	1.65	1.73	1.81	1.88	1.96	2.04	2.12
1.28	1.48	1.56	1.64	1.71	1.79	1.87	1.95	2.03	2.10
1.29	1.47	1.55	1.62	1.70	1.78	1.86	1.93	2.01	2.09
1.30	1.46	1.53	1.61	1.69	1.76	1.84	1.92	2.00	2.07
1.31	1.45	1.52	1.60	1.67	1.75	1.83	1.90	1.98	2.06
1.32	1.43	1.51	1.59	1.66	1.74	1.81	1.89	1.96	2.04
1.33	1.42	1.50	1.57	1.65	1.72	1.80	1.87	1.95	2.03
1.34	1.41	1.49	1.56	1.64	1.71	1.79	1.86	1.94	2.01
1.35	1.40	1.48	1.55	1.62	1.70	1.77	1.85	1.92	2.00
1.36	1.39	1.47	1.54	1.61	1.69	1.76	1.83	1.91	1.98
1.37	1.38	1.45	1.53	1.60	1.67	1.75	1.82	1.89	1.97
1.38	1.37	1.44	1.52	1.59	1.66	1.73	1.81	1.88	1.95
1.39	1.36	1.43	1.51	1.58	1.65	1.72	1.79	1.87	1.94
1.40	1.36	1.43	1.50	1.57	1.64	1.71	1.78	1.85	1.92
1.41	1.34	1.41	1.48	1.56	1.63	1.70	1.77	1.84	1.91
1.42	1.33	1.40	1.47	1.54	1.61	1.69	1.76	1.83	1.90
1.43	1.32	1.39	1.46	1.53	1.60	1.67	1.74	1.81	1.88
1.44	1.31	1.38	1.45	1.52	1.59	1.66	1.73	1.80	1.87
1.45	1.31	1.37	1.44	1.51	1.58	1.65	1.72	1.79	1.86
1.46	1.30	1.36	1.43	1.50	1.57	1.64	1.71	1.78	1.84
1.47	1.29	1.36	1.42	1.49	1.56	1.63	1.70	1.76	1.83
1.48	1.28	1.35	1.41	1.48	1.55	1.62	1.68	1.75	1.82
1.49	1.27	1.34	1.40	1.47	1.54	1.61	1.67	1.74	1.81
1.50	1.26	1.33	1.40	1.46	1.53	1.60	1.66	1.73	1.80
1.51	1.25	1.32	1.39	1.45	1.52	1.58	1.65	1.72	1.78
1.52	1.25	1.31	1.38	1.44	1.51	1.57	1.64	1.71	1.77
1.53	1.24	1.30	1.37	1.43	1.50	1.56	1.63	1.69	1.76
1.54	1.23	1.29	1.36	1.42	1.49	1.55	1.62	1.68	1.75
1.55	1.22	1.29	1.35	1.41	1.48	1.54	1.61	1.67	1.74
1.56	1.21	1.28	1.34	1.41	1.47	1.53	1.60	1.66	1.73
1.57	1.21	1.27	1.33	1.40	1.46	1.52	1.59	1.65	1.71

When the Replenishment Ratio is

	If the Employer's Benefit Ratio percentage does not exceed:								
1.58	1.20	1.26	1.32	1.39	1.45	1.51	1.58	1.64	1.70
1.59	1.19	1.25	1.32	1.38	1.44	1.50	1.57	1.63	1.69
1.60	1.18	1.25	1.31	1.37	1.43	1.50	1.56	1.62	1.68

...  
 The Employer's Tax Rate Shall Be:

	1.9%	2.0%	2.1%	2.2%	2.3%	2.4%	2.5%	2.6%	2.7%
--	------	------	------	------	------	------	------	------	------

When the Replenishment Ratio is

	If the Employer's Benefit Ratio percentage does not exceed:								
1.00	2.80	2.90	3.00	3.10	3.20	3.30	3.40	3.50	3.60
1.20	2.33	2.41	2.50	2.58	2.66	2.75	2.83	2.91	3.00
1.21	2.31	2.39	2.47	2.56	2.64	2.72	2.80	2.89	2.97
1.22	2.29	2.37	2.45	2.54	2.62	2.70	2.78	2.86	2.95
1.23	2.27	2.35	2.43	2.52	2.60	2.68	2.76	2.84	2.92
1.24	2.25	2.33	2.41	2.50	2.58	2.66	2.74	2.82	2.90
1.25	2.24	2.32	2.40	2.48	2.56	2.64	2.72	2.80	2.88
1.26	2.22	2.30	2.38	2.46	2.53	2.61	2.69	2.77	2.85
1.27	2.20	2.28	2.36	2.44	2.51	2.59	2.67	2.75	2.83
1.28	2.18	2.26	2.34	2.42	2.50	2.57	2.65	2.73	2.81
1.29	2.17	2.24	2.32	2.40	2.48	2.55	2.63	2.71	2.79
1.30	2.15	2.23	2.30	2.38	2.46	2.53	2.61	2.69	2.76
1.31	2.13	2.21	2.29	2.36	2.44	2.51	2.59	2.67	2.74
1.32	2.12	2.19	2.27	2.34	2.42	2.50	2.57	2.65	2.72
1.33	2.11	2.18	2.25	2.33	2.40	2.48	2.55	2.63	2.70
1.34	2.08	2.16	2.23	2.31	2.38	2.46	2.53	2.61	2.68
1.35	2.07	2.14	2.22	2.29	2.37	2.44	2.51	2.59	2.66
1.36	2.05	2.13	2.20	2.27	2.35	2.42	2.50	2.57	2.64
1.37	2.04	2.11	2.18	2.26	2.33	2.40	2.48	2.55	2.62
1.38	2.02	2.10	2.17	2.24	2.31	2.39	2.46	2.53	2.60
1.39	2.01	2.08	2.15	2.23	2.30	2.37	2.44	2.51	2.58
1.40	2.00	2.07	2.14	2.21	2.28	2.35	2.42	2.50	2.57
1.41	1.98	2.05	2.12	2.19	2.26	2.34	2.41	2.48	2.55
1.42	1.97	2.04	2.11	2.18	2.25	2.32	2.39	2.46	2.53
1.43	1.95	2.02	2.09	2.16	2.23	2.30	2.37	2.44	2.51
1.44	1.94	2.01	2.08	2.15	2.22	2.29	2.36	2.43	2.50
1.45	1.93	2.00	2.06	2.13	2.20	2.27	2.34	2.41	2.48
1.46	1.91	1.98	2.05	2.12	2.19	2.26	2.32	2.39	2.46
1.47	1.90	1.97	2.04	2.10	2.17	2.24	2.31	2.38	2.44
1.48	1.89	1.95	2.02	2.09	2.16	2.22	2.29	2.36	2.43
1.49	1.87	1.94	2.01	2.08	2.14	2.21	2.28	2.34	2.41
1.50	1.86	1.93	2.00	2.06	2.13	2.20	2.26	2.33	2.40
1.51	1.85	1.92	1.98	2.05	2.11	2.18	2.25	2.31	2.38
1.52	1.84	1.90	1.97	2.03	2.10	2.17	2.23	2.30	2.36
1.53	1.83	1.89	1.96	2.02	2.09	2.15	2.22	2.28	2.35
1.54	1.81	1.88	1.94	2.01	2.07	2.14	2.20	2.27	2.33
1.55	1.80	1.87	1.93	2.00	2.06	2.12	2.19	2.25	2.32
1.56	1.79	1.85	1.92	1.98	2.05	2.11	2.17	2.24	2.30
1.57	1.78	1.84	1.91	1.97	2.03	2.10	2.16	2.22	2.29
1.58	1.77	1.83	1.89	1.96	2.02	2.08	2.15	2.21	2.27
1.59	1.76	1.82	1.88	1.94	2.01	2.07	2.13	2.20	2.26
1.60	1.75	1.81	1.87	1.93	2.00	2.06	2.12	2.18	2.25



The Employer's Tax Rate Shall Be:

2.8% 2.9% 3.0% 3.1% 3.2% 3.3% 3.4% 3.5% 3.6%

When the Replenishment Ratio is

If the Employer's Benefit Ratio percentage does not exceed:

1.00	3.70	3.80	3.90	4.00	4.10	4.20	4.30	4.40	4.50
...									
1.20	3.08	3.16	3.25	3.33	3.41	3.50	3.58	3.66	3.75
1.21	3.05	3.14	3.22	3.30	3.38	3.47	3.55	3.63	3.71
1.22	3.03	3.11	3.19	3.27	3.36	3.44	3.52	3.60	3.68
1.23	3.00	3.08	3.17	3.25	3.33	3.41	3.49	3.57	3.65
1.24	2.98	3.06	3.14	3.22	3.30	3.38	3.46	3.54	3.62
1.25	2.96	3.04	3.12	3.20	3.28	3.36	3.44	3.52	3.60
1.26	2.93	3.01	3.09	3.17	3.25	3.33	3.41	3.49	3.57
1.27	2.91	2.99	3.07	3.14	3.22	3.30	3.38	3.46	3.54
1.28	2.89	2.96	3.04	3.12	3.20	3.28	3.35	3.43	3.51
1.29	2.86	2.94	3.02	3.10	3.17	3.25	3.33	3.41	3.48
1.30	2.84	2.92	3.00	3.07	3.15	3.23	3.30	3.38	3.46
1.31	2.82	2.90	2.97	3.05	3.12	3.20	3.28	3.35	3.43
1.32	2.80	2.87	2.95	3.03	3.10	3.18	3.25	3.33	3.40
1.33	2.78	2.85	2.93	3.00	3.08	3.15	3.23	3.30	3.38
1.34	2.76	2.83	2.91	2.98	3.05	3.13	3.20	3.28	3.35
1.35	2.74	2.81	2.88	2.96	3.03	3.11	3.18	3.25	3.33
1.36	2.72	2.79	2.86	2.94	3.01	3.08	3.16	3.23	3.30
1.37	2.70	2.77	2.84	2.91	2.99	3.06	3.13	3.21	3.28
1.38	2.68	2.75	2.82	2.89	2.97	3.04	3.11	3.18	3.26
1.39	2.66	2.73	2.80	2.87	2.94	3.02	3.09	3.16	3.23
1.40	2.64	2.71	2.78	2.85	2.92	3.00	3.07	3.14	3.21
1.41	2.62	2.69	2.76	2.83	2.90	2.97	3.04	3.12	3.19
1.42	2.60	2.67	2.74	2.81	2.88	2.95	3.02	3.09	3.16
1.43	2.58	2.65	2.72	2.79	2.86	2.93	3.00	3.07	3.14
1.44	2.56	2.63	2.70	2.77	2.84	2.91	2.98	3.05	3.12
1.45	2.55	2.62	2.68	2.75	2.82	2.89	2.96	3.03	3.10
1.46	2.53	2.60	2.67	2.73	2.80	2.87	2.94	3.01	3.08
1.47	2.51	2.58	2.65	2.72	2.78	2.85	2.92	2.99	3.06
1.48	2.50	2.56	2.63	2.70	2.77	2.83	2.90	2.97	3.04
1.49	2.48	2.55	2.61	2.68	2.75	2.81	2.88	2.95	3.02
1.50	2.46	2.53	2.60	2.66	2.73	2.80	2.86	2.93	3.00
1.51	2.45	2.51	2.58	2.64	2.71	2.78	2.84	2.91	2.98
1.52	2.43	2.50	2.56	2.63	2.69	2.76	2.82	2.89	2.96
1.53	2.41	2.48	2.54	2.61	2.67	2.74	2.81	2.87	2.94
1.54	2.40	2.46	2.53	2.59	2.66	2.72	2.79	2.85	2.92
1.55	2.38	2.45	2.51	2.58	2.64	2.70	2.77	2.83	2.90
1.56	2.37	2.43	2.50	2.56	2.62	2.69	2.75	2.82	2.88
1.57	2.35	2.42	2.48	2.54	2.61	2.67	2.73	2.80	2.86
1.58	2.34	2.40	2.46	2.53	2.59	2.65	2.72	2.78	2.84
1.59	2.32	2.38	2.45	2.51	2.57	2.64	2.70	2.76	2.83
1.60	2.31	2.37	2.43	2.50	2.56	2.62	2.68	2.75	2.81
...									

The Employer's Tax Rate Shall Be:

3.7% 3.8% 3.9% 4.0% 4.1% 4.2% 4.3% 4.4% 4.5%

The Commission shall extend the foregoing table by supplying additional replenishment ratios, benefit ratios, and tax rates up to six percent (6%). The Commission shall use the same mathematical principles used in constructing said table.

(B) For purposes of this subdivision, the floor of the Unemployment Compensation Fund is an amount equal to the greater of Four Hundred Million Dollars (\$400,000,000) or one percent (1%) of the total taxable wages for the four calendar quarters ending the preceding June 30. When the amount in the fund on the October 1 computation date is less than the floor, for the next calendar year a deficit tax rate shall be added to the general rate for each employer entitled to an experience rate for that year. The deficit tax rate is equal to the deficit ratio (determined under Paragraph (C)) multiplied by the employer's tax rate computed under this Act for the year in which the computation occurs. An employer's deficit tax rate may not exceed two percent (2%).

(C) The deficit ratio is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator. The denominator is the total amount of contributions under the general tax rate and the replenishment rate due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the computation date. The numerator is the amount by which the balance of the fund is less than the floor. Except for the computations in 1983, 1984, and 1985 that amount includes any federal advance or other liability of the fund.

(D) For purposes of this subdivision, the ceiling of the fund is two percent (2%) of the total taxable wages for the four calendar quarters ending the preceding June 30. When the amount in the fund on the October 1 computation date is more than the ceiling, each employer entitled to an experience rate on the computation date is entitled to a credit to be applied beginning with contributions for the first quarter of the following year. The amount of the credit is equal to a surplus ratio (determined under Paragraph (E)) multiplied by the employer's contributions due for the four calendar quarters ending the preceding September 30.

(E) The surplus ratio is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator. The numerator is an amount equal to the balance in the fund minus the ceiling. The denominator is the total of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the computation date.

(F) A credit may not be used against delinquent contributions and may not be applied until the employer has paid any delinquent contributions.

(7) If an employing unit acquires all or a part of the organization, trade or business of an employer, such acquiring successor employing unit and such predecessor employer may jointly make written ap-

plication to the Commission for that compensation experience of such predecessor employer which is attributable to the organization, trade or business or the part thereof acquired to be treated as compensation experience of such successor employing unit. The Commission shall approve such application if it finds that: (i) immediately after such acquisition the successor employing unit continued operation of substantially the same organization, trade or business or part thereof acquired; and (ii) the predecessor employer has waived, in writing, all his rights to an experience rating based on the compensation experience attributable to the organization, trade or business or part thereof acquired by the successor employing unit; and (iii) in the event of the acquisition of only a part of a predecessor employer's organization, trade or business, such acquisition was of a part to which a definitely identifiable and segregable part of the predecessor's compensation experience was and is attributable; and (iv) if the successor employing unit was not an employer at the time of the acquisition, such successor has elected to become an employer as of the date of the acquisition or has otherwise become an employer during the year in which the acquisition took place.

If the application for transfer of experience is approved and the successor employing unit was an employer immediately prior to the acquisition, such successor shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor on the date of the acquisition. If such application is approved and the successor employing unit was not an employer immediately prior to the date of the acquisition, such successor shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the highest rate applicable at the time of the acquisition to any predecessor employer who was a party to the acquisition with respect to which the joint application was made.

In the event the acquisition is the result of the death of the predecessor employer, the requirements of this subsection relating to the necessity for the predecessor to join in the application and the requirements of condition (ii) hereof shall not apply.

"Compensation experience," as used in this subsection includes duration of chargeability with benefit wages or benefits as well as all factors mentioned in subsection 7(c) of this Section necessary to the computation of experience rating under subsection 7(c) of this Section.

(8) In addition to the general rate provided by Subdivision (6) of this subsection, each employer entitled to an experience rate shall pay a replenishment tax at a rate equal to a percentage, stated to the nearest hundredth, derived from the following numerator and denominator. The numerator is an amount equal to one-half of the amount of benefits paid during the twelve (12) months ending the pre-

ceding September 30 that are not charged to an employer's account, that are charged to employers' accounts after the employers have reached maximum liability because of the maximum tax rate, or that are charged but considered not collectible. The denominator is the total taxable wages for the four quarters ending the preceding June 30.

(d) The computation date for all experience tax rates shall be as of October 1 of the year preceding the calendar year for which such rates are to be effective, and such rates shall be effective on January 1 of the calendar year immediately following such computation date for the entire year; provided that the experience tax rate for each employer who, for the first time, and at the close of any calendar quarter, has completed four (4) full consecutive calendar quarters throughout each month of which the employer was chargeable with benefit payments, shall be computed and determined as of the first day of the calendar quarter next following such close, and such rate shall be effective on the date as of which it was computed, and for the remainder of the calendar year in which such computation date occurs.

(e) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 7. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 3; Acts 1939, 46th Leg., p. 436, § 4; Acts 1941, 47th Leg., p. 2, ch. 2, § 1; Acts 1941, 47th Leg., p. 101, ch. 83, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 3; Acts 1949, 51st Leg., p. 282, ch. 148, §§ 5, 5A, 5B, 5C, 5D, 5E; Acts 1953, 53rd Leg., p. 47, ch. 38, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 5; Acts 1957, 55th Leg., p. 1350, ch. 460, § 4; Acts 1961, 57th Leg., p. 1129, ch. 513, § 1; Acts 1961, 57th Leg., 1st C.S., p. 43, ch. 18, § 6; Acts 1967, 30th Leg., p. 685, ch. 287, § 4, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2738, ch. 892, § 5, eff. Jan. 1, 1972; Acts 1971, 62nd Leg., p. 2777, ch. 900, § 2, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 991, ch. 386, §§ 9, 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 910, ch. 418, § 1, eff. June 6, 1979; Acts 1982, 67th Leg., 3rd C.S., p. 2, ch. 2, § 1, eff. Sept. 10, 1982; Acts 1983, 68th Leg., p. 2216, ch. 416, §§ 1, 3, eff. Aug. 29, 1983.]

1 Article 5221b-17(f)(2).

2 Article 5221b-3(a), (b).

3 Article 5221b-3(a), (b).

4 Article 5221b-3(d).

5 Article 5221b-4(b).

6 Article 5221b-4(h), (i).

7 Article 5221b-4.

Section 2 of the 1982 amendatory act provides:

"(a) Notwithstanding other law, the tax rate increase resulting for 1983 or 1984 under Section 7(c)(6)(B), Texas Unemployment Compensation Act (Article 5221b-5, Vernon's Texas Civil Statutes), as amended by this Act, may not exceed an additional five-tenths of one percent added to the tax rate in either year.

"(b) In addition to the tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), for the last calendar quarter of 1982 and the first calendar quarter of 1983 a separate and additional tax is levied on each employer eligible for an experience tax rate that year. For the last quarter of 1982 the rate of that tax is three-tenths of one

percent. For the first quarter of 1983, the rate is one-tenth of one percent. The tax applies to the same wage base to which the employer's unemployment tax applies for the quarter, shall be levied and collected in the same manner, and is subject to the same penalty for late payment. The receipts shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), as added by Section 3 of this Act."

Acts 1983, 68th Leg., p. 135, ch. 32, provides:

"Sec. 1. In addition to the tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), for the calendar year 1983, a separate and additional tax is levied on each employer which was entitled to an experience rating during calendar year 1982 and which is liable to pay contributions under Section 7 of the said Act with respect to the first calendar quarter of 1983. The amount of this additional tax is five percent (5%) of the amount of taxes paid by the employer for that portion of the calendar year 1982 for which the employer was entitled to an experience rating.

"Sec. 2. The tax levied by this Act is separate from, and additional to, any tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes) or Chapter 2, Acts of the 67th Legislature, 3rd Called Session, 1982.

"Sec. 3. The tax levied by this Act is due on August 1, 1983, and shall be collected in the same manner as the employer's unemployment tax and is subject to the same penalty for late payment.

"Sec. 4. Receipts from the tax levied by this Act shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-7c et seq., Vernon's Texas Civil Statutes)."

Sections 5 to 7 of the Acts 1983, 68th Leg., p. 2230, ch. 416, provide:

"Sec. 5. Solvency Tax. In addition to other taxes provided by law, for eight calendar quarters beginning with the third quarter of 1983 an additional tax of .10 percent is levied on each employer eligible for an experience tax rate. The tax applies to the same wage base to which the employer's unemployment tax applies for the quarter, and shall be levied and collected in the same manner, and is subject to the same penalty for late payment as the employer's unemployment tax. The receipts shall be deposited to the credit of the unemployment compensation fund.

"Sec. 6. Interest Tax. (a) In addition to other taxes provided by law, for the calendar years 1984 and 1985, a separate and additional tax is levied on each employer who was entitled to an experience rate for the previous year and who is liable for unemployment tax for the first quarter of 1984 or 1985, as applicable. Unless a higher rate is set by the governor under Subsection (b) of this section, the rate of this additional tax is 25 percent for 1984 and 10 percent for 1985, applied to the amount of taxes paid or due by the employer for that portion of the previous calendar year for which the employer was entitled to an experience rating. The tax is due at the same time as the employer's unemployment tax payment for the second quarter.

"(b) If the governor determines that the rate provided by Subsection (a) of this section is insufficient to pay the interest on federal advances, the governor by proclamation may increase the rate. The rate may not exceed 30 percent in 1984 or 12 percent in 1985. In setting the rate, the governor shall consider the recommendations of the commission. The increased rate must be set before the unemployment tax statements for the second calendar quarter are mailed to employers.

"(c) In addition to other taxes provided by law, for the calendar year 1986 a separate and additional tax of .10 percent is levied on each employer eligible for an experience tax rate. The tax applies to the same wage base to which the employer's unemployment tax applies for that year.

"(d) Taxes levied under this section shall be collected in the same manner as the employer's unemployment tax, and is subject to the same penalty for late payment.

"(e) Receipts from the taxes levied under this section shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-7c, Vernon's Texas Civil Statutes).

"Sec. 7. Deficit Tax Computation for 1983. Before any deficit tax is computed in 1983 under Section 7(c)(6)(B), Texas Unemployment Compensation Act (Article 5221b-5, Vernon's Texas Civil Statutes), as amended by this Act, the commission shall subtract from each employer's tax rate the amount that was added to the employer's general rate under that section as it existed for the 1982 computation."

#### Art. 5221b-5a. Reimbursements

(a) Reimbursing Employers: Payments in lieu of contributions shall be made in accordance with the provisions of this Section. An employer making payments in accordance with this Section shall be referred to as a "reimbursing employer" and such payments shall be referred to as "reimbursements."

(b) Payments by a Reimbursing Employer: At the end of each calendar quarter the Commission shall bill each reimbursing employer for an amount equal to the amount of the regular benefits plus one-half (1/2) of the amount of the extended benefits paid during such quarter which are attributable to service in the employ of such employer, and reimbursements shall be paid by the reimbursing employer to the Commission for the fund in accordance with such rules as the Commission shall prescribe. An employer which has elected to pay reimbursements under Section 8(b)(1), 8(b)(2), or 8(b)(3) of this Act shall also pay, in accordance with such rules, an amount equal to Thirty Dollars (\$30) for each initial claim which is ultimately found to be valid submitted to the Commission. Amounts so received shall be deposited in the Unemployment Compensation Administration Fund, and shall constitute fees for coverage and administration under such elections.

(c) Allocation of Benefit Costs: Each employer that is liable for reimbursements shall pay to the Commission for the fund the amount of the regular benefits plus the amount of one-half (1/2) of the extended benefits paid which are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one (1) or more of such employers are liable for reimbursements, the amount payable to the fund by each such employer that is liable for reimbursements shall be determined in accordance with the provisions of the following subparagraph (1) or subparagraph (2):

(1) Proportionate Allocation (When Fewer Than All Base Period Employers Are Liable for Reimbursements): If benefits paid to an individual are based on wage credits paid by one (1) or more employers who are liable for reimbursements and on wage credits paid by one (1) or more employers who are liable for contributions, the amount of reimbursement payable by each employer that is liable for reimbursements shall be an amount which bears the same ratio to the total benefits paid to the

individual as the total base period wage credits paid to the individual by such employer bears to the total base period wage credits paid to the individual by all of his base period employers.

(2) Proportionate Allocation (When All Base Period Employers Are Liable for Reimbursement): If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for reimbursements, the amount of reimbursement payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wage credits paid to the individual by such employer bears to the total base period wage credits paid to the individual by all of his base period employers.

(d) Records and Reports: Reimbursing employers shall maintain records and submit reports in accordance with subsection 11(e) of the Act<sup>1</sup> and rules prescribed by the Commission.

(e) Collections: If any reimbursing employer shall fail to pay reimbursements due under this Act on the date on which they are due and payable, as prescribed by the Commission, or if any such employer shall fail to submit records and reports as prescribed by the Commission, such employer shall be subject to the provisions set forth in Section 14 of this Act;<sup>2</sup> provided, that where Section 14 refers to contributions due from employers such Section shall be regarded as also referring to reimbursements due from reimbursing employers.

(f) Waiver of Rights: Reimbursing employers are entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this Act except the provisions of Section 7.<sup>3</sup> Section 7 shall be inapplicable to reimbursing employers (except where specifically mentioned therein) and an election to become a reimbursing employer shall constitute a waiver of the rights afforded under Section 7 of the Act.

(g) Continued Liability: All regular benefits paid and one-half (1/2) of extended benefits paid which are attributable to service in the employ of a reimbursing employer during the period for which he elected reimbursement pursuant to Section 8<sup>4</sup> shall be reimbursed by the employer even though the employer may no longer be a reimbursing employer when the benefit payments are made.

(h) Group Accounts: Two (2) or more reimbursing employers may file a joint application with the Commission for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this paragraph. Upon approval of the application, the Commission shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the Commission received the application

and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two (2) years and thereafter until terminated at the discretion of the Commission or upon application by the group, and such termination shall be effective only at the beginning of the next calendar year. Upon establishment of the account, each member of the group shall be liable for reimbursements with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bears to the total wages paid during such quarter for service performed in the employ of all members of the group. Each member of the group shall keep true and accurate employment records and submit such reports as the Commission may require with respect to persons employed by such member. The Commission shall prescribe such rules as may be necessary with respect to the type of records to be kept by and reports to be submitted by groups of employers, applications for the establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts of reimbursements that are payable under this paragraph by members of the group and the time and manner of such payments.

(i) Authority to Terminate Elections: If any reimbursing employer is delinquent in making reimbursements as provided under this Section, the Commission may terminate such reimbursing employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(j) Bond: In the discretion of the Commission, any reimbursing employer (or group of such employers) that elects to become liable for reimbursements may be required to execute and file with the Commission a surety bond approved by the Commission. The amount of such bond shall be determined in accordance with rules prescribed by the Commission. The Commission may require adjustments to be made in a previously filed bond if it deems such action appropriate. Failure by any reimbursing employer covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties provided for under this Act, shall render the surety liable on such bond to the extent of the bond, as though the surety was such employer. If any reimbursing employer fails to make bond when directed to do so by the Commission, the Commission may terminate such employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(k) Additional Safeguards: The Commission is authorized to provide such additional safeguards as may be needed to ensure that reimbursing employers pay the reimbursements required under this Section.

(l) Benefit Payments: Benefits based upon wages earned from a reimbursing employer shall be paid from the fund, but such benefits paid and reimbursements for such benefits shall not be used in computing the replenishment ratio provided for in subsection 7(c)(5) of this Act.<sup>5</sup>

(m) Notwithstanding any other provision in this Act, with respect to benefits paid for weeks of unemployment beginning after December 31, 1978, if the reimbursing employer is a state or political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions, that employer shall pay one hundred percent (100%) of the extended benefits based on benefit wage credits earned from that employer instead of one-half (½) or fifty percent (50%) as indicated for other employers covered under this Act.

[Acts 1971, 62nd Leg., p. 2738, ch. 892, § 6, eff. Jan. 1, 1972. Amended by Acts 1977, 65th Leg., p. 992, ch. 368, §§ 10, 11, eff. Jan. 1, 1978; Acts 1983, 68th Leg., p. 4929, ch. 878, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5221b-9(e).

<sup>2</sup> Article 5221b-12.

<sup>3</sup> Article 5221b-5.

<sup>4</sup> Article 5221b-6.

<sup>5</sup> Article 5221b-5(c)(5).

Section 3 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to unemployment compensation claims filed with the Texas Employment Commission on or after that date."

#### Art. 5221b-5b. Special Contributions for Governmental Employers

(a) Notwithstanding any provision in this Act to the contrary, after December 31, 1977, a governmental employer subject to the provisions of this Act and which pays contributions shall pay in accordance with the following.

(b) Contributions:

(1) Payments: Contributions shall accrue and become payable by each governmental employer for each calendar year, or portion thereof, in which it is subject to this Act with respect to wages for employment paid during the calendar year or portion thereof. The contributions shall become due and be paid by each such employer to the Commission for the fund in accordance with rules prescribed by the Commission and shall not be deducted in whole or in part from the wages of individuals in the employer's employ.

(2) Rate of Contributions: Each governmental employer shall pay contributions equal to one percent (1%) of the wages paid by the employer with respect to employment during each quarter for calendar years 1978 and 1979. The contribution rate

for calendar year 1980 shall be a percentage adjusted to the next higher one-tenth of one percent ( $\frac{1}{10}$  of 1%) based on the following numerator and denominator: The numerator shall include all benefits paid during the preceding two (2) calendar years based on wage credits earned from employers which pay contributions under this Section (not including benefit payments which are reimbursable from any other source), and the denominator shall include the total wages paid by all employers which pay contributions under this Section for the same period. The contribution rate for calendar year 1981 and each calendar year thereafter shall be derived in the same manner as for calendar year 1980, except the numerator and denominator shall include benefit payments and wages paid by the employers for only the one calendar year prior to the calendar year for which the rate is computed.

Provided, if the total benefits paid during the period used for determining the rate are greater than the total contributions paid by these same employers for the same period, the amount of benefits paid in excess of the amount of contributions collected for the period shall be added to the numerator in determining the contribution rate, and if the amount of benefits paid for the period is less than the contributions paid by these employers for the same period, that amount shall be deducted from the numerator in computing the rate; provided that in no year shall the contribution rate under this Section be less than one-tenth of one percent ( $\frac{1}{10}$  of 1%).

(3) Interest and Penalties on Past Due Contributions: If any governmental employer shall fail to pay contributions due under this Section on the date on which they are due and payable as prescribed by the Commission, the employer shall be subject to the same penalties as provided for other employers under subsection 14(a) of this Act.<sup>1</sup>

(c) Collections:

(1) The provisions for collecting delinquent contributions provided under Section 14 of this Act<sup>2</sup> shall be applicable with respect to governmental employers.

(2) If any governmental employer is delinquent in payment of contributions or reimbursements under any section of this Act, the Commission shall notify the Comptroller of Public Accounts in writing of the name of the governmental employer and the amount of the delinquency. On receipt of this notice, the Comptroller shall pay a sum to the Commission in the amount of the delinquency from any funds which would otherwise be due from the State to the delinquent governmental employer.

(d) Reports: Each governmental employer shall keep such records and file such reports with the Commission with respect to individuals in its employment as the Commission may prescribe by rules. A governmental employer failing to keep or file these reports when due shall be subject to the

same penalties as provided for other employers under subsection 14(c) of this Act.<sup>3</sup>

(e) Separate Accounting: Benefit payments based on wages from employers under this Section shall be paid from the fund; provided the Commission shall establish separate accounting with respect to benefits paid and contributions collected under this Section and these benefits and contributions shall not be used in determining contribution rates under Section 7 of this Act.<sup>4</sup>

[Acts 1977, 65th Leg., p. 992, ch. 368, § 12, eff. Jan. 1, 1978.]

<sup>1</sup> Article 5221b-12(a).

<sup>2</sup> Article 5221b-12.

<sup>3</sup> Article 5221b-12(c).

<sup>4</sup> Article 5221b-5.

**Art. 5221b-6. Duration of Coverage and Elections**

(a) Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

(b)(1) A nonprofit organization (or group of organizations) as described in Section 501(c)(3) of the Internal Revenue Code of 1954<sup>1</sup> which is exempt from income tax under Section 501(a) of such Code<sup>2</sup> and is subject to this Act may file an election to pay reimbursements as provided in Section 7-A of this Act<sup>3</sup> in lieu of paying contributions as provided in Section 7 of this Act.<sup>4</sup> Such election shall be made within forty-five (45) days after the date notice is mailed to the employer that he is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to this Act and such election shall be for a minimum period of two (2) calendar years and cannot be terminated prior to that time, except as provided in subsections 7-A(i) and 7-A(j) of this Act.<sup>5</sup> An election may be withdrawn by a written application by the employer filed with the Commission not later than thirty (30) days prior to the beginning of the year with respect to which the employer wishes to change his method of payment. Thereafter, there must again be a minimum of two (2) calendar years and a timely application filed before the method of payment may again be changed.

An election to pay reimbursements in lieu of paying contributions will be terminated at any time coverage is terminated under this Act. An employer whose election has been terminated as the result of termination of coverage shall upon again becoming an employer subject to this Act be given an opportunity to file another election to pay reimbursements in lieu of paying contributions under the same terms and conditions described above.

(2) A State or an instrumentality thereof may voluntarily elect, for a period of not less than two (2) calendar years, to pay reimbursements for benefits paid or to pay contributions.

(3) A political subdivision of a State or any instrumentality thereof may voluntarily elect for a period of not less than two (2) calendar years to pay reimbursements for benefits paid or to pay contributions.

(4) An election by an employer under subsection 8(b)(2) or 8(b)(3) of this Act to be a reimbursing employer shall be made within forty-five (45) days after the date notice is mailed to the employer that it is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to the Act. All elections under subsections 8(b)(2) and 8(b)(3) of this Act may be terminated after the minimum required period by filing with the Commission a written request for termination not later than thirty (30) days preceding the last day of a calendar year, and such termination shall be effective January 1 of the following year.

(5) Any employing unit other than one to which subsection 8(b)(1), 8(b)(2), or 8(b)(3) of this Act is applicable, not otherwise subject to this Act, may voluntarily elect coverage as an employer subject to this Act for a period of not less than two (2) calendar years and shall with the written approval of such election by the Commission become an employer subject hereto to the same extent as all other employers as of the date stated in such approval.

(6) Any employing unit for which services that do not constitute employment as defined in this Act are performed may file with the Commission a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this Act for not less than two (2) calendar years. Upon the written approval of such election by the Commission, such services shall be deemed to constitute employment subject to this Act from and after the date stated in such approval and during the period of the election.

(c)(1) No employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then if such employer files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that the employing unit was not an employer as defined in subsection 19(f) of this Act<sup>6</sup> during the preceding year.

(2) Regardless of whether or not an application for termination of coverage has been filed, an employing unit shall cease to be an employer subject to this Act as of the first day of January of any year if the Commission finds that the employing unit has not had any individuals in employment on any one (1) or more days within the three (3) immediately preceding consecutive calendar years.

(d) Any employing unit which is or becomes an employer subject to this Act, and which under the

provisions of this Section ceases to be an employer subject to this Act, and subsequent to such time again becomes an employer subject to this Act by reason of any of the provisions thereof, shall upon again becoming an employer subject to this Act be considered a new employer without regard to any rights acquired by it during the time that it had theretofore been an employer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 8. Amended by Acts 1939, 46th Leg., p. 436, § 5; Acts 1945, 49th Leg., p. 589, ch. 347, § 4; Acts 1949, 51st Leg., p. 282, ch. 148, § 6; Acts 1955, 54th Leg., p. 399, ch. 116, § 6; Acts 1957, 55th Leg., p. 1350, ch. 460, § 5; Acts 1971, 62nd Leg., p. 2741, ch. 892, § 7, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 994, ch. 368, §§ 13, 14, eff. Jan. 1, 1978.]

<sup>1</sup> 26 U.S.C.A. § 501(c)(3).

<sup>2</sup> 26 U.S.C.A. § 501(a).

<sup>3</sup> Article 5221b-5a.

<sup>4</sup> Article 5221b-5.

<sup>5</sup> Article 5221b-5a(i), (j).

<sup>6</sup> Article 5221b-17(f).

**Art. 5221b-6a. Repealed by Acts 1943, 48th Leg., p. 585, ch. 343, § 8**

**Art. 5221b-7. Unemployment Compensation Fund**

(a) Establishment and Control: There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Fund, which shall be administered by the Commission exclusively for the purposes of this Act.<sup>1</sup> This fund shall consist of (1) all contributions collected under this Act; (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings of such property or securities; and (5) all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

(b) Accounts and Deposits: The State Treasurer shall be treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with such regulations as the Commission shall prescribe. The Treasurer shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account.

All moneys payable to the fund, upon receipt thereof by the Commission, shall be forwarded to the Treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall except as herein otherwise provided, be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act, as amended,<sup>2</sup> any provisions of the law in this State relating to the deposit, adminis-

tration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. Refunds payable pursuant to Section 14 of this Act<sup>3</sup> may be paid from the clearing account or the benefit account upon warrants issued by the Comptroller under the direction of the Commission, except that refund of penalties which are erroneously collected, and which are to be refunded in accordance with the provisions of Subsection 14(j) of this Act,<sup>4</sup> shall be paid out of the Unemployment Compensation Special Administration Fund. The benefit account shall consist of all moneys requisitioned from this State's account in the Unemployment Trust Fund in the United States Treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the Treasurer, under the direction of the Commission, in any bank or public depository in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. All moneys in this fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable, on his official bond, for the faithful performance of his duties in connection with the Unemployment Compensation Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to the liability on any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered for losses sustained by the fund shall be deposited therein.

(c) Withdrawals: Moneys requisitioned from this State's account in the Unemployment Trust Fund shall be used exclusively for the payment of benefits and for refunds pursuant to Section 14 and this Section, except that money credited to this State's account pursuant to section 903 of the Social Security Act,<sup>5</sup> as amended, may be requisitioned and used by the Commission only to the extent and under the conditions prescribed by said Section 903, as amended. The Commission shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt thereof, the Treasurer shall deposit such moneys in the benefit account, and the Comptroller shall issue his warrants for payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account, and refunds from the clearing account, shall not be subject to any provision of law which may require itemization or other formal release by State officers of money in their custody. All warrants issued for the payment of benefits and refunds shall bear the signature of the Treasurer and the countersignature of a member of the Commission, or its duly authorized agent, for that purpose. Any balance of moneys requisitioned from the Un-

employment Trust Fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the Commission, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this State's account in the Unemployment Trust Fund as provided in subsection (b) of this Section.

(d) If a warrant has been issued by the Comptroller in payment of benefits as provided under this Act, and if the claimant entitled to receive such warrant has lost or loses, or for any reason failed or fails to receive such warrant after such warrant is or has been issued by the Comptroller, and upon satisfactory proof of such, the Comptroller may issue to claimant a duplicate warrant as provided for in Article 4365, Revised Civil Statutes of Texas, 1925, but in no event shall a duplicate warrant be issued after one year from the date of the original warrant.

If, after any warrant has been issued by the Comptroller payable to a claimant for benefits under the provisions of this Act, and such warrant shall have been lost or misplaced, or if claimant for any reason fails or refuses to present said warrant for payment within twelve (12) months after the date of issuance of such warrant, such warrant shall be cancelled, and thereafter no payment shall be made by the Treasurer on such warrant, and no duplicate warrant in place thereof shall ever be issued.

(e) Management of Funds Upon Discontinuance of Unemployment Trust Fund: The provisions of subsections (a), (b), (c), and (d) to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such Unemployment Trust Fund, from which no other State is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the Unemployment Compensation Fund of this State, shall be transferred to the Treasurer of the Unemployment Compensation Fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the Commission, in accordance with the provisions of this Act; provided, that such moneys shall be invested in the following readily marketable classes of securities: bonds or other interest-bearing obligations of the United States of America; and provided further, that such investment shall at all times be so made that all the



assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of securities or other properties belonging to the Unemployment Compensation Fund only under the direction of the Commission.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 9. Amended by Acts 1939, 46th Leg., p. 436, § 6; Acts 1941, 47th Leg., p. 261, ch. 178, § 1; Acts 1945, 49th Leg., p. 589, ch. 347, § 5; Acts 1957, 55th Leg., p. 1350, ch. 460, § 6.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> 42 U.S.C.A. § 1104.

<sup>3</sup> Article 5521b-12.

<sup>4</sup> Article 5221b-12(j).

<sup>5</sup> 42 U.S.C.A. § 1103.

#### Art. 5221b-7a. Transfer of Funds

Notwithstanding any requirements of this Chapter, the Commission shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) July 1, 1939, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in the Unemployment Trust Fund, established and maintained pursuant to Section 904 of the Social Security Act as amended,<sup>1</sup> to the Railroad Unemployment Insurance Account, established and maintained pursuant to Section 10 of the Railroad Unemployment Insurance Act,<sup>2</sup> an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty (30) days after the close of this Session of the Legislature and (2) January 1, 1940, authorize and direct the Secretary of the Treasury of the United States to transfer from this State's account in said Unemployment Trust Fund to said Railroad Unemployment Insurance Account an additional amount, hereinafter referred to as the liquidating amount. The Social Security Board shall determine both such amount after consultation with the Commission and the Railroad Retirement Board. The preliminary amount shall consist of that proportion of the balance in the Unemployment Compensation Fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act)<sup>3</sup> and credited to the Unemployment Compensation Fund bears to all contributions theretofore collected under this Act and credited to the Unemployment Compensation Fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in Section 1(a) of the Railroad Unemployment Insurance Act) pursuant to the provisions of this Act during the period July 1, 1939, to December 31, 1939, inclusive.

[Acts 1939, 46th Leg., p. 459, § 2.]

<sup>1</sup> 42 U.S.C.A. § 1104.

<sup>2</sup> 42 U.S.C.A. § 1104; 45 U.S.C.A. § 360.

<sup>3</sup> 45 U.S.C.A. § 351.

#### Art. 5221b-7b. Moneys Appropriated to Pay Benefits and Refunds

It is hereby specifically provided that all moneys now on deposit to the credit of the Unemployment Compensation Fund and any moneys received for the credit of such fund, are hereby appropriated for the payment of benefits and refunds as authorized by the provisions of the Act.<sup>1</sup>

[Acts 1941, 47th Leg., p. 261, ch. 178, § 2.]

<sup>1</sup> Art. 5221b-1 et seq.

#### Art. 5221b-7c. Advances From Federal Fund

(a) The Advance Interest Trust Fund is established. The fund is a trust fund in the custody of the State Treasurer and may be used without appropriation by the Governor only for the purpose of paying interest incurred on advances from the federal Unemployment Trust Fund. Income from investment of the fund shall be deposited to the credit of the fund. If the amount of the fund exceeds the amount required to pay interest incurred on advances, the Governor shall transfer all or part of the surplus to the unemployment compensation fund for the payment of benefits.

(b) If the Governor applies for an advance from the federal Unemployment Trust Fund, the Governor shall limit the amount applied for to an amount that, when added to previous advances, does not exceed the total amount for which principal and interest may be paid from taxes on employers.

(c) In addition to other authorized purposes, the Unemployment Compensation Special Administration Fund may be appropriated for payment of interest on advances.

[Acts 1982, 67th Leg., 3rd C.S., p. 8, ch. 2, § 3, eff. Sept. 10, 1982. Amended by Acts 1983, 68th Leg., p. 2230, ch. 416, § 4, eff. Aug. 29, 1983.]

Sections 2(b) and 4 of the 1982 Act provide:

"Sec. 2. (b) In addition to the tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), for the last calendar quarter of 1982 and the first calendar quarter of 1983 a separate and additional tax is levied on each employer eligible for an experience tax rate that year. For the last quarter of 1982 the rate of that tax is three-tenths of one percent. For the first quarter of 1983, the rate is one-tenth of one percent. The tax applies to the same wage base to which the employer's unemployment tax applies for the quarter, shall be levied and collected in the same manner, and is subject to the same penalty for late payment. The receipts shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), as added by Section 3 of this Act."

"Sec. 4. The unobligated and unencumbered balance (as of the effective date of this section) of the unemployment compensation special administration fund is appropriated to the office of the governor for the payment of interest on advances from the federal unemployment trust fund."

Acts 1983, 68th Leg., p. 135, ch. 32, provides:

"Sec. 1. In addition to the tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), for the calendar year 1983, a separate and additional tax is levied on each employer which was entitled to an experience rating during calendar year 1982 and which is liable to pay contributions under Section 7 of the said Act with respect to the first calendar quarter of 1983. The amount of this additional

tax is five percent (5%) of the amount of taxes paid by the employer for that portion of the calendar year 1982 for which the employer was entitled to an experience rating.

"Sec. 2. The tax levied by this Act is separate from, and additional to, any tax levied under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes) or Chapter 2, Acts of the 67th Legislature, 3rd Called Session, 1982.

"Sec. 3. The tax levied by this Act is due on August 1, 1983, and shall be collected in the same manner as the employer's unemployment tax and is subject to the same penalty for late payment.

"Sec. 4. Receipts from the tax levied by this Act shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-7c et seq., Vernon's Texas Civil Statutes)."

Section 6 of Acts 1983, 68th Leg., p. 2230, ch. 416, provides:

"Interest Tax. (a) In addition to other taxes provided by law, for the calendar years 1984 and 1985, a separate and additional tax is levied on each employer who was entitled to an experience rate for the previous year and who is liable for unemployment tax for the first quarter of 1984 or 1985, as applicable. Unless a higher rate is set by the governor under Subsection (b) of this section, the rate of this additional tax is 25 percent for 1984 and 10 percent for 1985, applied to the amount of taxes paid or due by the employer for that portion of the previous calendar year for which the employer was entitled to an experience rating. The tax is due at the same time as the employer's unemployment tax payment for the second quarter.

"(b) If the governor determines that the rate provided by Subsection (a) of this section is insufficient to pay the interest on federal advances, the governor by proclamation may increase the rate. The rate may not exceed 30 percent in 1984 or 12 percent in 1985. In setting the rate, the governor shall consider the recommendations of the commission. The increased rate must be set before the unemployment tax statements for the second calendar quarter are mailed to employers.

"(c) In addition to other taxes provided by law, for the calendar year 1986 a separate and additional tax of .10 percent is levied on each employer eligible for an experience tax rate. The tax applies to the same wage base to which the employer's unemployment tax applies for that year.

"(d) Taxes levied under this section shall be collected in the same manner as the employer's unemployment tax, and is subject to the same penalty for late payment.

"(e) Receipts from the taxes levied under this section shall be deposited to the credit of the advance interest trust fund established under Section 9c, Texas Unemployment Compensation Act (Article 5221b-7c, Vernon's Texas Civil Statutes)."

#### Art. 5221b-8. Texas Employment Commission

(a) Organization: There is hereby created a Commission to be known as the Texas Employment Commission. The Commission shall consist of three (3) members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally. During the time of the public member's service on the Commission, the public member may not be an officer, employee, or paid consultant of a labor-oriented or employer-oriented trade association.

(b) Appointment: Each of the three (3) members of the Commission shall be appointed by the Governor. The Governor shall make an appointment to fill any vacancy that occurs in the membership of the Commission. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. During his term of membership on the Commission, no

member shall engage in any other business, vocation or employment. Members are appointed for staggered terms of six (6) years with one member's term expiring on February 1 of each odd-numbered year. A member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term.

(c) Disqualification: A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the Commission or act as the general counsel to the Commission during the time the person is registered as a lobbyist. If the person ceases to engage in lobbying activity and files a notice of termination as prescribed by Section 7, Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), the person may serve as a member of the Commission or act as the general counsel to the Commission.

(d) Chairman: The Chairman of the Texas Employment Commission shall be the impartial member of the Commission.

(e) Employment Service and Advisory Council: The Commission is authorized to operate a public employment service but it is not necessary that same be operated as a separate division of the Commission. The Commission is also authorized to appoint one (1) State Advisory Council composed of fifteen (15) persons representing employers, employees and the public. Each Commissioner may appoint five (5) persons to the Council which shall meet regularly. Advisory Council members shall be allowed and paid, as a part of the cost of administering this Act and in accordance with regulations of the Commission, necessary travel and subsistence expenses, in addition to a per diem allowance, in connection with meetings of the Council; but they shall for no purpose be regarded as State employees. The Commission shall fix the composition and establish the duties of the State Advisory Council and may take such action as it deems necessary or suitable to this end. In addition to the duties established by the Commission, the Council shall prepare an annual report describing its work during the previous year and detailing any recommendations it may have. The Commission shall include the Council's report in the Commission's annual report to the Governor and the Legislature required by Subsection (b), Section 11, of this Act.<sup>1</sup> The Commission may likewise appoint and pay local advisory councils and consultants under the same conditions prescribed herein for the State Advisory Council.

(f) Salaries: The salaries of the members of the Texas Employment Commission shall be as specified in the General Appropriations Act.

(g) Quorum: Any two (2) Commissioners shall constitute a quorum. No vacancy shall impair the

right of the remaining Commissioners to exercise all of the powers of the Commission.

(h) Removal: It is a ground for removal by impeachment from the Commission if:

(1) a member is absent from every Commission meeting held during any sixty (60)-day period after the member received at least forty-eight (48) hours' notice of the meeting;

(2) the member is unable to discharge his duties for the remainder of the term for which he was appointed because of illness or other disability; or

(3) a member violates a prohibition established by Subsection (a), (b) or (c) of this section.

The validity of an action of the Commission is not affected by the fact that it was taken when a ground for removal of a member of the Commission existed.

(i) Sunset Provision: The Texas Employment Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Commission is abolished effective September 1, 1995.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 10. Amended by Acts 1943, 48th Leg., p. 585, ch. 343, § 6; Acts 1955, 54th Leg., p. 399, ch. 116, § 8; Acts 1957, 55th Leg., p. 1350, ch. 460, § 12; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.059, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2831, ch. 484, art. II, § 5, eff. June 19, 1983; Acts 1983, 68th Leg., 1st C.S.; p. 1, ch. 1, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5221b-9(b).

Section 6 of Acts 1983, 68th Leg., p. 2832, ch. 484, art. II provides:

"(a) A person appointed to the Texas Unemployment Compensation Commission, also known as the Texas Employment Commission, who held office immediately preceding the effective date of this Act and who was eligible to be a member of the commission under the law as it existed at the time of his appointment is entitled to serve the remainder of the term for which he was appointed.

"(b) The term of office succeeding a commission member's term that expires on November 21, 1984, expires on February 1, 1991. The term of office succeeding a commission member's term that expires on November 21, 1986, expires on February 1, 1993. The term of office succeeding a commission member's term that expires on November 21, 1988, expires on February 1, 1995."

Sections 6 and 7 of Acts 1983, 68th Leg., 1st C.S., p. 12, ch. 1 provide:

"Sec. 6. (a) A member of the Texas Employment Commission who holds office on August 31, 1983, is entitled to continue to hold the office for the term for which the member was appointed.

"(b) The person employed on the effective date of this Act as the agency administrator is entitled to continue to serve in that capacity at the pleasure of the commission.

"Sec. 7. Any state advisory council in existence on the effective date of this Act is abolished. A member of a state advisory council on the effective date of this Act may continue to serve until the commission appoints a new state advisory council or until January 1, 1984, whichever date is first."

#### Art. 5221b-9. Administration

(a) Duties and Powers of Commission: It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt,

amend, or rescind such rules and regulations, to make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. The Commission shall appoint an Agency Administrator on the basis of merit to administer the day-to-day operations of the Texas Employment Commission. The Commission may prescribe any specific qualifications for the position necessary to comply with federal law. The position of Agency Administrator is a merit system position.

(b) Annual Report: As soon after the close of each State fiscal year as is practicable, the Commission shall submit to the Governor and the Legislature a report covering the administration and operation of this Act during the preceding State fiscal year, and the Commission shall make such recommendations for amendments to this Act as the Commission deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the Commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. The report shall also include the annual report prepared by the State Advisory Council as prescribed by Section 10(e) of this Act,<sup>1</sup> the Commission's long-term and short-term goals and objectives for the future, and any information requested by the Legislature or the Legislative Budget Board. Whenever the Commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

(c) Regulations and General and Special Rules: General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten (10) days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten (10) days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

(d) Publication: The Commission shall cause to be printed for distribution to the public the text of this

Act, the Commission's regulations and general rules, and its annual reports to the Governor and the Legislature. The Commission shall also prepare information of interest describing the functions of the Commission and describing the Commission's procedures by which complaints are filed with and resolved by the Commission. The Commission shall make the information, and other material the Commission deems relevant and suitable, available to the general public and appropriate state agencies.

(e) **Personnel:** The Agency Administrator is authorized to appoint and prescribe the duties and powers of all officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of the Commission's duties. The Agency Administrator may delegate to any such person so appointed such power and authority as the Agency Administrator deems reasonable and proper for the effective administration of this Act, and may, at the Agency Administrator's discretion, bond any person handling moneys or signing checks hereunder. The Agency Administrator or the Agency Administrator's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Commission employees must be based on the system established under this subsection.

(f) **Employee Information:** The Commission shall provide to its members and employees as often as is necessary information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(g) **Records and Reports:** Each employing unit shall keep true and accurate employment records, containing such information as the Commission may prescribe and which is deemed necessary to the proper administration of this Act. Such records shall be open to inspection and subject to being copied by the Commission or its authorized representatives at any reasonable time and as often as may be necessary. The Commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the Commission deems necessary for the effective administration of this Act. Information thus obtained or otherwise secured shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) except as the Commission may deem necessary for the proper administration of this Act. Any employee or member of the Commission who violates any provision of this subsection shall be fined not less than Twenty Dollars (\$20), nor more than Two Hundred Dollars (\$200), or imprisoned for not longer than ninety (90) days, or both.

(h) **Oaths and Witnesses:** In the discharge of the duties imposed by this Act, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to

compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act. Notwithstanding the provisions of Article 3912e, Vernon's Texas Civil Statutes, or any other provision of the laws of this state, the fees of sheriffs and constables for serving such subpoenas shall be paid by the Commission out of administrative funds, and the Comptroller of Public Accounts shall issue warrants for such fees as directed by the Commission.

(i) **Subpoenas:** In case of contumacy by, or refusal to obey a subpoena issued by a member of the Commission or any duly authorized representative thereof to any person, any County or District Court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the Commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the Commission, shall be punished by a fine of not less than Two Hundred Dollars (\$200), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(j) **Protection Against Self Incrimination:** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission or in obedience to the subpoena of the Commission or any member thereof or any duly authorized representative of the Commission, in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. No statement whether oral or in writing made to the Commission or its employees in connection with the discharge of their duties under this

Act shall ever be made the basis for an action for defamation of character.

(k) State-Federal Cooperation: In the administration of this Act, the Commission shall cooperate to the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended;<sup>2</sup> shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act<sup>3</sup> for the purpose of assisting in the administration of this Act.

Upon request therefor, the Commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

(l) Funds: Except as otherwise provided in this subsection, all sums of money paid to the Commission under this Act shall be deposited in the State Treasury and may be used only for the administration of this Act. Funds are not required to be deposited if a state or federal law or regulation prohibits deposit in the treasury or if deposit would result in a loss of any federal funds.

(m) Audit: The state auditor shall audit the financial transactions of the Commission during each fiscal year.

(n) Complaint: The Commission shall keep an information file about each complaint filed with the Commission relating to a service rendered by the Commission.

(o) Hearing: If a written complaint is filed with the Commission relating to a service rendered by the Commission, the Commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 11. Amended by Acts 1955, 54th Leg., p. 399, ch. 116, § 8; Acts 1957, 55th Leg., p. 1350, ch. 460, § 7; Acts 1965, 59th Leg., p. 318, ch. 150, § 1, eff. July 1, 1965; Acts 1983, 68th Leg., p. 3764, ch. 579, § 6, eff. Sept. 1, 1983; Acts 1983, 68th Leg., 1st C.S., p. 4, ch. 1, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5221b-8(e).

<sup>2</sup> 42 U.S.C.A. § 301 et seq.

<sup>3</sup> 42 U.S.C.A. § 501 et seq.

Section 5 of Acts 1983, 68th Leg., 1st C.S., p. 11, ch. 1 provides: "The requirement under Section 11(e), Texas Unemployment Compensation Act, as amended by this Act (Article 5221b-9, Vernon's Texas Civil Statutes), that the commission develop a system of annual performance evaluations shall be implemented before

September 1, 1984. The requirement of Section 11(e) that merit pay be based on the performance evaluation system shall be implemented before September 1, 1985."

#### Art. 5221b-9a. Use of Records

The Commission may make the State's records relating to the administration of this Act<sup>1</sup> available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such Board, such copies thereof as the Railroad Retirement Board deems necessary for his purposes.

The Commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

[Acts 1939, 46th Leg., p. 459, § 3.]

<sup>1</sup> Article 5221b-1 et seq.

#### Art. 5221b-9b. Destruction of Records

The Commission may destroy any of its records, under such safeguards as will protect the confidential nature of such records, when it determines that such records no longer serve any legal, administrative, or other useful purpose. The Commission may likewise destroy its records at any time after it has made authentic photographs, calligraphs, microfilms, or other similar reproductions of such records.

[Acts 1941, 47th Leg., p. 261, ch. 178, § 3. Amended by Acts 1955, 54th Leg., p. 399, ch. 116, § 9.]

#### Art. 5221b-10. Employment Service

(a) Texas State Employment Service, as provided for under Act of the Forty-fourth Legislature, Regular Session, Chapter 236, page 552,<sup>1</sup> is hereby transferred to the Commission as a division thereof. The Commission, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act, and for purposes of performing such duties, as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., Title 29, Section 49(c)) as amended. It shall be the duty of the Commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State in conformity with Section 4 of said Act,<sup>2</sup> and this State will observe and comply with the requirements thereof. The Texas Employment Commission is hereby designat-

ed and constituted the agency of this State for the purposes of said Act.

(b) **Financing:** All monies received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said monies are hereby made available to the Texas Unemployment Compensation Commission to be expended as provided by this Section and by said Act of Congress, and any unexpended balance of funds appropriated or allocated either by the State of Texas or the Federal Government to the Texas State Employment Service as a division of the Bureau of Labor Statistics, is hereby, upon the passage of this Act, transferred to the special "Employment Service Account" in the Unemployment Compensation Administration Fund. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivision of this State or with any private, and/or non-profit organization, and as a part of any such agreement the Commission may accept monies, services, or quarters as a contribution to the special "Employment Service Account."

(c) **Invalidity of Transfer:** In the event that this Act, or any section thereof, in so far as the same shall affect the Texas State Employment Service, shall be held or declared unconstitutional or invalid, then in that event Chapter 236, page 552, Acts of the Regular Session of the Forty-fourth Legislature establishing the Texas State Employment Service shall be and remain in full force and effect as it was prior to the passage of this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 12. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 4; Acts 1983, 68th Leg., 1st C.S., p. 10, ch. 1, § 3, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5521a-2.

<sup>2</sup> 29 U.S.C.A. § 49c.

#### Art. 5221b-11. Unemployment Compensation Administration Fund

(a) **Special Fund:** There is hereby created in the State Treasury a special fund to be known as the Unemployment Compensation Administration Fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the Commission and shall be continuously available to the Commission for expenditure in accordance with the provisions of this Act,<sup>1</sup> and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the Federal Government or any agency thereof shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board or its successor for the proper and efficient administration of this Act. The fund shall consist of all moneys appropriated by this State; all moneys received from the United States of America, or any agency thereof; all moneys received from any other source for such purpose; all moneys collected

by the Commission as costs or fees charged by the Commission for furnishing photostatic or certified copies of records of the Commission, or fees charged by the Commission for making audits pursuant to the authority granted in this Act, and shall also include any moneys received from any agency of the United States of America or any other State as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the Unemployment Compensation Administration Fund, or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of such equipment or supplies which may no longer be necessary for the proper administration of this Act. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Administration Fund provided under this Act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Administration Fund shall be deposited in said fund.

(b) The Commission is authorized to furnish to any person entitled thereto upon application therefor photostatic or certified copies of any records in its possession, the publication of which is not prohibited by this Act, and the Commission shall charge therefor a reasonable fee to be set by the Commission.

(c) **Reimbursement of Fund:** If any moneys received after June 30, 1941, from the Social Security Board or successor under Title III of the Social Security Act,<sup>2</sup> or any unencumbered balances in the Unemployment Compensation Administration Fund as of that date, or any other Federal Moneys granted to the Employment Commission for the administration of this Act, are found by the Social Security Board or successor because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board or successor for the proper administration of this Act, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State to the Unemployment Compensation Administration Fund for expenditure as provided in subsection (a) of this Section. Upon receipt of notice of such a finding by the Social Security Board or successor the Commission shall promptly report the amount required for such reimbursement to the Governor and the Gover-

nor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 13. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 5; Acts 1939, 46th Leg., p. 436, § 7; Acts 1941, 47th Leg., p. 594, ch. 364, § 1; Acts 1949, 51st Leg., p. 282, ch. 148, § 7.]

<sup>1</sup> Article 5521b-1 et seq.

<sup>2</sup> 42 U.S.C.A. § 501 et seq.

#### Art. 5221b-12. Collection of Contributions

(a) Interest and Penalties on Past Due Contributions: If any employer subject to the provisions of this Act shall fail to pay contributions due under this Act on the date on which they are due and payable as prescribed by the Commission, such employer shall forfeit to the State of Texas a penalty of one and one-half per cent (1½%) of such contributions, and after the expiration of one (1) month such employer shall forfeit an additional penalty of one and one-half per cent (1½%) of such contributions for each month or fraction thereof, until such contributions and penalties shall have been paid in full; provided, however, that the penalties applicable to the contributions due for any period (as prescribed by the rules of the Commission) shall not exceed twenty-five per cent (25%) of the amount of contributions due at due date; provided, however, that for the exclusive purpose of this subsection, after July 1, 1965, the forfeit of penalty provided herein shall not apply to any employer who failed to pay contributions due under this Act because of the bona fide belief that all or some of their employees are covered under the unemployment insurance law of any other state if such employer paid, pursuant to the unemployment insurance law of such other state, the contributions thereunder when due on all such wages of such employees.

In addition to the penalties provided above, whenever the maximum penalty of twenty-five per cent (25%) shall accrue or shall have accrued as provided above in cases in which the liability of the employer is reduced to judgment, thereafter in addition to the penalties provided above, contributions included in such judgment shall bear interest at the rate of one-half of one per cent (½ of 1%) per month or part of a month.

(b) Collections: If, after notice, any employer defaults in any payment of contributions, penalties or interest thereon, the amount due shall be collected by civil action in a District Court in Travis County, Texas, in the name of the State and the Attorney General, and the employer adjudged in default shall pay the costs of such action; provided, however, that no court action shall be begun to collect contributions or penalties from an employer after the expiration of three (3) years from the due date of such contributions, except that, in any case of a willful attempt in any manner to evade any of the provisions of the Unemployment Compensation Law or Commission rules or regulations promulgated thereunder, such action may be begun at any time.

An employer liable for contributions, penalties, or interest under this Act who fails to pay such sums when due shall, after judgment has been entered therefor and execution returned unsatisfied, forfeit his right to employ individuals in this State until he enters into a bond with sureties to be approved by the Commission, in an amount not to exceed double the sum then due plus contributions estimated by the Commission to become due by said employer during the next calendar year, said bond to be conditioned upon payment of all contributions, penalties, interest, and court costs due and owing by the employer within thirty (30) days after the expiration of the next ensuing calendar year, and in the event the employer fails to furnish such bond or pay the taxes, interest, and penalty then found to be due, the Commission may proceed by injunction to prevent the continuance of such employment upon such failure by the employer by applying to the court which previously entered judgment against the employer for contributions, penalties, or interest, and a temporary injunction enjoining the employer from employing persons in this State without first posting bond as aforesaid may be granted after reasonable notice of not less than ten (10) days by said court; and such temporary injunction may upon final hearing be made permanent and shall remain in full force and effect until the requirements of this Section have been fully satisfied.

(c)(1) If any employer shall fail to file any reports of wages paid or contributions due as required by this Act or by the rules or regulations of the Commission, such employer shall forfeit to the State for the Unemployment Compensation Special Administration Fund as penalties: (i) for the first fifteen days or part thereof of violation, the sum of Five Dollars (\$5); and (ii) for the remainder of the month or part thereof of violation, the sum of Five Dollars (\$5) plus 1/20th of 1% of wages paid which the employer failed to report when due to the Commission; and (iii) for the second successive month or part thereof of violation, an additional Ten Dollars (\$10) plus 1/10th of 1% of wages paid which the employer failed to report when due to the Commission; and (iiii) for the third successive month, or part thereof of violation, an additional Ten Dollars (\$10) plus 1/5th of 1% of wages which the employer failed to report when due to the Commission. The penalties hereinbefore provided in (i), (ii), (iii), and (iiii) are cumulative and in addition to any other penalties provided in this Act, and if such penalties are not paid to the Commission at the time they are forfeited, they shall be collected by civil action as provided in this Section.

(2) If any employing unit shall (i) fail to keep any of the records required to be kept by the provisions of this Act or by the rules or regulations of the Commission, (ii) make a false report to the Commission, or (iii) fail or refuse to abide by the provisions of this Act, or the rules or regulations of the Commission promulgated hereunder, or violate the same, and if no civil penalty is otherwise provided

by this Act, such employing unit shall forfeit to the State for the Unemployment Compensation Special Administration Fund as a penalty the sum of Ten Dollars (\$10).

In cases where the violation is of continuous and continuing nature, whether or not any other civil penalty is otherwise provided by this Act, each day's violation after written notice of the existence of the violation is given to the employing unit shall constitute a separate offense and incur another penalty of Ten Dollars (\$10). The penalty for each day's violation shall be forfeited and become cumulative on the tenth (10th) calendar day after date of written notice is given or mailed to the employing unit by the Commission or its authorized representative. If such penalties are not paid when demanded by the Commission or its duly authorized representative, they shall be collected by civil action as provided in this Section.

(3) If any employer shall fail to make any reports to the Commission, required by this Act or by rules or regulations of the Commission, the Commission may estimate, from any sources of information available to it, the amount of taxable wages paid by such employer during the period in question, and the Commission may proceed to collect taxes and penalties on the basis of such estimates the same as if the estimated wages had been properly reported by the employer.

(4) The collection remedies provided in this Section shall be cumulative and no action shall be construed as an election on the part of the Commission to pursue any given remedy or action hereunder to the exclusion of any other remedy or action for which provision is made in this Act or in the General Laws of the State of Texas.

(d) If any employer fails or refuses to pay any contributions, penalties or interest within the time and manner provided by this Act, or by the rules or regulations adopted by the Commission hereunder, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceeding, any report filed in the offices of the Texas Employment Commission by such employer or his agents or representatives, or a certified copy thereof certified to by the Chairman or any member of said Commission or any employee designated for the purpose by said Commission, showing the amount of wages paid by such employer or his agents or representatives, with respect to which contributions, penalties or interest have not been paid, or any audit made by the Texas Employment Commission or its representatives from the books of such employer when signed and sworn to by such representative as being made from the records of said employer, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown.

(e) When an action is filed under the terms of subsection (b) of this Section 14 and is supported by a statement, report or audit, and the affidavit of a member of the Commission, a representative of the Commission, or the attorney representing the Commission, taken before some officer authorized to administer oaths, to the effect that the contributions, penalties or interest shown to be due by said statement, report, or audit are, within the knowledge of affiant, past due and unpaid and that all just and lawful offsets, payments, and credits have been allowed the same shall be taken as prima facie evidence thereof, unless the defendant in said action shall, before an announcement of ready for trial, file a written denial, under oath, stating that such contributions, penalties or interest are not due, in whole or in part, stating the particulars as to any part of said contributions, penalties or interest claimed to be not due; provided that when such counter-affidavit shall be filed on the day of the trial, the plaintiff shall have the right to postpone such cause for a reasonable time. When the defendant fails to file such affidavit, he shall not be permitted to deny the claim for contributions, penalties or interest, or any item thereof.

(f) All sums due by any employing unit under this Act shall become a lien upon all the property both real and personal belonging to such employing unit or to any individual so indebted. Such lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent and may be recorded in the "State Tax Liens" book kept by county clerks as provided in Article 1.07A of Title 122A, Revised Civil Statutes of Texas, 1925, as amended,<sup>1</sup> and such liens may be released in the manner there provided for other state tax liens. The Commission shall pay by warrant drawn by the State Comptroller to the county clerk of the county in which a notice of lien provided by this subsection has been filed the usual fee for filing and recording other similar instruments. Such fee shall be added to the amount due from the employer. When the liability secured by the lien is fully paid, the Commission shall mail to the employer a release of the said lien and it shall be the employer's responsibility to file such release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

(g) If any employer shall fail to remit proper contributions when due, or if any employer shall fail to make such reports to the Commission as are required by this Act, or, as are required by the regulations adopted by the Commission pursuant to authority granted in this Act, the Commission may employ auditors or other persons to ascertain the correct amount of contributions due and to prepare the correct reports due, and if such contributions have not been properly remitted, or, if such reports have not been properly made, the employer shall pay the reasonable expenses incurred in such investigation which shall be paid as additional penalty, and such additional penalty may be collected by the



Commission in the manner prescribed in this Section; provided that nothing herein shall prevent the Commission from using other funds available to it for the purpose of making audits and preparing or assisting in preparing reports of employers when the Commission determines that such action is necessary.

(h) Whenever any suit shall be instituted on behalf of the Commission, or at the request of the Commission under this Section or under Section 17 of this Act,<sup>2</sup> the costs adjudged against the State or the Commission shall be paid by the Commission out of the administrative fund herein provided for. All such costs as are chargeable against the Commission shall be paid by the Commission to the officers of the Courts of Texas at the time that the same become due under the provisions of the General Laws of this State.

(i) Priorities under legal dissolutions or distributions: In the event of any distribution of an employer's assets pursuant to an order of any Court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions then or thereafter due shall be entitled to the same priority as is now accorded by the General Laws of the State of Texas to other tax claims.

(j)(1) Where any employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due, and it is later determined that such contributions and/or penalties were not due, in whole or in part, the employing unit making such payment may make application to the Commission for an adjustment thereof in connection with contribution payments then due, or for a refund thereof because such adjustment cannot be made. If the Commission shall determine that such contributions or penalties, or any portion thereof were erroneously collected, the Commission shall allow such employing unit to make an adjustment thereof without interest in connection with contribution payments then due by such employing unit. If such adjustment cannot be made, the Commission shall refund said amount without interest from the fund. It is provided, however, that no application for adjustment or refund shall ever be considered by the Commission unless the same shall have been filed within three (3) years from the date on which such contributions and/or penalties would have become due, had such contributions and/or penalties been legally collectible by the Commission from such employing unit, and provided further that with respect to applications for refund or adjustment filed on or after January 1, 1956, if the approval of such application and the making of a refund or adjustment in connection therewith would require the deletion, removal, or disregarding of any benefit wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions and/or penalties, no such application for adjustment or refund shall ever

be considered by the Commission. The deletion, removal, or disregarding of benefit wages referred to herein shall not include the transfer of compensation experience as described in subsection 7(c) (7) of this Act.<sup>3</sup> For like cause, and within the same period, adjustments or refunds without interest may be so made on the Commission's own initiative.

(2) When an employing unit has made a payment to the Commission of contributions and/or penalties alleged to be due and has, within three (3) years from the date on which such contributions and/or penalties would have become due had such contributions and/or penalties been legally collectible by the commission from such employing unit, made application to the Commission for a refund or adjustment thereof, and such application for refund or adjustment has been denied by the Commission, such employing unit may, within one (1) year from the date on which notice of such denial was mailed to it, commence an action in any court of competent jurisdiction in Travis County, Texas, against the Commission for a refund of the contributions and/or penalties which the Commission refused to refund; provided, however, that such action may not be based upon an application for a refund or adjustment of contributions and/or penalties, or upon the denial of such an application, which application involved the consideration of wages which became benefit wages, or which were charged as benefit wages, more than three (3) years before the filing of such application for refund or adjustment of contributions. The action herein provided shall be exclusive and no action shall be brought under any other provision of law for such refund. Such action shall be de novo; and such recovery, if any, shall be without interest.

(k) Whenever it shall appear that any individual or employing unit is violating or threatening to violate any of the provisions of this Act, or of any rule, regulation or order of the Commission promulgated under this Act, relative to the collection of contributions, penalties, or interest, or the filing of reports relative to employment, the Commission, through the Attorney General, shall bring suit, in the name of the State of Texas against such employing unit or individual in any Court of competent jurisdiction in the county of the residence of the defendant, or if there be more than one (1) defendant, in the county of the residence of any of them, or in the county in which such violation is alleged to have occurred, to restrain such person or employing unit from violating such statute, or such rules, regulation or order of the Commission or any part thereof, and in such suit the Commission in the name of the State of Texas may obtain such injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant.

The violation by any person or employing unit of any injunction granted under the provisions of this Act shall be sufficient grounds for the appointment by the Court, either upon its own motion or that of

the Commission in the name of the State of Texas, of a receiver to take charge of such properties of such person or employing unit and to exercise such powers as in judgment of the Court shall be necessary in order to bring about compliance with such injunction; provided, however, that no such receiver shall be appointed except after notice and hearing. The power to appoint a receiver as herein provided shall be in addition to and cumulative of the power to punish for contempt.

(l) Taxes, penalties, interest and court costs owed by an employer under a final court judgment under this Act shall be deemed to be a debt owed to the State of Texas by the employer for the purposes of Article 4350. Vernon's Texas Civil Statutes, provided, however, that this subsection shall apply only to warrants which would otherwise be issued by the State Comptroller in refund of taxes, fees, assessments and other deposits required under the laws of Texas and to warrants otherwise owed to the employer as compensation for goods and services (other than warrants owed in payment for services performed as an elective or appointive employee of this state and warrants owed in reimbursement of expenses incurred in the performance of such state employment).

(m) Any qualified attorney who is a regular salaried employee of the Commission may represent any employment security agency of any other state in proceedings in court in this state to collect contributions, penalties, interest, and court costs for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of any other state, provided that such liability has been reduced to judgment in a court of record in the state of the requesting agency, and provided further, that the unemployment compensation law or unemployment insurance law of the requesting state provides for like action on behalf of the Commission by the requesting state agency. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this Act.

(n) In cases where it has become necessary for the commission to reduce to judgment its claim against an employer for taxes, penalty or interest, the Commission shall pay by warrant drawn by the State Comptroller to the county clerk of the county or counties in which an abstract of such judgment shall be recorded the usual fee for filing and recording such abstract of judgment. When the liability secured by the lien is fully paid, the Commission shall mail to the employer a release of said lien and it shall be the employer's responsibility to file such release with the appropriate county clerk and to pay the county clerk's fees for recording such release.

(o) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act and was indebted to the Commission

for taxes, penalty, or interest shall be liable to the Commission for prompt payment of such taxes, penalty, or interest and if not paid, suit may be brought by the Commission for the collection of same as though the taxes, penalty, or interest had been incurred by the successor employer.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 14. Amended by Acts 1939, 46th Leg., p. 436, § 8; Acts 1943, 48th Leg., p. 572, ch. 339, § 1; Acts 1947, 50th Leg., p. 766, ch. 379, § 1; Acts 1955, 54th Leg., p. 399, ch. 116, § 10; Acts 1957, 55th Leg., p. 1350, ch. 460, § 8; Acts 1965, 59th Leg., p. 318, ch. 150, §§ 2 to 4, eff. July 1, 1965; Acts 1967, 60th Leg., p. 683, ch. 287, §§ 5 and 6, eff. Oct. 1, 1967; Acts 1982, 67th Leg., 3rd C.S., p. 2, ch. 2, §6, eff. Sept. 10, 1982.]

<sup>1</sup> Repealed; see, now, Tax Code, § 113.004.

<sup>2</sup> Article 5221b-15.

<sup>3</sup> Article 5221b-5(c)(7).

**Effective date, repeals, etc.** Section 2 of the amendatory Act of 1943 read as follows:

"The provisions of this Act shall repeal all parts of Section 14 of Chapter 482, Acts of the 44th Legislature, Third Called Session, as amended, in conflict herewith, and all laws or parts of laws in conflict herewith, insofar as they do conflict herewith, but shall in no way be construed as forfeiting or waiving rights to collect contributions that have accrued under said Chapter 482, as amended, or penalties, not exceeding twenty-five (25%) per centum of the amount of contributions due at due date, that have accrued under said Chapter 482, as amended, nor the right of prosecution for violating any provision thereof."

Sections 3 and 4 of the amendatory Act of 1947 read as follows:

"Sec. 3. All laws or parts of laws in conflict herewith, in so far as they do conflict herewith, are hereby repealed, but such repeals shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Unemployment Compensation Commission which have accrued under the repealed sections of law, including, without limiting or without being limited thereto, the right to collect contributions, interest or penalties that have accrued, and the right of prosecution for any violation thereof.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have enacted such remaining portions despite such invalidity."

Section 7 of the 1982 amendatory act provides:

"(a) Section 5 of this Act takes effect January 1, 1983. All other sections take effect immediately.

"(b) The increase in the penalty rate on past due contributions resulting from the amendment of Section 14(a), Texas Unemployment Compensation Act (Article 5221b-12, Vernon's Texas Civil Statutes), by Section 6 of this Act applies prospectively to the accrual of penalties on amounts past due on the effective date of the amendment, as well as to amounts that become past due on or after that date. Former law applies to the accrual of penalties before that date."

#### Art. 5221b-12A. Liens

All sums due by any employing unit to the Commission under this Act shall become a lien on all the property both real and personal belonging to such employing unit or to any individual so indebted. The lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent. The provisions of Subchapters A and B of Chapter 113, Tax Code,<sup>1</sup> govern the enforcement of this lien. The Commission has all the duties imposed, and the power and authority in administering and enforcing the lien created by this section that is

conferred on the Comptroller for the enforcement of other liens under Subchapters A and B of Chapter 113, Tax Code. This lien is cumulative of the other lien provided in this Act and that lien is effective according to its terms.

[Acts 1981, 67th Leg., p. 1780, ch. 389, § 35, eff. Jan. 1, 1982.]

<sup>1</sup> Tax Code, §§ 113.001 et seq. and 113.101 et seq.

Section 1 of the 1981 Act enacted Title 2 of the Tax Code.

#### Art. 5221b-13. Protection of Rights and Benefits

(a) **Waiver of Rights Void:** No agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this Act shall be valid, except that an employer's waiver under the terms of subsections 7(c)(7)<sup>1</sup> or 7-A(f)<sup>2</sup> of this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions or reimbursements, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions or reimbursements required from him or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or be imprisoned for not more than six (6) months, or both.

(b) **Limitation of Fees:** No individual claiming benefits shall be charged fees of any kind in any proceeding under this Act by the Commission or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the Commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Commission. Any person who violates any provision of this subsection shall for each such offense, be fined not less than Fifty (\$50.00) dollars, nor more than Five Hundred (\$500.00) Dollars, or imprisoned for not more than six (6) months, or both.

(c) **No Assignment of Benefits; Exemptions:** No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid. The protec-

tions and limitations contained in the preceding portion of this section are superseded, to the extent of any conflict, by the provisions regarding child support obligations set out in Subsection (d) of this section.

#### (d) Child Support Obligations:

(1) An individual filing a new claim for benefits shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined by Subdivision (7) of this subsection. If the individual discloses that he owes child support obligations and is determined to be eligible for benefits, the Commission shall notify the state or local child support enforcement agency enforcing the obligation that the individual has been determined to be eligible for benefits.

(2) The Commission shall deduct and withhold from any benefits payable to an individual that owes child support obligations an amount equal to:

(A) the amount specified by the individual to the Commission to be deducted and withheld under this subdivision, if neither Paragraph (B) nor (C) is applicable;

(B) the amount, if any, determined pursuant to an agreement submitted to the Commission under Section 454(20)(B)(i), Social Security Act,<sup>3</sup> by the state or local child support enforcement agency, unless Paragraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from the benefits pursuant to legal process, as that term is defined by Section 462(e), Social Security Act,<sup>4</sup> properly served upon the Commission.

(3) The Commission shall pay any amount deducted and withheld under Subdivision (2) of this subsection to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under Subdivision (2) of this subsection shall for all purposes be treated as if it were paid to the individual as benefits and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) In subdivisions (1) through (4) of this subsection, "benefits" includes amounts payable by the Commission under an agreement entered under any federal law that provides for compensation, assistance, or allowances with respect to unemployment.

(6) This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the Commission under this subsection which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) In this subsection "child support obligations" includes only obligations that are being enforced pursuant to a plan described by Section 454 of the Social Security Act that has been approved by the

Secretary of Health and Human Services under Part D, Title IV, Social Security Act.<sup>5</sup>

(8) In this subsection "state or local child support enforcement agency" means any agency of this state or a political subdivision of this state operating pursuant to a plan described by Subdivision (7) of this subsection.

The Legislature declares that the preceding portion of this Subsection (d) and the last paragraph of Subsection (c) immediately above are enacted because Section 303(e) of the Social Security Act<sup>6</sup> requires these provisions in state law as a condition for federal funding of administration of the state unemployment compensation laws; and it further declares that if Section 303(e) of the Social Security Act is repealed, the preceding portion of this Subsection (d) and the last paragraph of Subsection (c) immediately above shall no longer have any force and effect.

[Acts 1936, 44th Leg., 3rd C.S., p. 993, ch. 482, § 15. Amended by Acts 1955, 54th Leg., p. 399, ch. 116, § 11; Acts 1971, 62nd Leg., p. 2743, ch. 892, § 8, eff. Jan. 1, 1972; Acts 1983, 68th Leg., p. 3072, ch. 527, § 5, eff. Sept. 1, 1983.]

<sup>1</sup> Article 5221b-5(c)(7).

<sup>2</sup> Article 5221b-5a(f).

<sup>3</sup> 42 U.S.C.A. § 654(20)(B)(i).

<sup>4</sup> 42 U.S.C.A. § 662(e).

<sup>5</sup> 42 U.S.C.A. § 651 et seq.

<sup>6</sup> 42 U.S.C.A. § 503(e).

Section 7 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, and applies only to claims for unemployment compensation benefits filed on or after that date. Claims filed before that date are governed by the law in effect on the filing date, and that law is continued in effect for that purpose."

#### Art. 5221b-14. Penalties

(a) Whoever makes a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act<sup>1</sup> or under the unemployment compensation law of any other state, or under any Act or Program of the United States administered by the Commission, either for himself or for any other person, shall be punished by fine of not less than One Hundred Dollars (\$100), nor more than Five Hundred Dollars (\$500), or by imprisonment for not less than thirty (30) days nor longer than one (1) year, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act, or who willfully fails or refuses to make any such contribu-

tions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this Act or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than Twenty (\$20.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commission, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commission for the Unemployment Compensation Fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 14(b) of this Act<sup>2</sup> for the collection of past due contributions.

(e) Any person who by willful nondisclosure or misrepresentation by him, or by another for him, of a material fact, has received any sum as benefits under this Act while any conditions for receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, forfeits such benefits and the rights to benefits which remain in the benefit year in which such nondisclosure or misrepresentation occurred. The Commission may to the same extent cancel such benefit rights of any person who has attempted by such willful nondisclosure or misrepresentation to obtain or increase benefits. Such forfeiture or cancellation may be effective only after opportunity for fair hearing before the Commission or its duly designated representative has been afforded such person.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 16. Amended by Acts 1939, 46th Leg., p. 436, § 9; Acts 1955, 54th Leg., p. 399, ch. 116, § 12; Acts 1957, 55th Leg., p. 1350, ch. 460, § 9; Acts 1961, 57th Leg., p. 905, ch. 403, § 1; Acts 1971, 62nd Leg., p. 2783, ch. 900, § 3, eff. Jan. 1, 1972.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> Article 5221b-12(b).

**Art. 5221b-15. Representation in Court**

(a) In any civil action to enforce the provisions of this Act<sup>1</sup> the Commission and the State shall be represented by an Assistant Attorney General who shall be appointed by the Attorney General and designated to perform such legal duties as may be required of him by the Commission, and who shall institute in the name of the State and in the name of the Attorney General any civil action requested of him by the Commission. Such Assistant Attorney General shall be paid by the Unemployment Compensation Commission for the services performed by such Assistant Attorney General solely for the Commission. Such Assistant Attorney General may be assisted by any other qualified attorneys who are regularly employed by the Commission.

(b) All criminal actions for violations of any provisions of this Act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the prosecuting attorney in the county in which the offense is alleged to have occurred.

(c) In all civil and criminal proceedings brought under provisions of this Act, duly certified copies of documents from Commission files and Commission records shall be accepted in evidence in lieu of the originals thereof.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 17. Amended by Acts 1957, 55th Leg., p. 1350, ch. 460, § 10; Acts 1965, 59th Leg., p. 318, ch. 150, § 5, eff. July 1, 1965.]

<sup>1</sup> Article 5221b-1 et seq.

**Art. 5221b-15a. Reciprocal Arrangements**

(a) The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other States or of the Federal Government whereby individuals performing services in this and other States for a single employing unit shall be deemed to be engaged in employment performed entirely within either:

(1) This State or within one of such other States where some portion of his services are performed, or

(2) The State in which such individual has his residence, or

(3) The State in which the employing unit maintains a place of business.

(b) The Commission shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this Act with his wages and employment covered under the unemployment compensation laws of other states or the Federal Government, or both, which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for:

(1) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws, and

(2) Avoiding the duplicate use of wages and employment by reason of such combining.

(c) The Commission is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies, reimbursements from or to the fund; in accordance with arrangements entered into pursuant to Subsection (b) of this Section. Reimbursements paid from the fund pursuant to this subsection shall be deemed to be benefits for the purposes of this Act.<sup>1</sup>

(d) The Commission is also authorized to enter into reciprocal arrangements with appropriate duly authorized agencies of other states or of the Federal Government, or both, whereby services on vessels or on aircraft engaged in interstate or foreign commerce for a single employer, wherever they are performed, shall be deemed performed within this State or within any such other state.

(e) The commission is authorized to enter into reciprocal arrangements with the appropriate agency of another state or the District of Columbia whereby employees of one state or the District of Columbia performing services in the other state or the District of Columbia shall be considered to be engaged in employment performed entirely within the employing state or the District of Columbia. The commission shall enter the arrangement on request of an agency of this state that has employees performing services in another state or the District of Columbia.

[Acts 1937, 45th Leg., p. 121, ch. 67, § 6. Amended by Acts 1945, 49th Leg., p. 121, ch. 67, § 6; Acts 1967, 60th Leg., p. 683, ch. 287, § 7, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2743, ch. 892, § 9, eff. Jan. 1, 1972; Acts 1981, 67th Leg., p. 83, ch. 44, § 2, eff. April 15, 1981.]

<sup>1</sup> Article 5221b-1 et seq.

**Art. 5221b-16. Nonliability of State**

Benefits shall be deemed to be due and payable under this Act<sup>1</sup> only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the Unemployment Compensation Fund, and neither the State nor the Commission shall be liable for any amount in excess of such sums.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 18.]

<sup>1</sup> Article 5221b-1 et seq.

**Art. 5221b-17. Definitions**

As used in this Act, unless the context clearly requires otherwise:

(a)(1) "Act" means the Texas Unemployment Compensation Act which is Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended.<sup>1</sup>

(2) "Base period" means such period of four (4) consecutive completed calendar quarters within the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year as the Commission may by regulation prescribe.

(3) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commission may by regulation prescribe.

(b)(1) "Benefits" means the money payments payable to an individual, as provided in this Act, with respect to his unemployment.

(2) "Benefit amount" means the amount of benefits an individual would be entitled to receive for one benefit period of total unemployment.

(3) "Benefit period" means such period of seven (7) consecutive calendar days as the Commission may by regulation prescribe.

(4) "Benefit Year," with respect to any individual means the period of one (1) year beginning with the day with respect to which his first valid initial claim is filed and, thereafter, the period of one (1) year beginning with the day with respect to which his next valid initial claim is filed after the termination of his last preceding benefit year.

(c) "Commission" means the Texas Employment Commission.

(d) "Contributions" means the money payments (taxes) to the State Unemployment Compensation Fund required under this Act. Employers who pay contributions under this Act may be referred to as "taxed employers".

(e) "Employing unit" means any individual or type of organization, including but not limited to any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or, subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two (2) or more separate establishments within this State shall be deemed to be employed by a single employing unit for all purposes of this Act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) below is applicable, which dur-

ing any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars (\$1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954<sup>2</sup> which is exempt from income tax under Section 501(a) of such Code<sup>3</sup> and which on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act;<sup>4</sup>

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act<sup>5</sup> for the current calendar year;

(6) A state or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act;

(8) Any employing unit which paid wages for or employed individuals in agricultural labor in accordance with the following; notwithstanding any other provision in this Act, agricultural labor as defined in subsection 19(g)(5)(B) of this Act shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of Twenty Thousand Dollars (\$20,000) or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) or more individuals in that employment for some portion of the day; provided that

(A) for purposes of this provision, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of the crew leader,

(i) if:

(I) the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963;<sup>6</sup> or

(II) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

(ii) if the individual is not an employee of such other person;

(B) for purposes of this provision, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (A) of this subdivision:

(i) the other person and not the crew leader shall be treated as the employer of that individual; and

(ii) the other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader (either on his behalf or on behalf of the other person) for the agricultural labor performed for the other person;

(C) for purposes of this provision, the term "crew leader" means an individual who:

(i) furnishes individuals to perform agricultural labor for any other person,

(ii) pays (either on his behalf or on behalf of the other person) the individuals so furnished by him for the agricultural labor performed by them, and

(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(D) for the purposes of this provision, wages shall not include remuneration paid in any medium other than cash;

(E) this provision shall not be applicable to agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.<sup>7</sup>

(9) Any employing unit which paid wages for domestic service in accordance with the following: notwithstanding any other provision in this Act, domestic service in a private home, local college club, or a local chapter of a college fraternity or sorority shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of One Thousand Dollars (\$1,000) or more for the domestic service, provided that an employer under this provision shall not be treated as an employer with respect to wages paid for any service other than domestic service unless the employer is treated as an employer under some other provision of this Act with respect to the service.

(g)(1) "Employment" means any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied, provided that any services performed by an individual for wages shall be deemed to be employment subject to this Act unless and until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact. The term "employment" shall include but shall not be limited to:

(A) The services of any individual who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services for his principal; and

(B) The services of a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis on the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

(C) Paragraphs (A) and (B) above are applicable if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that services of an individual shall not be included in the term "employment" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(2)(A) The term "employment" shall include an individual's entire service performed within or both within and without this State, if the service is localized in this State; or if the service is not localized in any state but some of the service is performed in this State and (i) the base of operations is in this State, or, if there is no base of operations then the place from which such service is directed or controlled is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this State.

(B) The term "employment" shall include an individual's entire service within the United States, even though performed entirely outside this State, if (i) the service is not localized in any state, and (ii) he is one of a class of employees who are required to travel outside this State in performance of their

duties, and (iii) his base of operations is in this State, or, if there is no base of operations then the place from which his service is directed or controlled is in this State.

(3)(A) Service not covered under paragraph (2) of this subsection and performed entirely without this State, and to which paragraph 3(C), below, is not applicable, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state, shall be deemed to be employment subject to this Act if the individual performing such services is a resident of this State and the Commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this Act.

(B) Services covered by reciprocal agreements authorized by this Act between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment, if the Commission has approved an election of the employing unit for whom such services were performed pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment subject to this Act.

(C) The term "employment" shall include any service performed on or in connection with an American vessel or American aircraft which is defined as employment in Section 3306(c) of the Internal Revenue Code of 1954<sup>8</sup> and which is not excepted from the definition of employment in Section 3306(c)(4) of such Code<sup>9</sup> provided the operating office from which such vessel or aircraft is ordinarily and regularly supervised, managed, directed and controlled is within this State.

(D) The term "employment" shall include any service (other than service which is deemed "employment" under the provisions of subsections (g)(2) and (g)(3) of this Section or the parallel provisions of another state's law) performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer, if:

(i) the employer's principal place of business in the United States is located in this State; or

(ii) the employer has no place of business in the United States, but:

(I) the employer is an individual who is a resident of this State; or

(II) the employer is a corporation which is organized under the laws of this State; or

(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one (1) other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

(E) The term "American employer" as used in subsection 19(g)(3)(D) of this Act<sup>10</sup> means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership, if two-thirds (2/3) or more of the partners are residents of the United States;

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(F) The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(G) In the event Texas is the state of jurisdiction for services covered under subsection 19(g)(3)(D) of this Act, said employer shall so notify all employees whose service is defined as "employment" in this subparagraph.

(4) Service shall be deemed to be localized within a state, if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act<sup>11</sup> for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.



(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (½) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half (½) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Services performed in the employ of a political subdivision or any instrumentality thereof which is wholly owned by one (1) or more political subdivisions:

(i) as an elected official;

(ii) as a member of a legislative body;

(iii) as a member of the judiciary;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(v) in a position which, under or pursuant to law, is designated as a major nontenured policy-making or advisory position, or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a nondiplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor,

if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954,<sup>12</sup> the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act<sup>13</sup> with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(O) Deleted by Acts 1977, 65th Leg., p. 997, ch. 368, § 17, eff. Jan. 1, 1978.

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal

agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed by an inmate of a custodial or penal institution which is owned or operated by the State or a political subdivision thereof;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, service performed in an apprenticeship training program, or service performed by a teaching assistant; and

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(V) Service performed on a fishing vessel normally having a crew of fewer than ten (10) if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.

(6) Included and Excluded Service: If the services performed during one-half (½) or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half (½) of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to services performed in any pay period by an individual for the person employing him, where any of such service is excepted by subsection 19(g)(5)(A) of this Act.<sup>14</sup>

(h) "Employment office" means a free public employment office, or branch thereof, operated by this State or maintained as a part of a state-controlled system of public employment offices.

(i) "Fund" means the Unemployment Compensation Fund established by this Act, to which all contributions required and from which all benefits provided under this Act shall be paid.

(j) "Partially unemployed": An individual shall be deemed "partially unemployed" in any benefit period of less than full-time work if his wages payable for such benefit period are less than the benefit amount he would be entitled to receive if he had performed no services during such period and if with respect to such benefit period no wages were payable to him, plus (i) Five Dollars (\$5), or plus (ii) twenty-five per cent (25%) of such benefit amount, whichever of (i) or (ii) is greater.

(k) "State" includes, in addition to the States of the United States of America, Puerto Rico, the District of Columbia, and the Virgin Islands.

(l) "Total unemployment": An individual shall be deemed "totally unemployed" in any benefit period during which he performs no services and with respect to which no wages are payable to him. An individual's benefit period of total unemployment shall be deemed to commence only after his registration pursuant to subsection 4(a) of this Act.<sup>15</sup> As used in this subsection (l), the term "wages" shall include only that part of remuneration for work which is in excess of (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater, in any one benefit period, and the term "services" shall not include work for which remuneration does not exceed (i) Five Dollars (\$5), or (ii) twenty-five per cent (25%) of the benefit amount, whichever of (i) or (ii) is greater.

(m) "Valid claim" means either an initial claim filed by an unemployed individual who has received the wages necessary to qualify for benefits under the terms of subsection 4(e) of this Act,<sup>16</sup> or a claim for benefits filed by an unemployed individual who has received the wages necessary to qualify for benefits under the terms of subsection 4(e) of this Act and "initial claim" means the notice filed by an individual who does not have a current benefit year that he is unemployed and may, if such unemployment continues, file a claim for benefits.

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash and gratuities received by any employee in the course of employment to the extent that the gratuities are considered as wages in the computation of taxes under the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3301 et seq., except that such term shall not include:

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to Seven Thousand Dollars (\$7,000) with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during any such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annu-

ties, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954<sup>17</sup> which is exempt from tax under Section 501(a) of said Code<sup>18</sup> at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954,<sup>19</sup> or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954;<sup>20</sup>

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954<sup>21</sup> (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after Seven Thousand Dollars (\$7,000) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment.

(o) "Week" means such period of seven (7) consecutive calendar days as the Commission may prescribe.

(p) "Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this Section.

(q) "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that places in jeopardy the lives or property of others, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure orderly work and the safety of employees, but does not include an act of misconduct that is in response to an unconscionable act of an employer or superior.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 19. Amended by Acts 1937, 45th Leg., p. 121, ch. 67, § 7; Acts 1939, 46th Leg., p. 436, § 10; Acts 1941, 47th Leg., p. 1378, ch. 625, § 1; Acts 1943, 48th Leg., p. 585, ch. 343, § 7; Acts 1945, 49th Leg., p. 589, ch. 347, § 7; Acts 1949, 51st Leg., p. 282, ch. 148, § 8; Acts 1955, 54th Leg., p. 399, ch. 116, § 13; Acts 1957, 55th Leg., p. 1350, ch. 460, § 11; Acts 1961, 57th Leg., p. 1129, ch. 513, § 2; Acts 1965, 59th Leg., p. 318, ch. 150, § 6; Acts 1967, 60th Leg., p. 697, ch. 287, § 8, eff. Oct. 1, 1967; Acts 1971, 62nd Leg., p. 2743, ch. 892, §§ 10, 11, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 994, ch. 368, §§ 15 to 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 384, ch. 175, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 17, ch. 12, § 2, eff. March 20, 1981; Acts 1982, 67th Leg., 3rd C.S., p. 8, ch. 2, § 5, eff. Jan. 1, 1983; Acts 1983, 68th Leg., p. 2877, ch. 489, § 1, eff. June 19, 1983.]

<sup>1</sup> Article 5221b-1 et seq.

<sup>2</sup> 26 U.S.C.A. § 501(c)(3).

<sup>3</sup> 26 U.S.C.A. § 501(a).

<sup>4</sup> Article 5221b-6.

<sup>5</sup> 26 U.S.C.A. § 3301 et seq.

<sup>6</sup> 7 U.S.C.A. § 2041 et seq.

<sup>7</sup> 8 U.S.C.A. §§ 1184(c), 1101(a)(15)(H).

<sup>8</sup> 26 U.S.C.A. § 3306(c).

<sup>9</sup> 26 U.S.C.A. § 3306(c)(4).

<sup>10</sup> Subsection (g)(3)(D) of this article.

<sup>11</sup> Article 5221b-9(b).

<sup>12</sup> 26 U.S.C.A. § 1603(c).

<sup>13</sup> Article 5221b-12(j).

<sup>14</sup> Subsection (g)(5)(A) of this article.

<sup>15</sup> Article 5221b-2(a).

<sup>16</sup> Article 5221b-2(e).

<sup>17</sup> 26 U.S.C.A. § 401(a).

<sup>18</sup> 26 U.S.C.A. § 501(a).

<sup>19</sup> 26 U.S.C.A. § 403(a).

<sup>20</sup> 26 U.S.C.A. § 405(a).

<sup>21</sup> 26 U.S.C.A. § 3101.

#### Art. 5221b-17a. Repeal; Saving Clause

The provisions of this Act shall repeal all parts of Chapter 482, General Laws of the Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General Laws of the Forty-fifth Legislature, Regular Session,<sup>1</sup> in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving rights to collect contributions, interest, or penalties that have accrued under said Chapter, nor the right of prosecution for violating any provision thereof; provided, that any individual becoming unemployed and otherwise eligible during a benefit year established subsequent to April 1, 1938, and prior to the effective date of this Act, shall be paid during such benefit year only those benefits established by his most recent determination applicable to such benefit year and prior to the effective date of this Act, except that the Commission may determine the method of making such payments in accordance with the other provisions of this Act.

[Acts 1939, 46th Leg., p. 436, § 12.]

<sup>1</sup> Articles 5221b-1 to 5221b-22b.

#### Art. 5221b-18. Repealed by Acts 1957, 55th Leg., p. 1350, ch. 460, § 13

#### Art. 5221b-19. Repeal or Amendment

Saving Clause: The Legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this Act at any time.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 21.]

#### Art. 5221b-20. Partial Invalidity; Separability of Provisions

(a) If any section, subsection, paragraph, sentence, clause, phrase, or word of this Act, or the application thereof to any person or circumstance, is held invalid, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

(b) In the event that the provisions of this Act which impose a compulsory contribution be declared invalid or void for any reason, the remainder of the Act shall nevertheless remain in full force and effect; and it is declared to be the intention of the Legislature that the remainder of the Act would have been enacted without the provisions imposing contributions. It is further enacted that in the event the provisions of this Act which impose contributions, are held invalid or void, all payments which have been voluntarily made under the provisions of the Act shall be and remain the property of the fund to which they are deposited; and that employers

shall have the right to continue to make voluntary contributions for unemployment insurance under this Act.

(c) In the event it shall be determined and held by the courts that the provisions of this State Act imposing compulsory contributions is invalid and void, it shall be the duty of the Commission to make such refunds to individual contributors as are entitled to the same.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 22.]

#### Art. 5221b-21. Powers of Commission

**General Provisions:** In all cases where the Commission is given authority to make investigations, to assemble information and to require the submission of documentary or oral testimony it is the intention of the Legislature to grant to the commission only such powers as are necessary for the Commission to exercise in order that they may properly administer this Act.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 23.]

#### Art. 5221b-22. Termination of Act

**Provisions for Termination of Act and Return of Contribution:** In the event the Supreme Court of the United States hold the Federal Social Security Act approved by the President August 14, 1935,<sup>1</sup> unconstitutional or inoperative for any reason whatsoever, then in that event the powers, duties and levies herein provided for, shall have no further force or effect and the Commission shall cease to function and all payments of levies and taxes made hereunder and then remaining unexpended shall be upon proper proof returned ratably to those making such payments, and it shall be the duty of the Unemployment Compensation Commission to perform this Act, and the Unemployment Compensation Commission shall remain in performance of this duty only until such Act has been performed.

[Acts 1936, 44th Leg., 3rd C.S., p. 1993, ch. 482, § 24.]  
142 U.S.C.A. § 301 et seq.

#### Art. 5221b-22a. Unemployment Compensation Special Administration Fund

There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Special Administration Fund which may be used by the Commission for the purposes of paying costs of the administration of this Act including the costs of reimbursing the Unemployment Compensation Benefit Accounts for unemployment compensation benefits paid to former employees of the State of Texas which are based on service for the state, and the costs of construction and purchase of buildings and land necessary in such administration. The State Treasurer shall be the Treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with the directions of the Commission. All

interest and penalties collected under the provisions of this Act and all moneys now on deposit in the Unemployment Compensation Special Administration Fund shall be paid into this fund. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Texas Unemployment Compensation Act. Nothing in this Section, however, shall prevent said moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the Texas Unemployment Compensation Act, for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The Commission may, by resolution duly entered in its Minutes, authorize to be charged against said moneys any expenditures which it deems proper in the interest of good administration of this Act, provided the Commission in such resolution finds that no other funds are available or can properly be used to finance such expenditures. All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund may be expended in accordance with the provisions of this Act, upon appropriation by the legislature, and shall not lapse at any time or be transferred to any other fund. All moneys in the Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Special Administration Fund provided herein. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Special Administration Fund shall be deposited in said Unemployment Compensation Special Administration Fund. If it be determined by the Commission in accordance with the provisions of subsection 14(j) of this Act that the Commission should refund penalties which have been erroneously collected and which have been deposited in the Unemployment Compensation Special Administration Fund, the refund of such penalties shall be made, without interest, out of the Unemployment Compensation Special Administration Fund, notwithstanding the provisions of subsection 14(j) of this Act<sup>1</sup> that payment of all refunds shall be made out of the Unemployment Compensation Fund. Such refunds paid out of the Unemployment Compensation Special Administration Fund shall be paid upon warrants issued

by the Comptroller under the direction of the Commission.

[Acts 1945, 49th Leg., p. 589, ch. 347, § 8. Amended by Acts 1949, 51st Leg., p. 282, ch. 148, § 9; Acts 1979, 66th Leg., p. 1870, ch. 755, § 1, eff. Aug. 27, 1979.]

<sup>1</sup> Article 5221b-12(j).

Acts 1982, 67th Leg., 3rd C.S., p. 8, ch. 2, inter alia, added art. 5221b-7c. Section 4 of said Act provides:

"The unobligated and unencumbered balance (as of the effective date of this section) of the unemployment compensation special administration fund is appropriated to the office of the governor for the payment of interest on advances from the federal unemployment trust fund."

#### Art. 5221b-22aa. Use of Fund for Payment of Legislative Expenses

In addition to all other purposes, as set out in Section 26 of this Act, for which the Unemployment Compensation Special Administration Fund may be used, moneys in this Fund in an amount not to exceed Sixty Thousand Dollars (\$60,000) may be used for the purpose of paying for the expenses of the Fifty-fifth Legislature as described in Chapter 1, Acts of the Fifty-fifth Legislature, Regular Session, 1957, as amended, and shall be available for appropriation or transfer by the Legislature to be used for such purpose during the biennium ending August 31, 1959.

[Acts 1957, 55th Leg., 2nd C.S., p. 181, ch. 21, § 4.]

#### Art. 5221b-22b. Title

The body of law originally enacted in Senate Bill No. 5, Chapter 482, General and Special Laws of the Forty-fourth Legislature, Third Called Session, as amended, providing for an unemployment compensation system and an employment service in Texas, shall be known and may be cited as the "Texas Unemployment Compensation Act."<sup>1</sup>

[Acts 1945, 49th Leg., p. 589, ch. 347, § 9.]

<sup>1</sup> Article 5221b-1 et seq.

#### Art. 5221b-22c. Unemployment Compensation Commission

Wherever the name "Texas Unemployment Compensation Commission" appears in the Texas Unemployment Compensation Act, such name shall for all purposes be changed to the "Texas Employment Commission."

[Acts 1947, 50th Leg., p. 766, ch. 379, § 2.]

#### Art. 5221b-22d. Coverage of State Employees

(a) The State of Texas hereby elects, with respect to all services performed in the employ of this State or any branch or department thereof or any instrumentality thereof which is not otherwise an employer subject to this Act, to become a reimbursing employer subject to this Act, and all services performed in the employ of this State or of any branch or department or instrumentality thereof shall be deemed to constitute employment. This election does not apply to political subdivisions of this State.

(b) The Commission shall provide an annual statement to each State agency showing the benefits paid by the Commission during the year that are attributable to that agency.

[Acts 1971, 62nd Leg., p. 2783, ch. 900, § 4, eff. Jan. 1, 1972. Amended by Acts 1983, 68th Leg., 1st C.S., p. 11, ch. 1, § 4, eff. Sept. 1, 1983.]

#### Art. 5221b-22dd. Coverage for Out-of-State Employees

If the commission is unable to execute a reciprocal agreement under Subsection (e) of Section 17-A of this Act<sup>1</sup> to cover state employees who work outside the state, the employing agency shall become a reimbursing employer if permitted by the law of the state or the District of Columbia in which the employees work. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contributions for those employees from funds available for that purpose.

[Acts 1981, 67th Leg., p. 83, ch. 44, § 3, eff. April 15, 1981.]

<sup>1</sup> Article 5221b-15a(e).

#### Art. 5221b-22e. Conformity With Federal Statutes

If any provision of this Act is held not to conform with Federal statute(s) by the Secretary of Labor, the Texas Employment Commission is hereby authorized to administer this Act so as to conform with the provisions of the Federal statute(s) until such time as the Legislature meets in its next session and has an opportunity to amend this Act.

[Acts 1971, 62nd Leg., p. 2784, ch. 900, § 5, eff. Jan. 1, 1972.]

#### Art. 5221b-23. Expired

This article, derived from Acts 1937, 45th Leg., p. 550, ch. 271, effective May 5, 1937, in view of section 4 of said Act providing that the Act should be in force and effect for a period of two years from and after the date of its enactment, is now expired.

#### Art. 5221b-24. Repeal; Saving Clause

The provisions of this Act shall repeal all parts of Chapter 482, General and Special Laws, Forty-fourth Legislature, Third Called Session, as amended by Chapter 67, General and Special Laws, Forty-fifth Legislature, Regular Session, as amended by Chapter 2, Title "Labor," General Laws, Forty-sixth Legislature, Regular Session,<sup>1</sup> in conflict herewith, and all laws or parts of laws in conflict herewith, but shall in no way be construed as forfeiting or waiving any rights of the State of Texas or the Texas Unemployment Compensation Commission, including without limiting the foregoing, the right to collect contributions, interest, or penalties that have accrued under said Chapter, and the right of prosecution for violating any provision thereof.

[Acts 1941, 47th Leg., p. 1378, ch. 625, § 2.]

<sup>1</sup> Art. 5221b-1 et seq.

**CHAPTER FIFTEEN. INSPECTION OF  
STEAM BOILERS**

**Art. 5221c. Boiler Inspection Law**

**Definitions**

Sec. 1. The following terms used in this Act mean:

- (1) "Act" or "The Act"—The Boiler Inspection Law.
- (2) "Alteration"—A change in a boiler that substantially alters the original design.
- (3) "Approved"—Approved by the Commissioner.
- (4) "ASME Code"—The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda Code cases, and interpretations adopted by the Council of the Society.
- (5) "Authorized Inspector"—Any Inspector of boilers holding a commission issued by the Commissioner pursuant to Section 10 of this Act.
- (6) "Board"—The Board of Boiler Rules.
- (7) "Boiler"—Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.
  - (A) "Power Boiler"—A boiler in which steam is generated at a pressure in excess of 15 psi (103 kPa) or a High-Temperature Water Boiler.
  - (B) "High-Temperature Water Boiler"—A water boiler intended for operation at pressures in excess of 160 psi (1,103 kPa) and/or temperatures in excess of 250 degrees F. (121 degrees C.).
  - (C) "Electric Boiler"—A boiler in which the source of heat is electricity.
  - (D) "Unfired Steam Boiler"—A steam generating system that includes:
    - (i) Vessels known as evaporators or heat exchangers.
    - (ii) Vessels in which steam is generated by the use of heat resulting from operation of a processing system containing a number of pressure vessels such as used in the manufacture of chemical and petroleum products.
    - (iii) Waste Heat Boilers.
  - (E) "Miniature Boiler"—Any power boiler which does not exceed the following limits:
    - (i) Sixteen-inch (406 mm) inside diameter of shell.
    - (ii) Twenty-square-foot (1.86 square meter) heating surface (not applicable to electric boiler).
    - (iii) Five-cubic-foot gross (0.14 cubic meter) volume exclusive of casing and installation.
    - (iv) One hundred psi (689 kPa) maximum allowable working pressure.
  - (F) "Nuclear Boiler"—A nuclear power plant system which produces and controls an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves, and storage tanks.
- (G) "Heating Boiler"—Any steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, which is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.
  - (i) "Steam Heating Boiler"—A boiler for operation at pressures not exceeding 15 psi.
  - (ii) "Hot Water Heating Boiler"—A boiler for operation at a pressure not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet.
  - (iii) "Hot Water Supply Boiler"—A boiler for operation at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet when any of the following limitations is exceeded:
    - (a) Heat input of 200,000 Btu/hour.
    - (b) Water temperatures of 210 degrees F.
    - (c) Nominal water-containing capacity of 120 gallons (454.2 l.).
  - (iv) "Potable Water Heater"—A boiler for operation at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. when any of the following limitations is exceeded:
    - (a) Heat input of 200,000 Btu/hour.
    - (b) Nominal water-containing capacity of 120 gallons.
- (8) "Chief Inspector"—The Inspector appointed in accordance with Section 8 of this Act.
- (9) "Code"—ASME Code.
- (10) "Commissioner"—The Commissioner of the Department of Labor and Standards of the State of Texas.
- (11) "Condemned Boiler"—A boiler inspected and declared unfit for further service by the Chief Inspector, the Deputy Inspector, or the Commissioner.
- (12) "Certificate Inspection"—An inspection, the report of which is used by the Chief Inspector to decide whether or not a Certificate of Operation may be issued.
- (13) "Certificate of Operation"—A Certificate issued by the Commissioner permitting the operation of a boiler.
- (14) "Deputy Inspector"—An Inspector appointed by the Commissioner.
- (15) "Existing Installation"—Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.
- (16) "External Inspection"—An inspection of the exterior of the boiler and its appurtenances made when a boiler is in operation, where possible.
- (17) "Electric Boiler"—See Boiler, "Electric".

- (18) "Heating Boiler"—See Boiler, "Heating".
- (19) "High-Temperature Water Boiler"—See Boiler, "High Temperature Water".
- (20) "Hot Water Heating Boiler"—See Boiler, "Hot Water Heating".
- (21) "Hot Water Supply Boiler"—See Boiler, "Hot Water Supply".
- (22) "Inspection Agency"—An authorized inspection agency providing inspection services in accordance with Section 10 of this Act.
- (23) "Inspector"—Chief Inspector, Deputy Inspector, or Authorized Inspector.
- (24) "Internal Inspection"—A complete and thorough inspection of the interior of the boiler where construction will permit.
- (25) "Lined Potable Water Heater"—See Boiler, "Potable Water Heater".
- (26) "Major Repair"—A repair upon which the strength of the boiler will depend.
- (27) "Miniature Boiler"—See Boiler, "Miniature".
- (28) "National Board"—The National Board of Boiler and Pressure Vessel Inspectors.
- (29) "National Board Inspection Code"—The Manual for Boiler and Pressure Vessel Inspectors published by the National Board.
- (30) "New Installations"—A boiler constructed, installed, or placed in operation after June 3, 1937.
- (31) "Nuclear Boiler"—See Boiler, "Nuclear".
- (32) "Non-Standard Boiler"—A boiler that does not qualify as a standard boiler.
- (33) "Owner or User"—Any person, firm, or corporation owning or operating boilers within the State.
- (34) "Portable Boiler"—A boiler which is primarily intended for use in a temporary location.
- (35) "Power Boiler"—See Boiler, "Power".
- (36) "Preliminary Order"—A written order issued by the Chief Inspector or any Deputy Inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.
- (37) "Reinstalled Boiler"—A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.
- (38) "Repair"—The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.
- (39) "Rules and Regulations"—The Code of Rules and Regulations promulgated and enforced by the Commissioner in accordance with Section 6 of this Act.
- (40) "Safety Appliance"—Safety devices such as safety valves or safety relief valves (within the

WTSC Civil Statutes—20

jurisdictional limits of the boiler as prescribed by the ASME Code and the Rules and Regulations) provided for the purpose of diminishing the danger of accidents.

(41) "Secondhand Boiler"—A boiler of which both the location and ownership have changed.

(42) "Special Inspection"—An inspection by the Chief Inspector or Deputy Inspector other than those in Sections 4, 4a, and 5 in this Act.

(43) "Standard Boiler"—A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Commissioner.

(44) "Steam-Heating Boiler"—See Boiler, "Steam Heating".

(45) "Unfired Steam Boiler"—See Boiler, "Unfired".

**Registration of Boilers; Certificate of Operation; Injunction Against Operation of Unsafe Boiler; Revocation of Certificate**

Sec. 2. Unless otherwise specifically exempted in this Act, all boilers operated within the State shall be registered with the Department of Labor and Standards. In addition, such boilers shall not be operated unless they have satisfactorily passed a Certificate Inspection and have qualified for a Certificate of Operation. The Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner and shall be placed under glass in a conspicuous place on or near the boiler for which it is issued. No prosecution shall be maintained where the issuance of or the renewal of such Certificate of Operation shall have been requested and shall remain unacted upon. However, if the operation of such boiler without a Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of the Chief Inspector or any Deputy Inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order. The Commissioner may revoke any Certificate of Operation issued for a



boiler within this State after good cause is shown and after notice and opportunity for a hearing on the revocation.

#### Board of Boiler Rules

Sec. 2a. There is established within the Department of Labor and Standards a Board of Boiler Rules, consisting of nine members appointed by the Commissioner. Except for the initial appointees, members hold office for terms of six years expiring on January 31 of odd-numbered years. In making the initial appointments, the Commissioner shall designate three for terms expiring in 1979, three for terms expiring in 1981, and three for terms expiring in 1983.

The Commissioner may remove any member of the Board for inefficiency or neglect of duty in office. Upon the resignation, death, suspension, or incapacity of any member, the Commissioner shall fill the vacancy for the remainder of the vacated term with an individual representative of the same interests with which the predecessor was identified.

The nine members shall have experience with boilers, and at least four, when available, shall be registered professional engineers licensed in the State of Texas. Three members shall be representatives of owners or users of boilers, one shall be representative of boiler manufacturers or installers, three shall be representatives of companies insuring boilers in this State, one shall be a mechanical engineer on the faculty of a recognized engineering college within the State, and one shall be a representative of a labor union.

The Chief Inspector shall serve as chairman, and the Commissioner shall be an ex officio member. At the call of the chairman, the Board shall meet at least twice each year at a place designated by the Board. No decision of the Board shall be effective unless supported by the vote of at least five members.

The Board shall act in an advisory capacity to the Commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board members shall serve without salary, but are entitled to reimbursement for actual expenses incurred in the performance of their duties as board members.

#### Exemptions from Act

Sec. 3. The following are exempt from the provisions of this Act:

- (1) Boilers owned or operated by the Federal Government;
- (2) Pressure Vessels and unfired steam boilers, except:
  - a. Steam drums of unfired steam boilers.
  - b. Waste heat boilers.

#### Exemptions from Sections 4, 5, and 11 of Act

Sec. 3a. The following shall be exempt from the requirements of Sections 4, 5, and 11 of this Act:

1. Heating Boilers used for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families.

#### Inspections; Ordering Repairs to Unsafe Boiler; Hearing; Temporary Certificate of Operation

Sec. 4. The Commissioner shall cause boilers subject to the provisions of this Act to be inspected internally and externally (except as provided for in Sections 4 and 4a) as follows:

(1) Power boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible.

(2) Steam heating boilers and hot water heating boilers shall receive a certificate inspection biennially.

(3) Hot water supply boilers and lined potable water heaters shall receive a certificate inspection triennially.

(4) Portable steam boilers shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months.

(5) Nuclear boilers shall be inspected and reported in such form and with such appropriate information as the Commissioner shall designate.

If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than the interval required for certificate inspections. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the Chief Inspector or any Deputy Inspector shall issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why the preliminary order should not be complied with. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as may be deemed proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The Chief Inspector may issue a

temporary Certificate of Operation for a period not to exceed thirty (30) days, pending the completion of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. Any boiler which cannot be rendered safe for use shall be condemned and the use of such boiler shall be prohibited.

#### Interval Between Internal Inspections

Sec. 4a. Upon the approval of the Commissioner and the inspection agency having jurisdiction, the interval between internal inspections may be extended to a period not to exceed twenty-four (24) months for power boilers and forty-eight (48) months for waste heat boilers and for other unfired steam boilers using heat resulting from the operation of a process system, the interval may be extended to the next scheduled down time, but not to exceed 60 months provided: (1) continuous water treatment under competent and experienced supervision has been in effect since the last internal inspection for the purpose of controlling and limiting corrosion and deposits; (2) accurate and complete records are available showing that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not greater than twenty-four (24) hours of operation and that the water condition in the boiler is satisfactorily controlled; (3) accurate and complete records are available showing the dates such boiler has been out of service and the reasons therefor since the last internal inspection, and such records shall include the nature of all repairs to the boiler, the reasons why such repairs were made; and (4) the last internal and current external inspection of the boiler indicates the inspection period may be safely extended. The Commissioner and inspection agency having jurisdiction may grant an additional extension for up to one hundred twenty (120) days to the inspection interval covered by the Certificate of Operation on receipt of a request stating that an emergency exists. However, before an extension is allowed, the Authorized Inspector shall make an external inspection and items (1) through (4) of this Section must be complied with. When such an extended period between internal inspections has been approved by the Commissioner and the inspection agency having jurisdiction, as outlined in this Section, a new Certificate of Operation shall be issued for that extended period of operation.

#### Intervals of Inspection for Nuclear Boilers

Sec. 4b. Intervals of inspection for Nuclear Boilers shall be as established by the Commissioner and the owner.

#### Insurance Company Reports; Inspection by Authorized Inspector; Certificate of Operation; Notice of Cancellation or Expiration of Insurance Policy

Sec. 5. Every insurance company authorized to insure and inspect boilers in this State shall, within thirty (30) days after a certificate inspection file a

report with the Commissioner stating the condition of the boiler. The report shall also include the location of the boiler, date inspected, and the name of the inspector.

Any boiler inspected by an authorized inspector shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any boiler at any reasonable time when, in the opinion of the Commissioner, such boiler may be in an unsafe condition. The Commissioner shall contact the insurance company carrying insurance on the boiler and request the authorized inspector to participate with the Chief Inspector or Deputy Inspector to jointly inspect the boiler, within twenty (20) days. No additional charge shall be made for this inspection.

The Commissioner is authorized to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act. The fee for the Certificate of Operation shall not exceed the sum of Fifteen Dollars (\$15).

Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

#### Rules and Regulations; Special Inspection Service; Exchange of Information

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The Commissioner may adopt rules and regulations to provide inspection procedures for use of nondestructive examination equipment to comply with the inspection requirements specified in Section 4 of this Act. The Commissioner is empowered to provide special inspection service to owner-users and manufacturers including surveys required for certification to construct, assemble or repair boilers or pressure vessels. Provided that the Commissioner or any employee of the Department, shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase.

The Commissioner may exchange information and experience data with other authorities having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Prior to the adoption, amendment, or repeal of any rules, the Commissioner shall give at least 30 days' notice of the intended action. Notice of the proposed rule shall be filed with the secretary of

state and published by the secretary of state in the Texas Register. The notice must include:

- (1) a brief explanation of the proposed rule;
- (2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;
- (3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;
- (4) a request for comments on the proposed rule from any interested person; and
- (5) any other statement required by law.

Each notice of a proposed rule becomes effective as legal notice when published in the Texas Register. The notice shall be mailed to all persons who have made timely written requests of the Commissioner for advance notice of the rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

Prior to the adoption of any rule, the Commissioner shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons or by any association having at least 25 members. The Commissioner shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the Commissioner if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

If the Commissioner finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing his reasons for that finding, he may proceed without prior notice or hearing or on any abbreviated notice and hearing that he finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under the provisions of this section is not precluded. An emergency rule adopted under these provisions and the Commissioner's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

No rule adopted is valid unless adopted in substantial compliance with this section and the provisions of the Administrative Procedure and Texas Register Act.<sup>1</sup>

<sup>1</sup> Article 6252-13a.

#### Grievance Procedure

Sec. 7. When any person is aggrieved by any fundamental rule, regulation or order promulgated

by the Commissioner, that person shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same by motion upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

#### Appointment and Qualifications of Chief and Deputy Inspectors

Sec. 8. The Commissioner shall appoint a Chief Inspector of boilers who shall be the Administrator of the boiler program. The Chief Inspector shall be a resident of Texas and a citizen of the U.S.A. The appointee shall have at least five (5) years experience in the construction, installation, inspection, operation, maintenance, or repair of boilers and shall have passed a written examination demonstrating the necessary ability to judge the safety of boilers for use. The Chief Inspector shall not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or their appurtenances. The Commissioner shall appoint Deputy Inspectors, as needed, with qualifications similar to those of the Chief Inspector, and such clerical assistants as may be necessary to carry out the provisions of this Act.

#### Salaries and Expenses

Sec. 9. The salaries and expenses of persons employed or appointed pursuant to the terms of this Act shall be established by the Legislature.

#### Persons Authorized to Inspect; Commission of Authorized Inspectors; Revocation of Certificate of Operation

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the Chief Inspector, a Deputy Inspector, or an Authorized Inspector. However, Authorized Inspectors shall be continuously employed by an insurance company and shall first obtain from the Commissioner a Texas commission as an inspector of boilers. The Commissioner is vested with full power and authority to determine the qualifications (by written examination) of any applicant seeking a commission as inspector. The Commissioner may accept, after proper investigation, the commission issued to an inspector by any other jurisdictional authority having a written examination equal to that of the State of Texas. The Commissioner may rescind for good cause, any Texas commission issued to any person.

## Fees

Sec. 11. (a) The Commissioner may fix and collect fees for the inspection of boilers and the issuance of Certificates of Operation.

Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected.

(b) The Commissioner may fix and collect fees for administering examinations as provided by this Act.

(c) With the advice of the Board of Boiler Rules, the Commissioner shall fix the fees provided by this Act in amounts that produce income sufficient to cover the expenses incurred in the administration of this Act. Fees collected by the Commissioner under the provisions of this Section of the Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

(d) The Commissioner may fix and collect fees for special inspections as referred to in Section 6 of this Act. Such fees, travel, and per diem collected under the provisions of this Section of the Act shall be reappropriated to the credit of the Boiler Inspection Division.

## Penalty for Violations by Persons in Charge of Boilers

Sec. 12. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

## Penalty for Violations by Operators of Factory, Mill, Workshop, Mine, Store, Business House, Public or Private Work

Sec. 13. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any place where a boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Department of Labor and Standards to enter the same and remain thereon or therein for such time as reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter said official or employee from carrying out the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction

shall be fined not to exceed One Hundred Dollars (\$100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

## Notice of Rule, Regulation or Order Violation Prerequisite to Criminal Action

Sec. 14. Whenever there shall have been adopted, amended or repealed as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order.

## Admission in Evidence of Affidavit Setting Forth Terms of Order

Sec. 15. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the Chief Inspector or any Deputy Inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

## Partial Invalidity

Sec. 16. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof.

[Acts 1937, 45th Leg., p. 893, ch. 436. Amended by Acts 1939, 46th Leg., p. 433, §§ 1 to 3; Acts 1951, 52nd Leg., p. 273, ch. 158, § 1; Acts 1955, 54th Leg., p. 445, ch. 121, § 1; Acts 1957, 55th Leg., p. 1331, ch. 452, § 1; Acts 1959, 56th Leg., p. 947, ch. 440, §§ 1 to 3; Acts 1961, 57th Leg., p. 496, ch. 239, §§ 1 to 3; Acts 1963, 58th Leg., p. 131, ch. 78, § 1, eff. Aug. 23, 1963; Acts 1965, 59th Leg., p. 887, ch. 440, §§ 1, 2, eff. June 16, 1965; Acts 1977, 65th Leg., p. 162, ch. 82, § 1, eff. April 25, 1977; Acts 1979, 66th Leg., p. 149, ch. 81, §§ 1, 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 542, ch. 223, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2486, ch. 648, §§ 1 to 3, eff. Sept. 1, 1981.]

The 1979 amendatory act, inter alia, redesignated former § 11a, relating to a special inspection fee, as subsec. (e) of § 11.

## CHAPTER SIXTEEN. MISCELLANEOUS PROVISIONS

- Art.  
5221d. Retirement, Death or Other Benefit or Savings Plan; Payments or Refunds by Employer or Trustee; Relief From Liability.  
5221e. Repealed.  
5221e-1. Migrant Labor Housing Facilities; Licensing.  
5221f. Manufactured Housing Standards Act.  
5221g. Employment Counseling Program for Displaced Homemakers.  
5221h. Transfer of License.  
5221i. Purchase of Unexpired License.

Art.  
5221j. Agricultural Laborers; Length of Hoes.  
5221k. Commission on Human Rights Act.

**Art. 5221d. Retirement, Death or Other Benefit or Savings Plan; Payments or Refunds by Employer or Trustee; Relief From Liability**

Sec. 1. Whenever payment or refund is made to an employee, former employee, or his beneficiary or his heirs, legatees or the representative of his estate pursuant to a written retirement, death, or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer, former employer, and any trustee making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment or refund is made by the employer or former employer, has received at its principal place of business within this State, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof or where a trustee is making the payment or refund, such notice has been received by the trustee at its home office.

Sec. 2. Should said payment or refund, made as provided in Section 1 above, be comprised in whole or in part of stock in any corporation, such corporation may accept said stock for transfer as directed by the employer, former employer, or the trustee making such payment or refund, and shall be entitled to treat the transferee as the owner of said stock for all purposes unless and until the corporation has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such stock or to some interest therein.

Sec. 3. Nothing contained in this Act shall affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer or former employer and the trustee making such payment or refund, or the corporation accepting such stock for transfer.

[Acts 1955, 54th Leg., p. 470, ch. 132.]

**Art. 5221e. Repealed by Acts 1965, 59th Leg., p. 213, ch. 86, § 2, eff. Sept. 1, 1965**

See, now, article 4101-2, § 4.

**Art. 5221e-1. Migrant Labor Housing Facilities; Licensing**

**Definitions**

Sec. 1. The following words and phrases shall mean:

(a) Migrant labor housing facility: One or more buildings, structures, trailers, or vehicles, contiguous or grouped, together with the land appertaining thereto, established, operated, or used as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, tempo-

rary, or migrant workers for more than three days, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(b) Person: An individual or group of individuals, association, partnership, corporation, or political subdivision.

(c) Migrant agricultural worker: An individual working or available for work, primarily in agricultural or related industry on a seasonal or temporary basis, who moves one or more times from one place to another for the purpose of such employment or availability for seasonal or temporary employment.

(d) Board: The Texas Board of Health.

(e) Department: The Texas Department of Health.

**Necessity of License; Posting**

Sec. 2. No person shall establish, maintain, or operate any migrant labor housing facility in this state without first obtaining a license from the department. Such license shall be posted and kept posted in the migrant labor housing facility to which it applies at all times during maintenance or operation.

**Application; Form and Contents; Payment of Fee**

Sec. 3. Application for a license to establish, operate, or maintain a migrant labor housing facility shall be made to the department on a form and under rules prescribed by the board at least 45 days prior to the intended operation of the facility. The application shall state the location and ownership of the existing or proposed migrant labor housing facility, the approximate number of persons to be accommodated, the probable periods of use, and any other information the board may require. The application shall be accompanied by a license fee set by the board not to exceed \$100.

**License; Inspection Prior to Issuance; Expiration and Nontransferability; Failure to Meet Standards**

Sec. 4. (a) Within 30 days of the receipt of a complete application and fee submitted to the department under Section 3 of this Act, the migrant labor housing facility shall be inspected by the department.

(b) If the migrant labor housing facility meets the reasonable, minimum standards of construction, sanitation, equipment, and operation required by rules issued under and in accordance with this Act, the department shall issue a license to operate a migrant labor housing facility. The license, unless sooner revoked, shall expire one year after the date of issuance, and it shall not be transferable.

(c) If the migrant labor housing facility does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules issued under and in accordance with this Act, the department shall give notice to the applicant at the time of the inspection of the rea-

sons why the facility does not meet the standards. The applicant may request the department to reinspect the facility within 60 days of the date of the notice; provided, however, that if the facility does not meet the standards upon reinspection, a new application for a license must be submitted in accordance with Section 3 of this Act.

**Suspension or Revocation of License; Procedure;  
Location of Hearing**

Sec. 5. The department is hereby authorized to suspend or revoke a license for violation of any of the provisions of this Act or the rules issued pursuant thereto. The procedure by which the department revokes or suspends a license shall be governed by the department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Hearings shall be held in the county in which the migrant labor housing facility is located.

**Rules; Establishment of Fees**

Sec. 6. The board shall make and promulgate such reasonable rules as may be determined to be necessary to protect the health and safety of persons living in migrant labor housing facilities, prescribing standards for living quarters at such facilities, including provisions relating to construction of facilities, sanitary conditions, water supply, toilets, sewage disposal, refuse and garbage storage, collection, and disposal, light, air, safety, protection from fire hazards, equipment, maintenance and operation of the facility, and such other matters as they may determine to be appropriate or necessary for the protection of the health and safety of occupants. The Texas Board of Health shall set fees for licensing migrant labor housing facilities not to exceed the maximum amount established by this Act and shall adopt rules establishing minimum standards for issuing, revoking, and suspending licenses. Said board shall have the authority to modify or repeal any of these rules as deemed necessary.

**Care of Facilities by Employees and Occupants**

Sec. 7. Every employee and occupant of a migrant labor housing facility using the sanitary and other facilities furnished for his convenience shall comply with all applicable rules and standards promulgated in accordance with the provisions of this Act for the care and upkeep of such facilities, that the board has determined to be necessary to protect the health and safety of all employees and occupants.

**Inspection to Determine Violation of Act or Rules;  
Notice; Right of Entry**

Sec. 8. An authorized representative of the Texas Department of Health, after giving notice or having made a reasonable attempt to give notice to the facility's operator, may enter and inspect migrant labor housing facilities at reasonable hours

and investigate such facts, conditions, and practices or matters as may be necessary or appropriate to determine whether any person has violated any provisions of this Act or rules adopted under this Act.

**Violations; Penalties; Injunction; Appeal**

Sec. 9. (a) Any person, as defined in this Act, establishing, conducting, maintaining, or operating any migrant labor housing facility, within the meaning of this Act, without first obtaining a license as provided herein or who shall violate any of the provisions of this Act or rules lawfully promulgated thereunder shall be subject to a civil penalty of \$200 for each day a violation occurs. The county attorney of the county in which the violation occurs, or the attorney general, shall bring such action in the name of the state at the request of the department.

(b) In addition to other remedies, the department is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for good cause shown to grant, a temporary or permanent injunction restraining and enjoining any person, as defined in this Act, employee, or occupant from violating any of the provisions of this Act or rules lawfully promulgated thereunder. Such person, employee, or occupant, so enjoined, shall have the right to appeal such injunction, temporary or permanent, to the Supreme Court of the State of Texas, as in other cases.

**Enforcement**

Sec. 10. It shall be the duty of the department to enforce the provisions of this Act.

**Conflicting Laws Repealed**

Sec. 11. All laws or parts of laws in conflict herewith are hereby repealed.

[Acts 1971, 62nd Leg., p. 2446, ch. 788, eff. June 8, 1971. Amended by Acts 1975, 64th Leg., p. 954, ch. 361, § 1, eff. June 19, 1975; Acts 1983, 68th Leg., p. 853, ch. 199, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"All licenses to operate a migrant labor housing facility which were issued prior to the effective date of this Act are valid through their annual expiration date, except that any temporary licenses shall expire on the effective date of this Act."

**Art. 5221f. Manufactured Housing Standards Act**

**Short Title**

Sec. 1. This Act may be cited as the Texas Manufactured Housing Standards Act.

**Purpose**

Sec. 2. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the

legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

#### Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(a) "Mobile home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(b) "Retailer" means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(c) "Manufacturer" means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

(d) "Department" means the Texas Department of Labor and Standards.

(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(f) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding. A broker may or may not be an

agent of any party involved in the transaction. A person who maintains a location for the display of manufactured homes is not a broker but is a retailer. The term shall not apply if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate; however, the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply.

(g) "Consumer" means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

(h) "Decal" means a device or insignia issued by the department that is permanently affixed to each transportable section or modular component of each modular home to indicate compliance with the standards, rules, and regulations established by the department.

(i) "Seal" means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

(j) "Label" means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(k) "Installation," when used in reference to manufactured housing, means the transporting of manufactured homes or manufactured home components to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement and erection of a manufactured home or manufactured home components on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable sections or components, the installation of air conditioning, and minor adjustments.

(l) "Installer" means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.

(m) "Alteration" means the replacement, addition, and modification, or removal of any equipment or its installation after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being

replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(n) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

(o) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(p) "Code" means the Texas Manufactured Housing Standards Code.

(q) "Modular home" means a dwelling that is constructed in one or more modules at a location other than the homesite, or is constructed utilizing one or more modular components, and which is designed to be used as a permanent residence when the modular components or modules are transported to the homesite and are joined together, or are erected, and installed on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems. It is expressly provided, however that the term modular home shall not mean nor apply to: (i) housing constructed of sectional or panelized systems not utilizing modular components; (ii) any ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location; and (iii) any dwelling constructed in modules incorporating concrete as the basic and predominant structural component.

(r) "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

(s) "Manufactured housing" or "manufactured home" means a HUD-code manufactured home, a mobile home, or a modular home and collectively means and refers to all three.

(t) "Registrant" means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, salesperson, recycler, or installer.

(u) "HUD-code manufactured home" means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(v) "Advertising" or "advertisement" means any commercial message which promotes the sale, exchange, or lease-purchase of manufactured homes and which appears in, or is presented on, radio, television, a public-address system, newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, other printed material, an inside or outside sign or window display, or in point-of-sale literature or price tags. Materials which are educational or that may be required by law do not constitute advertising. Any advertisement relating to manufactured housing shall be considered as an offer to sell, exchange, or lease-purchase to consumers.

(w) "Modular component" means a structural portion of a residential dwelling that is constructed at a location other than the homesite in such a manner that its construction cannot be adequately inspected for code compliance at the homesite without damage or without removal of a part thereof and reconstruction.

#### Manufactured Housing Standards

Sec. 4. (a) The department shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

(1) The requirements and standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, remain in full force and effect until amended in accordance with the procedure set forth in this section.

(2) The department shall adopt standards and requirements for the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Manufactured Home Construction and Safety Standards Act of 1974.<sup>1</sup>

(3) The department shall adopt standards and requirements for the construction of modular homes and modular components which, from an engineering performance standpoint, shall be substantially equivalent to the standards and requirements contained in the Standard (Southern) Building Code or the Uniform Building Code and the National Electrical Code as those codes existed on January 1, 1983, for the construction of residential dwellings. If these codes are revised after January 1, 1983, the department shall appropriately revise the standards and requirements to conform with those revisions if such revisions are in the public interest and consistent with the purposes of this Act.

(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manu-



factured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.

(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section.

(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department.

(3) Repealed by Acts 1983, 68th Leg., p. 4681, ch. 817, § 2, eff. Sept. 1, 1983.

(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

(d) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any political subdivision, the department shall publish a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice.

(e) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

(f) The department shall cooperate with all units of local government in this state and shall authorize local units of government, on request, to make and perform inspection and enforcement activities related to the construction of foundation systems and the erection and installation of manufactured housing at the homesite pursuant to contracts or other official designations and the rules and regulations of the department. The department shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed within the local governmental unit and may establish cooperative inspection training programs. The department may withdraw the authorization if the local governmental unit fails to follow the rules, regulations, interpretations, and written instructions of the department.

142 U.S.C.A. § 5401 et seq.

Sec. 5. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

#### Regulations

Sec. 6. (a) It is unlawful for any manufacturer to construct HUD-code manufactured homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all HUD-code manufactured homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development. It is unlawful for a manufacturer to ship HUD-code manufactured homes into the state for sale or resale unless the manufacturer has complied with all requirements of the National Manufactured Home Construction and Safety Standards Act of 1974 and all standards, rules, and regulations of the Department of Housing and Urban Development.

(b) It is unlawful for any manufacturer to construct modular homes or modular components in the state or to ship modular homes or modular components into the state for sale or resale unless constructed to the code and unless the manufacturer has received approval by the department of the design and specifications for the construction of its modular homes or modular components and of its quality control program to assure compliance with the requirements and standards of the Texas Manufactured Housing Standards Code, has purchased the required decals, and has the modular homes or modular components inspected pursuant to the regulations of the department.

(c) Before the sale of a manufactured home to a consumer and before its installation, it is unlawful for any manufacturer, retailer, broker, or installer to make any alteration on a manufactured home to which a seal, label, or decal has been affixed or cause such an alteration to be made, unless prior written approval has been obtained from the department.

(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal.

(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a registered retailer.

(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable.

(g) A person may not make any announcement concerning the sale, exchange, or lease-purchase of, nor offer to sell, exchange, or lease-purchase, a

manufactured home to consumers in this state through any form of advertising unless such person is a duly registered manufacturer, retailer, or broker. This prohibition against advertising shall not apply to a person to whom a certificate or document of title has been issued showing such person to be the owner of the home, provided that such person does not offer to sell, exchange, or lease-purchase two or more manufactured homes in any consecutive 12-month period. This prohibition also shall not apply to the advertising of real estate on which a manufactured home has been permanently attached and affixed.

(h) It is unlawful for a retailer to purchase for resale to a consumer, or to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase, any new manufactured home which was not constructed by a registered manufacturer.

(i) It is unlawful for any manufacturer, retailer, or installer to purchase, use, or possess any recycled tires, wheels, and axles for manufactured homes except those acquired from a person registered with the department as an approved recycler.

(j) It is unlawful for a retailer or broker to use the phrase "no down payment" or "nothing down," or any similar phrase or term in any advertisement, without identifying in the advertisement the specific source of the funds for the loan or credit advance and setting forth the conditions of qualification of the purchaser for approval of the loan or credit advance without down payment. This prohibition shall not apply to credit transactions to be guaranteed by the Veterans Administration of the United States provided that the phrase or term includes the words "to qualified veterans."

(k) It is unlawful for a retailer or broker to fail to comply with the requirements and provisions of the Texas Credit Code or the federal Truth-in-Lending Act<sup>1</sup> or to advertise any interest rate or finance charge which is not expressed as an annual percentage rate.

(l) It is unlawful for a retailer to set forth in any retail installment sales contract or other credit document any down payment unless all of the down payment has actually been received by the retailer at the time of execution of the contract or document. If any part of the down payment is represented by a loan, trade-in, or any consideration other than cash, this fact shall be expressly set forth on the retail installment sales contract or credit document. No amount of the cash down payment shall be from any rebate or other consideration received by, or to be given to, the consumer from the retailer.

#### Registration

Sec. 7. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured home into the state, unless the person is registered as a manufactured housing manu-

facturer by the department and possesses a valid manufacturer's certificate of registration.

(b) A person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's certificate of registration.

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's certificate of registration.

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration and files proof of insurance as required by the department. The department may issue a temporary installer's certificate of registration to a homeowner for the installation of the owner's home in accordance with applicable requirements, standards, and regulations of the department, on application and payment of the required fee and on submission of proof of insurance by the owner as required by the department.

(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the department an application for registration containing the following information:

(1) the legal name, address, and telephone number of the applicant;

(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

(3) the dates on which the applicant became the owner and operator of the business.

(f) Each application for a certificate of registration must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

(g) All certificates of registration are valid for one year from the date of issue and are renewable annually on payment of the annual fee; provided, however, that the initial certificates of registration issued to registrants as of September 1, 1979, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.

(h) The department by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on

the new expiration date, the total license fee is payable.

(i) If a change occurs in the information filed with the department under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(j) While acting as an agent for a registrant, an employee is covered by the business entity's certificate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor except as provided in Subsection (m) of this section.

(k) The commissioner, after notice and hearing, may revoke or suspend for a definite period of time and for a particular geographic area any certificate of registration issued under this Act if the commissioner finds that the registrant:

(1) knowingly and willfully violated any provision of this Act or any rule or regulation made pursuant to this Act after receipt of actual notice of any failure to comply;

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code;<sup>1</sup> or

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act.

(l) The commissioner shall conduct any hearing involving the revocation or suspension of a certificate of registration in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) A retailer or an installer may not contract with any person for the installation of any air-conditioning equipment, devices, or components in connection with the installation of a manufactured home unless the person is registered as an installer with the department or is otherwise licensed by the state as an air-conditioning contractor. This subsection shall not apply to a new manufactured home being installed on a permanent foundation within a

municipality which regulates air-conditioning contractors unless some other state statute provides otherwise.

(n) A person may not act as a salesperson of manufactured housing unless the person is registered with the department. Each applicant for a certificate of registration shall file with the department an application giving such information as the department deems necessary and pay the required fee. The owner of a sole proprietorship, a partner in a partnership, or an officer of a corporation which is duly registered as a retailer or broker does not have to register as a salesperson so long as such individual is properly listed in the retailer's or broker's application for registration. The salesperson is the agent of the retailer or broker, and the department may require the execution of an appropriate agency designation.

(o) A person may not acquire or purchase, or sell or offer to sell, any recycled tires, wheels, or axles for manufactured homes unless the person is duly registered with the department. Each applicant for a certificate of registration shall file with the department an application giving the information as the department deems necessary and pay the required fee.

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

#### Used Mobile Homes

Sec. 8. A retailer or broker may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used mobile home manufactured after December 12, 1969, unless an appropriate seal or label is affixed to it. If the used mobile home does not have a seal or label, the retailer or broker must apply to the department for a seal with an affidavit that the manufactured home is habitable.

#### Administration and Enforcement

Sec. 9. (a) The department is hereby charged with the administration and enforcement of this Act.

(b) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The department shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Manufactured Home Construction and Safety Standards Act of 1974.<sup>1</sup>

(c) The department shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Manufactured Home Construction and Safety Standards Act of 1974<sup>2</sup> and to provide for the effective enforcement of all HUD-code man-

ufactured home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development.

(d) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the department shall publish in the Texas Register a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the department shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(f) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

(g) Immediately after their promulgation, the department shall publish in the Texas Register all rules and regulations or amendments thereto.

(h) The department through its authorized representatives is authorized to enter at reasonable times and without advance notice any factory, warehouse, establishment, or location of a registrant to make any inspections that are reasonably required to determine whether a registrant is in compliance with this Act and the rules, regulations, and administrative orders promulgated under this Act.

(i) The department is authorized to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, plans, and documents as may reasonably be required. Each such inspection shall be commenced and completed with reasonable promptness.

(j) The department may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursuant to this Act. The department may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act.

(k) The department may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code.

(l) The department may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

(m) When necessary or required by law, the department may obtain inspection search warrants.

(n) The department may inspect manufactured homes at the borders of this state and adopt rules and regulations necessary for the inspection of all manufactured homes entering this state to assure compliance with the National Manufactured Home Construction and Safety Standards Act of 1974, the Texas Manufactured Housing Standards Code, and the rules and regulations of the department, and to assure payment of any use tax which may be due the State of Texas.

(o) In order to protect the public health, safety, and welfare, and to assure the availability of low cost manufactured housing for all consumers, the department shall establish rules and regulations for the protection of the interests of consumers who occupy or desire to purchase manufactured housing and for the business conduct of those persons required to be registered under this Act.

142 U.S.C.A. § 5414.

242 U.S.C.A. § 5401 et seq.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

#### Fees

Sec. 11. (a) There shall be a fee in an amount set by the commissioner for the inspection of the installation of mobile and HUD-code manufactured homes which shall be paid by the installer of the home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the home. The department shall make appropriate fee distributions to local governmental units performing inspections pursuant to contracts or other official designations.

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974<sup>1</sup> and to that Act itself, the commissioner shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of HUD-code manufactured home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all HUD-code manufactured homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

(4) There shall be a fee for inspection of used mobile and HUD-code manufactured homes at retailer locations to check compliance with the code and to determine if the home has been damaged in transit. This fee shall be paid by the retailer in possession of the homes at the time the inspection was made. For any given home at a retailer location, this fee may not be assessed more than one time.

(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of HUD-code manufactured homes. This fee shall be paid by the person making the alteration. The person shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection.

(6) There shall be a fee for the issuance of seals for used mobile or HUD-code manufactured homes which shall be paid by the retailer or broker.

(c) The installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home. Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee. The department shall make appropriate fee distributions to each local governmental unit performing inspections pursuant to contracts or other official designations or the department may waive the inspection fee if the installer has paid applicable inspection fees to the appropriate local government officials.

(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the commissioner shall set fees for the following functions:

(1) a fee paid by the manufacturer for the review of modular home and modular component designs, blueprints, and specifications;

(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;

(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;

(4) annual fees for the issuance and renewal of manufacturers', retailers', brokers', salespersons',

recyclers', and installers' certificates of registration; and

(5) a fee for the issuance of decals that shall be paid by the manufacturer.

(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection.

(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund except the inspection fees paid pursuant to Subsections (a) and (c) of this section. Those fees shall be placed in a special manufactured housing inspection fund created in the state treasury which shall be used by the department as may be appropriated for the costs of inspections and fee distributions to local governmental entities performing inspections pursuant to contracts or other official designations.

(g) The fees charged by the department in effect August 31, 1983, shall remain in effect until the new schedule of fees set forth in this section has been promulgated and adopted.

(h) The commissioner shall set each fee imposed under this section in an amount that is reasonable and necessary to defray the costs of administering this Act.

142 U.S.C.A. § 5401 et seq.

Sec. 12. [Deleted.]

#### Security Required

Sec. 13. (a) The department may not issue a certificate of registration, unless the applicant first files a surety bond, a cash deposit, or other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process.

(b) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is immediately suspended.

(c) If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

(d) The bond shall be a surety bond issued by a company authorized to do business in this state and

shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate.

(e) The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment against a manufacturer, retailer, broker, or installer for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including but not limited to:

(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

(2) failure to give proper title documents or certificates of title to consumers;

(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission or the violation of any requirements of the Texas Credit Code or of the federal Truth-in-Lending Act; or

(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the cash deposit or other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(f) A consumer shall inform the manufacturer, retailer, or installer, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of a claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a manufactured home to a consumer, the consumer must be given conspicuous written

notification of this two-year limit and the notice requirements.

(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. Property used for the business that is not contiguous to a bonded location requires a separate bond. Any location at which a manufactured home is shown to the public or is offered for sale, exchange, or lease-purchase by a retailer to consumers is a location which is required to be bonded. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation which qualifies for tax exemption pursuant to Section 501(c) of the U.S. Internal Revenue Code<sup>1</sup> is not a location which requires a bond.

(h) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer shall be bonded, supply a cash deposit or other security in the amount of \$50,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$40,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$10,000. Retailers, brokers, and installers registered with the department and bonded prior to September 1, 1983, shall have until January 1, 1984, to provide the additional amount of bond, cash deposit, or other security required by this Act. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

(i) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ceases business as a manufacturer, retailer, broker, or installer or at such time as the department may determine that no claims exist against the cash deposit or security.

<sup>1</sup> 26 U.S.C.A. § 501(e).

#### Warranties

Sec. 14. (a) After the effective date of this Act, all new manufactured homes sold to consumers in the state shall be covered by the manufactured home warranty set forth in this section.

(b) The manufactured home warranty provided for in this Act is given by the manufacturer of the manufactured home.

(c) The manufactured home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

(1) that the manufactured home complies with the code;

(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later;

(3) that the manufactured home and all appliances and other equipment installed and included therein by the manufacturer or retailer are free from defects in materials or workmanship;

(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department;

(5) that the manufacturer or the retailer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

(6) that the warranty contains the address of the retailer and manufacturer where notices of defects may be given; and

(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

(e) For all secondary installations not covered by the new home warranty as set forth in Subsection (c) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules, regulations, and administrative orders of the department.

(f) If the new manufactured home is moved from the initial installation site during the term of the warranty period, the new home warranty shall not apply to any defect or damage caused by the move. Conspicuous notice of this provision shall be given the consumer at the time of sale. The burden of proof is placed on the warrantor to establish that the defect is caused by the move.

(g) In any action brought against a registrant for failure to perform warranty service or repairs, the \$1,000 limitation set forth in Section 17.50(b)(1) of Subchapter E, Chapter 17, Business & Commerce Code, shall be adjusted to reflect changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor. The \$1,000 limitation shall be increased or decreased by multiplying the \$1,000 limitation by the percentage of increase or decrease in the Consumer Price Index from the 1967 base of 100 to the time at which damages are awarded by final judgment or settle-

ment and adding or subtracting such resulting amount to or from the \$1,000 limitation.

Sec. 15. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

#### Judicial review

Sec. 16. (a) Any party to a hearing aggrieved by the decision or order of the commissioner may secure judicial review thereof in the following manner:

(1) The petition must be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the commissioner becomes final.

(2) The filing of a petition for review shall not itself stay the effect of the decision or order complained of, but the commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no supersedeas bond shall be required.

(3) Service of process: the petition for review shall be served on the commissioner and upon all parties of record in any hearing before the commissioner in respect to the matter for which review is sought. After service of such petition upon the commissioner and within the time permitted for filing an answer, or as soon thereafter as the record is made available to the commissioner, the commissioner shall certify to the district court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

(4) The review of any decision or order of the commissioner shall be tried by the court without a jury in the same manner as civil actions generally, but no evidence shall be admissible which was not adduced at the hearing.

(5) The burden of proof shall be on the plaintiff. The reviewing court may affirm the action complained of or remand the matter to the commissioner for further proceedings.

(6) Appeals from any final judgment may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the commissioner.

#### Penalties

Sec. 17. (a) A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a misdemeanor and on conviction shall be fined not more than \$1,000 or shall be confined in the county jail not longer than one year or both.

(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code<sup>1</sup> and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

(e) Civil suits filed pursuant to this section shall be filed in a district court in Travis County, Texas, or in the county in which the violation, or threat of violation, occurred.

<sup>1</sup> Business and Commerce Code, § 17.41 et seq.

#### Miscellaneous Provisions

Sec. 18. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

(b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

(c) 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 this 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.

(d) If a retailer, broker, salesperson, or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, salesperson, or installer is voidable at the option of the consumer. A consumer's contract for the purchase, exchange, or lease-purchase of a new manufactured home is also voidable if the retailer purchased the home from an unregistered manufacturer in violation of Section 6, Subsection (h), of this Act.

(e) Nothing in this Act shall be construed to modify or amend any provisions of The Real Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes). The provisions of this article, as amended, shall not apply to a person licensed as a real estate broker or salesman pursuant to The Real Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes), who, as agent of the buyer or seller, negotiates the sale or lease of a mobile home and the real property to which it is affixed; provided that the ownership of the mobile home and real property are of record in the same person and that such sale or lease shall be in a single real estate transaction.

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, an installer is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or the State Department of Highways and Public Transportation. The State Department of Highways and Public Transportation shall cooperate with the department in the routing of the transportation of housing and shall not issue any permits for the transportation of manufactured housing except to persons holding valid certificates of registration issued by the department.

(g) A local governmental unit may not require any permit, fee, bond, or insurance for the installation of manufactured housing by a registered installer except as may be approved by the department.

#### Manufactured Home Titles

Sec. 19. (a) In this section:

(1) "Debtor" has the same meaning as given it by Section 9.105(a)(4), Business & Commerce Code.

(2) "Document of title" means a written instrument issued solely by and under the authority of the department that sets forth:

(A) the name and address of the purchaser and seller at the first retail sale, or the transferee and transferor at any subsequent sale or transfer;

(B) the manufacturer's name and address and, if any, the model designation;

(C) in accordance with applicable rules of the department, the outside dimensions of the manufactured home when installed for occupancy exclusive of the tongue or other towing device as measured to the nearest one-half of one foot at the base of the home, and the approximate square footage of the home when installed for occupancy;

(D) the identification number or numbers for each section or module of the manufactured home;

(E) the county of this state in which the manufactured home is installed for occupancy;

(F) the dates of any liens, and the names and addresses of the lienholders, in chronological order of recordation, and if no liens are registered or



recorded on the manufactured home, a statement of that fact;

(G) the signature of the owner signed with pen and ink on receipt of the certificate;

(H) that if a husband and wife file, with the application for document of title, an agreement signed by both providing that the manufactured home is to be held jointly with rights of survivorship, the department will issue the document of title in both names; and

(I) any other data the department requires.

(3) "First retail sale" means the initial acquisition by a consumer of a manufactured home by purchase, exchange, or lease-purchase from a retailer and includes a bargain, sale, transfer, or delivery with intent to pass an interest other than a lien, to a manufactured home for which a document of title has not been previously issued by the department.

(4) "Identification number" means the permanent number affixed to, or imprinted on, a manufactured home or section of the home as prescribed by the rules of the department.

(5) "Inventory" has the meaning given it by Section 9.109(4), Business & Commerce Code, as amended.

(6) "Lien" means a security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement of whatever kind or character if an interest, other than an absolute title, is sought to be held or given in a manufactured home, and any lien on a manufactured home that is created or given by the constitution or a statute.

(7) "Manufacturer's certificate" means a document, or a form prescribed by the department, that shows the original transfer of a manufactured home from the manufacturer to the retailer, and if presented with an application for a document of title, the certificate must show, on a form prescribed by the department, each subsequent transfer between retailers and retailer to owner.

(8) "Mortgagee" means a secured party or any other person who holds a lien on a manufactured home.

(9) "Mortgagor" means a debtor or other person who gives a lien on a manufactured home, any person who agrees that a lien may be retained on the home or any part of it, or any person against whom a lien arises under the constitution or a statute.

(10) "Secured party" has the meaning given it by Section 9.105(a)(13), Business & Commerce Code.

(11) "Security interest" has the meaning given it by Section 1.201(37), Business & Commerce Code.

(12) "Security agreement" has the meaning given it by Section 9.105(a)(12), Business & Commerce Code.

(13) "Subsequent sale" means a bargain, sale, transfer, or delivery with intent to pass an interest, other than a lien, to a manufactured home from a person to another person subsequent to the first retail sale and initial issuance of a document of title.

(b) The department shall prescribe forms and adopt rules relating to manufacturer's certificates, to applications for documents of title, and to the issue of documents of title at the first retail sale and for each subsequent sale or transfer of a manufactured home.

(c) At the first retail sale, the retailer and purchaser shall apply for the issuance of a document of title. As a part of the application, the retailer shall surrender the original manufacturer's certificate. At a subsequent sale or transfer the seller and purchaser, or the transferor and transferee, shall apply for the issuance of a new document of title. As a part of the application, the seller or transferor shall surrender the original document of title. The department shall review the application and issue a document of title if the department is satisfied that the document of title should be issued.

(d) If there are no liens registered or recorded, the department shall issue a document of title marked "ORIGINAL" on its face and shall send the original by first class mail to the purchaser or transferee at the address on the application. If a lien is shown in the application or recorded with the department, the department shall issue a document of title marked "ORIGINAL" on its face and send the original by first class mail to the first lienholder. The department shall mail, first class, a copy of the document of title conspicuously marked "NON-TRANSFERABLE COPY" on its face to the purchaser or transferee and any other lienholder at the address shown on the application.

(e) The owner designated in the original document of title must transfer the title on a form prescribed by the department executed before a notary public and must file the form with the department before a manufactured home may be conveyed, transferred, or otherwise disposed of at a subsequent sale. The form must include any information the department requires and must include an affidavit that the person signing is the owner of the manufactured home and that there are no liens on the home except a lien shown on the document of title or described in the affidavit. A title to a manufactured home may not pass or vest at a subsequent sale until the transfer is executed as provided by this section and an application for the issuance of a new document of title is sent to the department.

(f) When the ownership of a manufactured home in this state is transferred by operation of law, as in an inheritance, a devise, or a bequest, bankruptcy, receivership, judicial sale, or any involuntary divestiture of ownership, the department shall issue a new document of title when the department is provided with a certified copy of the order or bill of

sale from an officer making a judicial sale, or the order appointing a temporary administrator, the probate proceedings, the letters testamentary, the letters of administration, or an affidavit by all of the heirs at law showing that no administration is necessary and showing in whose name the certificate should be issued. If a security interest or other lien is foreclosed in accordance with law by nonjudicial means and the secured party or other mortgagee files an affidavit with the department showing the nonjudicial foreclosure in accordance with law, the department may issue a new document of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien and the mortgagee files an affidavit showing the creation of the lien and of the divestiture of title because of the lien in accordance with law, the department may issue a new document of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife and if on the death of either spouse the department is provided with a copy of the death certificate of the deceased spouse, the department shall issue a new document of title to the surviving spouse.

(g) If an original document of title is lost or destroyed, the owner or lienholder may obtain a certified copy of the original from the department by making an affidavit on a form prescribed by the department; but the department shall issue the certified copy only to the first lienholder if a lien is disclosed on the original. The certified copy shall be conspicuously marked "CERTIFIED COPY OF ORIGINAL" on its face. If the original is recovered, the owner or lienholder shall immediately surrender the original to the department with the certified copy of the original document of title, and the department shall issue a new original document of title.

(h) The department shall record all state tax liens as filed by the comptroller on manufactured homes installed for use and occupancy in this state. The department may not issue or transfer the title to a manufactured home on which a state tax lien has been filed until the tax, penalties, and interest are paid. On receipt of a notice that the comptroller has filed a lien, the department shall notify the owner and all lienholders.

(i) A lien on the manufactured homes in the inventory is perfected by filing a security agreement with the department in a form that contains the information the department requires. Failure to pay or satisfy any inventory lien filed and recorded against a manufactured home pursuant to the terms of the security agreement by the retailer is sufficient cause to revoke or suspend the retailer's registration with the department.

(j) If a manufactured home is affixed to real estate by installation on a permanent foundation, as defined by the department, the manufacturer's certificate or the original document of title may be surrendered to the department for cancellation.

The address and location of the real estate must be given to the department when the certificate or document of title is surrendered. The department may require the filing of other information. The department may not cancel a manufacturer's certificate or a document of title if a lien has been registered or recorded on the manufactured home. If a lien has been registered or recorded, the department shall notify the owner and each lienholder that the title and a description of the lien have been surrendered to the department and that the department will not cancel the title until the lien is released. Permanent attachment to real estate does not affect the validity of a lien recorded or registered with the department before the manufactured home is permanently attached. The rights of a prior lienholder pursuant to a security agreement or the provisions of a credit transaction and the rights of the state pursuant to a tax lien are preserved.

(k) The registration and recordation of a lien with the department is notice to all persons that the lien exists. Liens recorded or registered with the department have priority, in the chronological order of recordation, over other liens or claims against the manufactured home.

(l) Notwithstanding any other provisions of this section, the filing of a security agreement by a secured party perfecting a lien in the inventory of a retailer shall not prevent a buyer in the ordinary course of business as defined by Sections 1.201(9) and 9.307(a) of the Business & Commerce Code from acquiring good title free and clear of such interest, and the department shall not consider such security interest as a lien for the purpose of title issuance.

(m) The department shall furnish each county tax assessor-collector in this state a quarterly report that lists the name of the owner of each manufactured home installed in the county during the preceding calendar quarter, the name of the manufacturer, the model designation, the identification number of each section or module, and the address or location where the manufactured home is installed.

(n) The express provisions of this article supersede any conflicting provisions of the Business & Commerce Code; otherwise, the provisions of the Business & Commerce Code apply to transactions relating to manufactured housing.

(o) A certificate of title to a manufactured home issued pursuant to the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes), before March 1, 1982, is subject to this article. A lien registered or recorded with the State Department of Highways and Public Transportation before March 1, 1982, for the purposes of this article is registered or recorded with the department.

(p) Each month the State Department of Highways and Public Transportation shall send the department either a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways or a list of the permits issued and the information on the permits.

The department shall pay the reasonable cost of providing the copies or the list and information.

(g) The department shall adopt rules consistent with this article for the titling of a manufactured home that has been previously registered or titled in this state or any other state. The rules must protect a lienholder recorded on a certificate or document of title.

(r) The department shall set a fee for issuing titles to manufactured housing; it shall not be higher than is necessary to pay the estimated expenses of administering this section. These fees shall be paid to the State Treasurer and placed in the general revenue fund.

#### Notice to Consumers Before Title Transfer

Sec. 20. (a) A retailer or manufacturer shall not transfer title to a manufactured home nor otherwise sell, assign or convey a manufactured home to a consumer without delivering the notice required by this section subject to applicable rules of the department and Subsection (c) of this section. The notice shall be delivered to the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

(b) The notice shall be of such type, size, and format as prescribed by the department. A retailer or manufacturer shall not vary the provisions or form of the notice; it shall read as follows:

#### WARNING

\* CERTAIN BUILDING MATERIALS USED IN THE CONSTRUCTION OF RESIDENTIAL DWELLINGS MAY RELEASE FORMALDEHYDE GAS INTO YOUR HOME OVER A LONG PERIOD OF TIME AND CAUSE OR CONTRIBUTE TO ADVERSE HEALTH EFFECTS.

\* FORMALDEHYDE GAS MAY CAUSE EYE, NOSE, AND THROAT IRRITATION, COUGHING, SHORTNESS OF BREATH, SKIN IRRITATION, NAUSEA, DROWSINESS, HEADACHES, AND DIZZINESS. PEOPLE WITH ASTHMA OR OTHER RESPIRATORY PROBLEMS OR ALLERGIES MAY SUFFER MORE SERIOUS REACTIONS, ESPECIALLY PERSONS ALLERGIC TO FORMALDEHYDE.

\* PROPER VENTILATION OF YOUR HOME MAY HELP REDUCE THE LEVEL OF FORMALDEHYDE. THEREFORE, PERIODIC AIRING OF YOUR HOME IS RECOMMENDED.

\* IF YOU HAVE QUESTIONS CONCERNING FORMALDEHYDE, CONTACT THE TEXAS DEPARTMENT OF LABOR AND STANDARDS. IF YOU HAVE HEALTH PROBLEMS, CONSULT YOUR DOCTOR.

Texas Department of Labor and Standards  
P.O. Box 12157  
Capitol Station  
Austin, TX 78711  
Telephone: 512/475-5712

(c)(1) The legislature finds that substantial questions currently exist as to the health effects, if any, of formaldehyde gas; that sufficient evidence is not now available to determine whether or not formaldehyde is a health hazard; and further that additional research, testing, and hearings are necessary to make these determinations.

(2) The department shall determine whether or not formaldehyde emitted by building products and materials into the ambient air of manufactured housing is a serious health hazard and at what levels or concentrations, if any, it becomes a serious health hazard. This determination shall be made by contracting for appropriate research and for the testing of homes, by collecting data and information through coordination with all appropriate federal agencies and with the Texas Department of Health and Texas Air Control Board, and by conducting and holding hearings as necessary.

(3) If the department determines that there is not a serious health hazard, or that there is not a serious health hazard at or below certain levels or concentrations, the notice requirement contained in Subsection (a) of this section shall not apply except to those manufactured homes in which there is a level or concentration of formaldehyde, if any, deemed by the department to be a serious health hazard.

(4) If it is determined that a serious health hazard exists at certain levels or concentrations, the department shall establish performance standards for building products and materials, prescribe testing procedures and the standards and conditions under which tests shall be conducted, and shall adopt rules and regulations, all as may be deemed necessary for the protection of the health, safety, and welfare of the consumer. The department shall also amend or modify the warning set forth in Subsection (b) of this section as required to assure that the consumer receives adequate information and notice of the health effects, if any, of formaldehyde in indoor ambient air and the risks, if any, of living in the home.

(d) The provisions of this section shall not be deemed to imply or infer that the retailer or manufacturer had, or did not have, prior to the passage of this Act any duty to warn any consumer concerning possible health effects of formaldehyde. Failure to comply with the notice provisions of this section or the performance standards for building products and materials which may be established by the department shall, after the effective date of this section, be evidence of wanton disregard for the health and safety of the consumer; compliance with such notice provisions and standards shall be evidence that the home is habitable and that the manufacturer and retailer had due regard for the health and safety of the consumer.

[Acts 1969, 61st Leg., p. 1945, ch. 656, eff. Sept. 1, 1969. Amended by Acts 1971, 62nd Leg., p. 2765, ch. 896, § 1, eff. Sept. 1, 1971; Acts 1973, 63rd Leg., p. 1673, ch. 606, § 1, eff. June 15, 1973; Acts 1975, 64th Leg., p. 2036, ch. 674, §§ 1 to 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 288, ch. 139, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1405, ch. 625, §§ 1 to 19, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 113, ch. 55, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 380, ch. 154, § 1, eff. May 20, 1981;

Acts 1981, 67th Leg., p. 3084, ch. 815, §§ 3, 4, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4681, ch. 817, §§ 2 to 12, 19, eff. Sept. 1, 1983.]

Sections 2 to 4 of the 1971 amendatory act provided:

"Sec. 2. Effective Date. This Act shall take effect on September 1, 1971.

"Sec. 3. Applicability. No mobile home manufactured or sold prior to the time limitation included in this Act shall be affected by its provisions.

"Sec. 4. Severability Clause. If any provision of this Act or the application thereof to any person or circumstance 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."

Section 2 of the 1973 amendatory act provided:

"If any provision of this Act, or any part thereof, shall be declared or rendered invalid and of no force or effect, such invalidity shall not affect any remaining provisions of the Act, and such remaining provisions shall be severable therefrom just as if such invalid provision or part thereof, had never been included as a part thereof."

Section 19 of the 1979 amendatory act provided:

"This Act takes effect September 1, 1979. The standards and requirements for the construction and installation of modular homes established by this Act are effective January 1, 1980."

Sections 2 and 3 of Acts 1981, 67th Leg., p. 113, ch. 55, provide:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 3. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision."

Sections 1 and 20 of the 1983 amendatory act provide:

"Sec. 1. The purposes of this Act are to amend the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) to conform with amendments to federal law and regulations, to encourage the cooperation of local building officials and the Texas Department of Labor and Standards for the local inspection and enforcement of applicable building codes and regulations relating to manufactured housing, and to add certain additional regulations for the protection of the public health, safety, and welfare. Due to the significantly increasing number of manufactured homes being constructed and purchased, it is the intent of the legislature that the Texas Department of Labor and Standards shall perform inspection and enforcement activities at manufacturing plants and facilities and that, to the extent practical and feasible, municipalities shall perform inspection and enforcement at the local level."

"Sec. 20. Nothing in this Act shall be construed to limit or diminish, nor increase nor add to, the authority of cities, towns, or villages, including home-rule cities, to limit or otherwise regulate the location of manufactured homes, HUD-code manufactured homes, or mobile homes. Whatever authority such municipalities possess prior to the effective date hereof is not changed by this legislation."

#### Art. 5221g. Employment Counseling Program for Displaced Homemakers

##### Purpose

Sec. 1. Because of the increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" through divorce, death of spouse, or other loss of family income, and because of homemakers' unique and invaluable contribution to the welfare of society as unpaid workers, it is the intention of the legislature in enacting this legislation to provide the counseling necessary to enable displaced homemakers to as-

sume or resume a valuable role commensurate with their talents and abilities in the paid work force.

##### Definitions

Sec. 2. In this Act:

(1) "Commission" means the Texas Employment Commission.

(2) "Displaced homemaker" means an individual:

(A) who:

(i) has worked without pay as a homemaker for his or her family;

(ii) is not gainfully employed; and

(iii) has had, or would have, difficulty in finding employment; and

(B) who also:

(i) has depended for financial support on the income of a family member and has lost that income; or

(ii) has depended on government assistance as the parent of dependent children, but is no longer eligible for the assistance.

##### Establishment

Sec. 3. The Texas Employment Commission shall establish a special assistance job-counseling program for displaced homemakers. The commission shall design the program specifically for a person reentering the paid work force after a number of years as a homemaker. The counseling shall consider and build upon the skills and experiences of a homemaker and shall prepare the person through employment counseling to reenter the paid work force as well as develop and hone job skills. The program shall assist displaced homemakers in obtaining training and education as well as place displaced homemakers in suitable employment. The commission may not charge a fee for participation by a displaced homemaker in the program.

##### Utilization of Existing Personnel, Equipment, Etc.

Sec. 4. In establishing the job-counseling program, the commission shall utilize existing commission personnel, services, facilities, and equipment.

##### Cooperation in Securing Employment

Sec. 5. Agencies, departments, and commissions of the state and political subdivisions of the state shall cooperate with the commission in securing suitable employment for displaced homemakers counseled by the commission.

[Acts 1977, 65th Leg., p. 328, ch. 159, eff. May 17, 1977.]

#### Art. 5221h. Transfer of License

Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued.

[Acts 1925, S.B. 84. Renumbered from art. 7055 by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

**Art. 5221i. Purchaser of Unexpired License**

The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time.

[Acts 1925, S.B. 84. Renumbered from art. 7056 by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

**Art. 5221j. Agricultural Laborers; Length of Hoes****Use of Certain Hoes Prohibited**

Sec. 1. An employer of agricultural laborers may not require an employee to use a hoe that has a handle less than four feet in length in performing agricultural labor in commercial farming operations.

**Exemptions**

Sec. 2. This Act shall not apply to employers who are engaged in the operation of greenhouses or nurseries.

**Penalty**

Sec. 3. (a) An employer who violates Section 1 of this Act commits an offense.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1981, 67th Leg., p. 929, ch. 344, eff. Aug. 31, 1981.]

**Art. 5221k. Commission on Human Rights Act****ARTICLE 1. SHORT TITLE; DECLARATION OF PURPOSE; CONSTRUCTION****Short Title**

Sec. 1.01. This Act may be cited as the Commission on Human Rights Act.

**Purposes**

Sec. 1.02. The general purposes of this Act are:

(1) to provide for the execution of the policies embodied in Title VII of the federal Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e et

seq.), and to create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633; and

(2) to secure for persons within the state freedom from discrimination in certain transactions concerning employment, and thereby to protect their interest in personal dignity; and to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

**General Rule of Construction**

Sec. 1.03. This Act shall be construed according to the fair import of its terms.

**Specific Rules of Construction**

Sec. 1.04. (a) In this Act, "because of age" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older and under 70 years of age. Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$27,000.

(b) In Article 5, "because of handicap" or "on the basis of handicap" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

(c) In this Act, "because of sex" or "on the basis of sex" includes but is not limited to discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work. An employer is not required by this Act to pay for health insurance benefits for abortion, except if the life of the mother would be endangered were the fetus carried to term. This Act does not preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

**ARTICLE 2. GENERAL DEFINITIONS****Definitions**

Sec. 2.01. In this Act, unless the context otherwise requires:

(1) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety or efficiency.

(2) "Commission" means the Commission on Human Rights created by this Act.

(3) "Commissioner" means a member of the commission.

(4) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state, except that the term "employee" does not include an individual elected by the qualified voters to public office in the state or a political subdivision of the state, an individual chosen by that officer to be on the officer's personal staff, an appointee on the policy-making level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of public office.

(5) "Employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes a political subdivision and any state agency or instrumentality, including public institutions of higher education.

(6) "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

(7)(A) "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a person because he is addicted to any drug or illegal or federally controlled substances or because he is addicted to the use of alcohol.

(B) "Handicap" means a condition either mental or physical that includes mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment that requires special ambulatory devices or services, as defined in Section 121.002(4), Human Resources Code, but does not include a condition of addiction to any drug or illegal or federally controlled substances or a condition of addiction to the use of alcohol.

(8) "Labor Organization" means a labor organization engaged in an industry affecting commerce, and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(9) "Local commission" means a commission on human relations created by one or more political subdivisions.

(10) "National origin" includes the national origin of an ancestor.

(11) "Person" means one or more individuals or an association, corporation, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(12) "Political subdivision" means a county or an incorporated city or town.

(13) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.

### ARTICLE 3. COMMISSION ON HUMAN RIGHTS: CREATION; POWERS

#### Commission on Human Rights

Sec. 3.01. (a) There is created the Commission on Human Rights to consist of six members. The governor shall appoint the commissioners with the advice and consent of the senate and designate one of the commissioners as chairman of the commission. One member of the commission shall be representative of industry, one member shall be representative of labor, and four members shall be appointed at large. In making appointments, the governor shall strive to achieve representation on the commission that is diverse with respect to economic status, sex, race, and ethnicity.

(b) The term of office of each commissioner is six years. Of the commissioners first appointed, two shall be appointed for a term of two years, two for a term of four years, and two for a term of six years. An individual chosen to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the commissioner whom he is to succeed. A commissioner is eligible for reappointment.

(c) Four members of the commission constitute a quorum. A vacancy on the commission does not impair the authority of the remaining commission-

ers to exercise the powers of the commission. The commission by rule may establish panels of not less than a quorum to exercise its power.

(d) A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties.

#### Powers of Commission

Sec. 3.02. The commission has the following powers:

- (1) to maintain an office in the city of Austin;
- (2) to meet and exercise its powers at any place within the state, except in any political subdivision having a local commission as described in Section 4.02 of this Act;
- (3) to employ an executive director and authorize the employment of other staff members, including any necessary attorneys or clerks and other representatives or agents, and to fix the compensation of the executive director or other staff members, representatives, or agents;
- (4) to promote the creation of local commissions on human rights and to cooperate or contract with individuals or state, local, or other agencies, both public and private, including agencies of the federal government and of other states;
- (5) to accept public grants or private gifts, bequests, or other payments;
- (6) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act;
- (7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act. The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in this subdivision on behalf of the commission;
- (8) to furnish technical assistance requested by a person subject to this Act to further compliance with the Act or with rules or orders issued under this Act;
- (9) to render at least annually a comprehensive written report to the governor and to the legislature, which report may contain recommendations of the commission for legislative or other action to carry out the purposes and policies of this Act; and
- (10) to adopt, issue, amend, and rescind procedural rules to carry out the purposes and policies of this Act.

#### Sunset Provision

Sec. 3.03. The Commission on Human Rights is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), and unless continued

in existence as provided by that Act, the commission is abolished effective September 1, 1987.

### ARTICLE 4. LOCAL COMMISSIONS

#### Local Ordinances

Sec. 4.01. A political subdivision may adopt and enforce an ordinance that prohibits practices designated as unlawful under this Act, or otherwise declared unlawful under federal or state law.

#### Local Commissions

Sec. 4.02. A political subdivision or two or more political subdivisions acting jointly may create a local commission to promote the purposes of this Act and to secure for all individuals within the jurisdiction of the political subdivision or subdivisions freedom from discrimination because of race, color, handicap, religion, sex, national origin, or age and may appropriate funds for the expenses of the local commission.

#### Powers of Local Commissions

Sec. 4.03. A local commission may exercise the following powers in addition to other powers authorized by this Act or other laws:

- (1) to employ an executive director and other employees and agents and fix their compensation;
- (2) to meet and exercise its powers as provided in this Act;
- (3) to cooperate or contract with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states and municipalities;
- (4) to accept public grants or private gifts, bequests, or other payments;
- (5) to receive, investigate, seek to conciliate, and pass on complaints alleging violations of this Act, and file civil actions to effectuate the purposes of this Act if the federal government or state commission has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission;
- (6) to render at least annually a report, a copy of which shall be furnished to the state commission; and
- (7) to request and, if necessary, compel by subpoena the attendance of necessary witnesses for examination under oath or affirmation, and the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this Act.

#### Referral to Local Commission

Sec. 4.04. (a) The state commission shall refer a complaint filed with it to a local commission with the necessary investigatory and conciliatory powers if the complaint concerns discrimination in employment because of race, color, handicap, religion, sex, national origin, or age, and:

(1) the complaint has been referred to the state commission by the federal government; or

(2) the jurisdiction over the subject matter of the complaint has been deferred to the state commission by the federal government.

(b) On referral by the state commission, the local commission shall take appropriate action within the scope of its powers. After referral to the local commission, the state commission shall afford the local commission a reasonable time, but not less than 60 days, to act to remedy the practice alleged as discriminatory in the referred complaint. If the local commission has not acted on the complaint within a reasonable time, the state commission shall reassume responsibility for the complaint and take appropriate action on it.

(c) A local commission may refer a matter under its jurisdiction to the state commission.

#### ARTICLE 5. DISCRIMINATION IN EMPLOYMENT

##### Employers

Sec. 5.01. It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge an individual or otherwise to discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, handicap, religion, sex, national origin, or age; or

(2) to limit, segregate, or classify an employee or applicant for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, handicap, religion, sex, national origin, or age.

##### Employment Agencies

Sec. 5.02. It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, handicap, religion, sex, national origin, or age, or to classify or refer for employment an individual on the basis of race, color, handicap, religion, sex, national origin, or age.

##### Labor Organizations

Sec. 5.03. It is an unlawful employment practice for a labor organization:

(1) to exclude or to expel from membership or otherwise to discriminate against an individual because of race, color, handicap, religion, sex, national origin, or age;

(2) to limit, segregate, or classify members or applicants for membership or to classify or to fail or refuse to refer for employment an individual because of race, color, handicap, religion, sex, national origin, or age in a way:

(A) that would deprive or tend to deprive an individual of employment opportunities; or

(B) that would limit employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment; or

(3) that would cause or attempt to cause an employer to violate this article.

##### Training Programs

Sec. 5.04. Unless the training or retraining opportunities or programs are provided under an affirmative action plan approved according to federal law, rule, or order, it is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to discriminate against an individual because of race, color, religion, sex, or national origin in admission to or participation in a program established to provide apprenticeship, on-the-job, or other training or retraining opportunities.

##### Other Discriminatory Employment Practices

Sec. 5.05. (a) It is an unlawful employment practice for an employer, labor union, or employment agency:

(1) to retaliate or discriminate against a person who has opposed a discriminatory practice or who has made or filed a charge, filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act;

(2) to aid, abet, incite, or coerce a person to engage in a discriminatory practice;

(3) wilfully to interfere with the performance of a duty or the exercise of a power by the commission, one of its staff, or its representatives; or

(4) wilfully to obstruct or prevent a person from complying with the provisions of this Act or a valid rule or order issued under this Act.

(b) Unless handicap, religion, sex, national origin, or age is a bona fide occupational qualification, it is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to print or publish or cause to be printed or published a notice or advertisement relating to employment indicating a preference, limitation, specification, or discrimination based on race, color, handicap, religion, sex, national origin, or age, if the notice or advertisement concerns an employee's status, employment, or admission to or membership or participation in a labor union or an apprenticeship, on-the-job, or other training or retraining program.

##### Exceptions

Sec. 5.06. This article does not apply to:

(1) the employment of an individual of a particular religion by a religious corporation, association,



or society to perform work connected with the performance of religious activities by the corporation, association, or society;

(2) the employment of an individual by his parent, spouse, or child; or

(3) any labor union, firm, association, or individual participating in a U.S. Department of Labor-approved statewide hometown plan on the effective date of this Act.

#### Nondiscriminatory Practices

Sec. 5.07. (a) Notwithstanding any other provision of this article, it is not an unlawful employment practice:

(1) for an employer to hire and to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its members or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job, or other training or retraining program to admit or employ an individual in its program, on the basis of handicap, religion, sex, national origin, or age, if handicap, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise;

(2) for a religious educational institution or an educational organization operated, supervised, or controlled, in whole or in substantial part, by a religious corporation, association, or society to limit employment or give preference to members of the same religion;

(3) for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment under a bona fide seniority system, bona fide merit system, or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade this Act, or under a system that measures earnings by quantity or quality of production if those different standards are not discriminatory on the basis of race, color, handicap, religion, sex, national origin, or age, except that no employee benefit plan may excuse a failure to hire on the basis of age and no seniority or employee benefit plan may require or permit involuntary retirement on the basis of age;

(4) for an employer to apply to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment if those different standards are not discriminatory on the basis of race, color, handicap, religion, sex, national origin, or age;

(5) for an employer to impose minimum or maximum age requirements for peace officers or fire fighters;

(6) for a public school official to adopt or implement a plan reasonably designed to end discriminatory school practices; or

(7) for an employer to engage in any practice that has a discriminatory effect and that would otherwise be prohibited by this Act if the employer establishes that the practice is not intentionally devised or operated to contravene the prohibitions of this Act and is justified by business necessity.

(b) The employment of one person in place of another, standing by itself, is not evidence of an unlawful employment practice.

#### No Liability for Good Faith Reliance on Commission Rules

Sec. 5.08. In any action or proceeding based on any alleged unlawful employment practice, no person is subject to any liability arising out of the commission of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the commission.

#### Imbalance Plans

Sec. 5.09. This Act may not be interpreted to require a person subject to this Act to grant preferential treatment to an individual or to a group on the basis of the race, color, handicap, religion, sex, national origin, or age of that individual or group because an imbalance exists between the total number or percentage of persons of that individual's or group's race, color, handicap, religion, sex, national origin, or age employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in any apprenticeship, on-the-job, or other training or retraining program, and the total number or percentage of persons of that race, color, handicap, religion, sex, national origin, or age in any community, this state, region, or other area, or in the available work force in any community, this state, region, or other area.

#### Application of Act; Persons Employed Outside of Texas

Sec. 5.10. This Act does not apply to an employer with respect to the employment of persons outside the State of Texas.

### ARTICLE 6. ADMINISTRATIVE REVIEW

#### Complaints; temporary relief

Sec. 6.01. (a) A person claiming to be aggrieved by an unlawful employment practice, or that person's agent, may file with the commission a complaint, which must be in writing under oath or affirmation, stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful

employment practice, and setting forth facts sufficient to enable the commission to identify the person charged (hereinafter referred to as the respondent). The executive director or his designee shall within 10 days serve the respondent with a copy of the complaint and shall invite both the complainant and respondent to attempt voluntarily to resolve their dispute prior to initiation and completion of an investigation. A complaint under this section must be filed within 180 days after the date the alleged unlawful employment practice occurred; untimely complaints shall be dismissed by the commission. The executive director or any other staff member of the commission designated by the executive director shall investigate a complaint and determine if there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint. If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or his designee shall promptly investigate the allegations set forth in the complaint.

(b) If, after an investigation, the executive director or his designee determines that there is not reasonable cause to believe that the respondent has engaged in an unlawful employment practice, as alleged in the complaint, the executive director or his designee shall issue a written determination incorporating his finding that the evidence does not support the complaint and dismissing the complaint and shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

(c) If, after an investigation, the executive director or his designee determines that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, as alleged in the complaint, the executive director or his designee shall review the evidence in the record with a panel of three commissioners. If, after the review, at least two of the three commissioners determine that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, the executive director shall issue a written determination incorporating his finding that the evidence supports the complaint and shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law. The commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. The commission, its executive director, or its other officers or employees may not make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

(d) A showing of undue hardship by the respondent is a defense to a complaint of discrimination

made by an employee or applicant based on handicap. With respect to a complaint based on handicap, the commission's order must take into account the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

(e) If the commission concludes, on the basis of preliminary investigation of an alleged unlawful employment practice contained in a complaint, that prompt judicial action is necessary to carry out the purposes of this Act, the commission shall file a petition in the district court in a county in which the alleged unlawful employment practice that is the subject of the complaint occurred, or in a county in which the respondent resides, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this Act. No temporary injunctive relief may issue absent a showing by the commission of substantial likelihood of success on the merits and irreparable harm to the complainant, in the absence of the preliminary relief, pending final determination on the merits.

(f) No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law or any local ordinance of any political subdivision of the state based on an act that would be an unlawful employment practice under this article may file a complaint under this section with respect to the same grievance.

## ARTICLE 7. JUDICIAL ACTION

### Judicial Action; Enforcement

Sec. 7.01. (a) If the commission has made a determination that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, and the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful, the commission may bring a civil action against the respondent named in the charge if a majority of the commissioners determine that the civil action may effectuate the purposes of this Act. The complainant has the right to intervene in a civil action brought by the commission. If the complaint filed with the commission pursuant to Section 6.01 of this Act is dismissed by the commission, or if within 180 days after the date of filing of the complaint the commission has not filed a civil action under this section or has not successfully negotiated a conciliation agreement between the complainant and respondent, the commission shall so notify the complainant in writing by certified mail. Within 60 days after the date of receipt of the notice, a civil action may be brought by the complainant against the respondent named in the charge. After timely application, the court may in its discretion permit the commission to intervene in any civil action filed under this subsection on certification that the case is of general public importance and if the commission has, before commencement of the civil action by the complain-

ant, issued a determination of reasonable cause to believe that the Act has been violated. In no event may any action be brought pursuant to this article more than one year after the date of filing of the complaint to which the action relates.

(b) The court shall assign any action brought under this article for hearing at the earliest practicable date to expedite the action.

(c) If the court finds that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the court may enjoin the respondent from engaging in an unlawful employment practice and order such additional equitable relief as may be appropriate.

(d) Additional equitable relief may include but is not limited to:

(1) the hiring or reinstatement, with or without back pay, but back pay liability may not accrue for any date more than two years before the date of filing of a complaint with the commission, and interim earnings and unemployment compensation benefits received shall operate to reduce the back pay otherwise allowable;

(2) the upgrading of employees with or without pay;

(3) the admission or restoration of union membership;

(4) the admission to or participation in a guidance program, apprenticeship, on-the-job, or other training or retraining program, with the use of objective job-related criteria in the admission of individuals to these programs;

(5) the reporting on the manner of compliance with the terms of a final order issued under this Act; and

(6) the payment of court costs.

(e) In any action or proceeding under this Act, the court in its discretion may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs. The state or an agency or a political subdivision of the state is liable for costs to the same extent as a private person, except that the state, a state agency, or a political subdivision is not liable for attorney's fees.

(f) In the case of handicapped employees or applicants, the court must take into account the undue hardship defense, including the reasonableness of the cost of any necessary work place accommodation and the availability of alternatives or other appropriate relief.

(g) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this article, a party to the action or the commission, on the written request of a person aggrieved by the failure, may commence proceedings to compel compliance with the order.

(h) All judicial proceedings under this Act shall be by trial de novo, and no commission findings, recommendations, determinations, or other actions are binding on any court.

## ARTICLE 8. RECORDS

### Preservation and Use

Sec. 8.01. (a) Notwithstanding any other section of this Act, a person under investigation in connection with a charge filed under this Act and subject to this Act must make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, preserve these records for periods required by the commission's rules or by court order, and make reports from these records as prescribed by the commission's rules or court order as reasonable, necessary, or appropriate for the enforcement of this Act or rules or orders issued under this Act.

(b) The commission by rule shall require that each person subject to this Act who controls an apprenticeship, on-the-job, or other training or retraining program:

(1) keep all records reasonably necessary to carry out the purposes of this Act, including but not limited to a list of applicants who wish to participate in the program and the chronological order in which applications for the program were received; and

(2) furnish to the commission on request a detailed description of the manner in which individuals are selected to participate in the apprenticeship, on-the-job, or other training or retraining program.

(c) Records and reports required by the commission under this section must conform to similar records and reports required by federal law, 42 U.S.C. Section 2000e-8(c).

### Secrecy; Access to Records; Noncompliance

Sec. 8.02. (a) An officer or employee of the commission may not make public any information obtained by the commission under its authority under Section 6.01 of this Act except as necessary to the conduct of a proceeding under this Act.

(b) If a person fails to permit access, examination, photographing, or copying or fails to make, keep, or preserve records or make reports in accordance with this article, the commission may issue a subpoena requiring compliance. On a failure to comply with a subpoena of the commission, the commission shall apply to the district court of the county in which the person is found, resides, or transacts business for an order directing compliance.

## ARTICLE 9. MISCELLANEOUS DISCRIMINATORY PRACTICES

### Conciliation Agreements

Sec. 9.01. It is an unlawful employment practice for a party to a conciliation agreement made under

this Act to violate the terms of the conciliation agreement.

#### Wilful Interference

Sec. 9.02. A person who wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this Act is guilty of a Class B misdemeanor.

### ARTICLE 10. MISCELLANEOUS PROVISIONS

#### Effect on Other State or Federal Laws

Sec. 10.01. Nothing contained in this Act relieves any government agency or official of the responsibility to assure nondiscrimination in employment as required under any other provision of the state or federal constitutions or laws.

Sec. 10.02. [Amends art. 6252-16, § 1a].

Sec. 10.03. [Repeals arts. 6252-16, § 2a, 6252-14, and Human Resources Code, § 121.003(f)].

#### Appropriation

Sec. 10.04. For the fiscal biennium ending August 31, 1985, the following amounts are appropriat-

ed to the Commission on Human Rights for the purpose of carrying out the provisions of this Act:

(1) from funds appropriated by H.B. 656, Acts of the 67th Legislature,<sup>1</sup> from Fund 117 to the State Purchasing and General Services Commission, the sum of \$200,000; and

(2) any amount of federal funds received by the state for that purpose.

<sup>1</sup> Acts 1981, 67th Leg., p. 3333, ch. 875.

#### Conformity With Federal Statutes

Sec. 10.05. If any provision of this Act is held by the Equal Employment Opportunity Commission to disqualify the Commission on Human Rights as a deferral agency or for federal funds, the Commission on Human Rights is hereby authorized to administer this Act so as to qualify for deferral status until such time as the legislature meets in its next session and has an opportunity to amend this Act.

[Acts 1983, 68th Leg., 1st C.S., p. 37, ch. 7, §§ 1.01 to 10.01, 10.04, 10.05, eff. Sept. 23, 1983.]

## TITLE 84

### LANDLORD AND TENANT

**Art.**  
5222 to 5239. Repealed.

**Arts. 5222 to 5227.** Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, eff. Jan. 1, 1984

Acts 1983, 68th Leg., ch. 576, repealing these articles, enacts the Property Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Property Code.

**Arts. 5228 to 5231.** Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

**Art. 5232.** Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, eff. Jan. 1, 1984

Acts 1983, 68th Leg., ch. 576, repealing this article, enacts the Property Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Property Code.

**Arts. 5233 to 5235.** Repealed by Rules of Civil Procedure (Acts 1939, 46th Leg., p. 201, § 1)

**Arts. 5236 to 5238.** Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, eff. Jan. 1, 1984

Acts 1983, 68th Leg., ch. 576, repealing these articles, enacts the Property Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Property Code.

**Art. 5238a.** Repealed by Acts 1973, 63rd Leg., p. 1228, ch. 441, § 5, eff. Sept. 1, 1973

See, now, Property Code, § 54.041 et seq.

**Arts. 5238b, 5239.** Repealed by Acts 1983, 68th Leg., p. 3729, ch. 576, § 6, eff. Jan. 1, 1984

Acts 1983, 68th Leg., ch. 576, repealing these articles, enacts the Property Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Property Code.

# TITLE 85

## LANDS—ACQUISITION FOR PUBLIC USE

### 1. STATE USE

**Art.**

- 5240. Mode of Acquisition.
- 5241. State Railroad.

### 2. FEDERAL USE

- 5242. Authorized Uses.
- 5243. Condemnation Proceedings.
- 5244. Immediate Occupancy
- 5244a. Municipal Corporations and Political Subdivisions or Districts; Conveyances to United States in Aid of Navigation, Flood Control, etc.; Prior Conveyances Validated.
- 5244a-1. Highway Commission Authorized to Grant Easements or Interests in Land to United States for Flood Control in Counties Near Mexican Boundary.
- 5244a-2. Commissioners' Courts Authorized to Convey Land to United States for Flood Control Near Mexican Boundary.
- 5244a-3. Conveyance of State Land or Interest in Land to United States for Civil Works Projects.
- 5245. State Land.
- 5246. To Record Title.
- 5247. Federal Jurisdiction.
- 5248. Repealed.
- 5248a. Granting Easement to the United States in Certain Lands.
- 5248b. Granting Easement to United States for Louisiana and Texas Intracoastal Waterway.
- 5248c. Counties Authorized to Convey Lands to the United States.
- 5248c-1. Conveyance of County Land or Interest in Land to United States for Military Installation.
- 5248c-2. Conveyance of County Land or Interest in Land to United States for Civil Works Projects.
- 5248d. Lands Conveyed to the United States for Military Purposes.
- 5248d-1. Conveyance of Lands Under Control of State Highway Department to United States for Military Purposes.
- 5248e. Cities or Counties, Acting Separately or Jointly, May Acquire Lands for Use of United States Government; Contracts; Validation of Agreements.
- 5248f. Payments or Gifts in Lieu of Taxes by Federal Agencies.
- 5248g. Grant of Portions of Bed and Banks of Pecos, Devils and Rio Grande Rivers to United States.
- 5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States.
- 5248h. Consent to Acquisition of Land for Flood Control.
- 5248i. Consent to Acquisition of Land in Trinity Watershed.

### 1. STATE USE

**Art. 5240. Mode of Acquisition**

When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken.

[Acts 1925, S.B. 84.]

**Art. 5241. State Railroad**

If any land is acquired by purchase or condemnation to obtain right of way for any railroad or tram road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this State, or any of the farms of this State, and used in connection with the State penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs of condemnation, or the purchase price of said property.

[Acts 1925, S.B. 84.]

### 2. FEDERAL USE

**Art. 5242. Authorized Uses**

The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cut-offs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any

such purchase or acquisition made in accordance with the provisions of this law.

[Acts 1925, S.B. 84.]

**Art. 5243. Condemnation Proceedings**

Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner.

[Acts 1925, S.B. 84.]

**Art. 5244. Immediate Occupancy**

Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court.

[Acts 1925, S.B. 84.]

**Art. 5244a. Municipal Corporations and Political Subdivisions or Districts; Conveyances to United States in Aid of Navigation, Flood Control, etc.; Prior Conveyances Validated**

Sec. 1. When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County contiguous to any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by resolution of its governing body may have heretofore agreed or may hereafter agree to acquire and convey the same, for ultimate conveyance to the United States of Ameri-

ca and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

Sec. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby.

[Acts 1937, 45th Leg., p. 145, ch. 77.]

**Art. 5244a-1. Highway Commission Authorized to Grant Easements or Interests in Land to United States for Flood Control in Counties Near Mexican Boundary**

Whenever the State of Texas shall be the owner of any land, or interest in land, acquired for use as a right-of-way for any State highway in any County, one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or in any county contiguous to any county of such described class, which is used or proposed to be used as a part of the site for flood control works, constructed or to be constructed by any such county or by the United States of America, for the purpose of controlling the flood waters of any navigable stream of this State, the State Highway Commission is hereby authorized and empowered, upon request by the United States through its proper officers, or upon the request of the County Judge of any such County, to convey to the United States of America, or to any such County, (which has agreed to convey said lands or interest therein to the United States pursuant to an Act of Congress), without monetary consideration therefor, an easement or interest in such land which may be necessary for the construction, operation, and maintenance of such works; and in the event the fee simple title to such lands is not vested in the State and the owner of the fee has executed an easement to such lands for flood control purposes, the Highway Commission is authorized and empowered to join in and assent to such easement. The State Highway Commission is authorized at its discretion to execute the necessary deeds, conveyances, or agreements for the purposes stated, to be signed by the Chairman pursuant to the order of the Commission, and all such conveyances and agreements heretofore made are hereby ratified and confirmed. The Commission may in

lieu of the monetary consideration waived herein above, make such reservations and agreements as it deems necessary for the best interests of the State and its highway system, with reference to the alteration, construction, reconstruction, operation and maintenance of such structures and facilities now used, or hereafter to be used, for highway purposes in, upon, or across the lands, or interest therein, desired for flood control purposes.

[Acts 1939, 46th Leg., p. 480, § 1.]

**Art. 5244a-2. Commissioners' Courts Authorized to Convey Land to United States for Flood Control Near Mexican Boundary**

Sec. 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any such county, which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to secure by gift, purchase or by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for the same out of any special flood control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge, after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance to the United States. Said declaration shall contain and have annexed thereto—

(1) A description of the land taken sufficient for the identification thereof.

(2) A statement of the estate or interest in said land taken, and the public use to be made thereof.

(3) A plan showing the lands taken.

(4) A statement of the amount of damage awarded by the Special Commissioners or, by the jury on appeal for the taking of said land.

Sec. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall be deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said declaration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall be the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose.

[Acts 1939, 46th Leg., p. 482.]

**Art. 5244a-3. Conveyance of State Land or Interest in Land to United States for Civil Work Projects**

**Conveyances Authorized**

Sec. 1. Whenever the State of Texas shall be the owner of any land or interest in land, which land or interest therein is under the control of the Texas Highway Department, and which land is used or proposed to be used as a part of the site of a flood control, river and harbor improvement, water conservation, or other civil works project constructed or to be constructed by the United States of America or an agency or instrumentality thereof, the Governor is hereby authorized and empowered, upon the recommendation of the State Highway Commission, or upon request by the United States through its proper officers when supported by the recommendation of the State Highway Commission, to convey to the United States of America or to any political subdivision, agency or instrumentality of this State which is cooperating with the United States in any such project, without monetary consideration therefor, or for a consideration determined by the State Highway Commission, an easement or other interest in such land which may be necessary for the construction, operation, and maintenance of such project.

**When Fee Title is Not in the State**

Sec. 2. In the event the fee simple title to such land is not vested in the State and the owner of the fee has executed an easement to such lands for the above purposes, the Governor is authorized and

empowered upon the recommendation of the State Highway Commission to join in and assent to such easement by the same instrument or by separate instrument.

#### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the Governor upon the recommendation of the State Highway Commission for the purposes stated above are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 664, ch. 306.]

#### Art. 5245. State Land

When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner as other patents are issued.

[Acts 1925, S.B. 84.]

#### Art. 5246. To Record Title

All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice.

[Acts 1925, S.B. 84.]

#### Art. 5247. Federal Jurisdiction

Whenever the United States shall acquire any lands under this title, and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no

such cession had taken place; and such condition shall be inserted in such instrument of cession.

[Acts 1925, S.B. 84.]

#### Art. 5248. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Tax Code.

#### Art. 5248a. Granting Easement to the United States in Certain Lands

Sec. 1. That there is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of constructing and maintaining the proposed Louisiana and Texas Intra-Coastal Waterway over and through disconnected portions of the stream beds of Mud Bayou and East Bay Bayou from approximately Station 1519 to approximately Station 1914 as shown on United States Engineer Department map, "Louisiana and Texas Intra-Coastal Waterway, Sabine River-Galveston Bay Section, Survey of 1926-7, Sheet No. 12, File 16-2-16," the said portions of the stream beds of Mud Bayou and East Bay Bayou covered by this easement being 300 feet wide and located in Chambers and Galveston Counties where the proposed Intra-Coastal Waterway will intersect the meanderings of the bayous.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intra-Coastal Waterway prior to January 1, 1939, or should said Government cease to maintain or to have maintained said Intra-Coastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights, or the right to use and maintain any bridge or bridges now in existence on or across said Mud Bayou, or East Bay Bayou, and the right of the owner of any such bridge to use and maintain the same is hereby expressly recognized and confirmed.

[Acts 1929, 41st Leg., 1st C.S., p. 175, ch. 66.]

#### Art. 5248b. Granting Easement to United States for Louisiana and Texas Intercoastal Waterway

Sec. 1. There is hereby granted and conveyed to the United States of America the free and uninterrupted use, liberty, and easement to construct and maintain the Louisiana and Texas Intracoastal Waterway over and through disconnected portions of bays and any tidal lands owned by the State of Texas within an area three hundred (300) feet in width extending from the Galveston-Brazoria County line to the nine-foot contour in Aransas Bay



along the route of the projected Louisiana and Texas Intracoastal Waterway as shown in red on map, in four (4) sheets, prepared by the United States Engineer Office, Galveston, Texas, entitled "Louisiana and Texas Intracoastal Waterway, Survey of 1927-1928," Index Sheets Nos. 1, 2, 3, and 4, File No. 16-4-4, and the further free and uninterrupted use, liberty, and easement to deposit dredged material during construction and maintenance of the waterway in bays and on tidal lands owned by the State of Texas within two thousand (2,000) feet of the above described area, said portions of bays and tidal lands being located in Brazoria, Matagorda, Calhoun, and Aransas Counties.

Sec. 2. Provided, however, that should the United States of America fail or refuse to construct said Intracoastal Waterway prior to January 1, 1947, or should said Government cease to maintain or to have maintained said Intracoastal Waterway at any time, then this right of easement shall cease and determine, and all right of whatsoever nature shall revert and be vested in the State of Texas.

Sec. 3. Provided, further, that nothing in this Act shall be construed to affect or impair any vested rights.

[Acts 1937, 45th Leg., p. 801, ch. 393.]

#### Art. 5248c. Counties Authorized to Convey Lands to the United States

Sec. 1. Any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

Sec. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

Sec. 3. All proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provide for the conveyance of a part or parts of any plot of ground

such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

Sec. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the purpose of serving all State criminal and civil process.

[Acts 1939, 46th Leg., p. 138.]

#### Art. 5248c-1. Conveyance of County Land or Interest in Land to United States for Military Installation

##### Conveyance Authorized

Sec. 1. Whenever the county shall be the owner of any land or interest in land, which land or interest therein is under the control of the county and is near any federally owned or operated military installation or facility, the County Judge is hereby authorized and empowered upon an order of the Commissioners Court or upon request by the United States through its proper officers when supported by an order of the Commissioners Court to convey to the United States of America without monetary consideration therefor, or for a consideration determined by the Commissioners Court, an easement or other interest in such land which may be necessary in connection with the construction, operation, and maintenance of such military installation or facility.

##### When Fee Title is Not in the County

Sec. 2. In the event the fee simple title to such land is not vested in the county and the owner of the fee has executed an easement to such lands for such purposes, the County Judge is authorized and empowered upon an order of the Commissioners Court to join in and assent to such easement by the same instrument or by a separate instrument.

##### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the County Judge or Commissioners Court upon an order of the Commissioners Court for the above purposes are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 273, ch. 148.]

#### Art. 5248c-2. Conveyance of County Land or Interest in Land to United States for Civil Works Projects

##### Conveyances Authorized

Sec. 1. Whenever the County shall be the owner of any land or interest in land, which land or interest therein is under the control of the said County, and which land is used or proposed to be used as part of the site of a flood control, river and harbor improvement, water conservation, or other civil

works project constructed or to be constructed by the United States of America or an agency or instrumentality thereof, the County Judge is hereby authorized and empowered upon an order of the Commissioners Court, or upon request by the United States through its proper officers when supported by an order of the Commissioners Court, to convey to the United States of America or to any political subdivision, agency or instrumentality of this State which is cooperating with the United States in any such project, without monetary consideration therefor, or for a consideration determined by the Commissioners Court, an easement or other interest in such land which may be necessary for the construction, operation, and maintenance of such project.

#### When Fee Title is Not in the County

Sec. 2. In the event the fee simple title to such land is not vested in the County and the owner of the fee has executed an easement to such lands for the above purposes, the County Judge is authorized and empowered upon an order of the Commissioners Court to join in and assent to such easement by the same instrument or by separate instrument.

#### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the County Judge or Commissioners Court on an order of the Commissioners Court for the purposes stated above are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 274, ch. 149.]

#### Art. 5248d. Lands Conveyed to the United States for Military Purposes

Sec. 1. There is hereby granted and conveyed to the Government of the United States of America the free and uninterrupted use, liberty, and easement of, in, and to that certain area three (3) miles square or larger, or of different form, in Nueces County Navigation District, in Nueces Bay, in Nueces County, Texas, as the proper agent or agents of the United States Government may designate for the erection and maintenance of forts, military stations or camps, magazines, arsenals, dock yards, barracks, lighthouses, navy yards, naval bases, naval air bases, naval air stations, channels, approaches for battleships, or for other needful military purposes.

Sec. 2. If the United States of America shall not desire to utilize said area for said purposes or any of said purposes, and shall fail or refuse to erect said forts, military stations or camps, barracks, naval bases, naval air bases or stations, or other needful military purposes, prior to January 1, 1949, or should said Government cease to maintain or to have maintained said forts, military stations or camps, barracks, naval bases, naval air bases or stations, channels and approaches, at any time, then the right of easement, use, and liberty herein granted shall cease and determine, and all right of what-

soever nature by virtue hereof shall revert and be revested in the State of Texas.

Sec. 3. If and when the proper authority or agent of the United States of America may demand, the Governor of the State of Texas shall convey said area to the Government of the United States of America for the purposes herein set forth. The use, liberty, and easement herein authorized shall be upon the express condition that the State of Texas shall retain all of the oil and gas and mineral rights, and that the State of Texas shall convey said public domain to the United States of America under the limitation in Articles 8225, 5242, 5245, and 5247 of the Revised Civil Statutes of Texas, and such approval and authorization of the Legislature of the State of Texas is hereby given.

[Acts 1939, 46th Leg., Spec.Laws, p. 546.]

#### Art. 5248d-1. Conveyance of Lands Under Control of State Highway Department to United States for Military Purposes

##### Conveyances Authorized

Sec. 1. Whenever the State of Texas shall be the owner of any land or interest in land, which land or interest therein is under the control of the Texas Highway Department and is near any Federally owned or operated military installation or facility, the Governor is hereby authorized and empowered upon the recommendation of the State Highway Commission or upon request by the United States through its proper officers when supported by the recommendation of the State Highway Commission to convey to the United States of America without monetary consideration therefor, or for a consideration determined by the State Highway Commission, an easement or other interest in such land which may be necessary in connection with the construction, operation, and maintenance of such military installation or facility.

##### When Fee Title is Not in the State

Sec. 2. In the event the fee simple title to such land is not vested in the State of Texas and the owner of the fee has executed an easement to such lands for such purposes, the Governor is authorized and empowered upon the recommendation of the State Highway Commission to join in and assent to such easement by the same instrument or by a separate instrument.

##### Former Conveyances Ratified

Sec. 3. All such conveyances heretofore made by the Governor upon the recommendation of the State Highway Commission for the above purposes are hereby ratified and validated.

[Acts 1961, 57th Leg., p. 1063, ch. 475.]

**Art. 5248e. Cities or Counties, Acting Separately or Jointly, May Acquire Lands for Use of United States Government; Contracts; Validation of Agreements**

**Authority to Acquire**

Sec. 1. Any city or county in the State, separately or jointly, is authorized to acquire lands for the use of the United States Government, either by a lease for a term of years or in fee simple title; said lands shall lie within the limits of the county acquiring same, or if acquired by a city, within the limits of the county in which said city is located.

**Appropriations; Warrants**

Sec. 2. For the purpose of acquiring lease-hold interest or fee simple title to lands for the use of the United States Government, authorized above, the said city or county is authorized to appropriate any available funds and also to issue time warrants in payment thereof; provided, however, that in the event time warrants are proposed to be issued, the provisions of Article 2368-a of the Revised Civil Statutes of the State of Texas shall be followed in the issuance of said time warrants.

**Condemnation**

Sec. 3. For the purpose of acquiring lease-hold or fee simple estate in lands for the use of the United States Government, any city or county may condemn lands for such purpose, and said condemnation may be for any period of years, or in fee simple title, and in the acquisition of said interest desired, said city or county may, immediately after filing condemnation suit, as now provided by law, take possession of said lands by depositing with the County Clerk the amount of money estimated by the Commissioners' Court or City Council of the city or county involved, to be the just compensation for the interest in the land taken. Said petition for condemnation shall set forth the amount of said money so found by the Commissioners' Court or City Council, to be just, and such finding shall be made by said body prior to the filing of the petition of condemnation. In the event the Special Commissioners appointed under the condemnation statutes, after a hearing as provided by law, find the just compensation to be greater than the amount fixed by the Commissioners' Court or City Council, then an additional amount shall be deposited with the County Clerk by the taking authority, so as to equal the amount found by the Commissioners. Condemnation may be in the name of the city or county and said city or county may at any time after the taking, which shall be from the date the deposit of the money estimated by the Commissioners' Court or City Council, or the date of deposit of the amount fixed by the Special Commissioners in the event the taking is not desired until after the Commissioners have acted thereon, transfer the interest acquired by the taking to the United States Government.

**Contracts**

Sec. 4. Any city or county may contract with the United States Government or its agencies obligating itself to acquire a lease-hold interest, or fee simple title in land as above authorized and any agreement heretofore executed by any city or county with the United States Government binding itself to acquire interest in land for the Government is hereby validated.

**Partial Unconstitutionality**

Sec. 5. If any section, sub-section, sentence, clause or phrase of this Act shall be held unconstitutional for any reason, such fact shall not affect the remaining portions hereof.

[Acts 1941, 47th Leg., p. 239, ch. 168.]

**Art. 5248f. Payments or Gifts in Lieu of Taxes by Federal Agencies**

Sec. 1. All moneys, funds, assets, or gifts authorized by Federal Statute to be paid to the State of Texas in lieu of taxes or as a gift by the Federal Public Housing Authority or any other Federal Agency, be and the same is hereby accepted by the State of Texas; that this acceptance applies to any such tenders, gifts, or offers, whether they be made in the past, present, or future.

Sec. 2. The Comptroller of Public Accounts is hereby directed and authorized to execute such instruments as may be proper or necessary to effect the acceptance of such moneys, gifts, or assets, and when so received by the Comptroller, he shall deposit same in the State Treasury to the credit of the General Revenue Fund.

Sec. 3. The Comptroller may direct that such moneys, when so paid by the Federal Public Housing Authority, be remitted through the county tax assessor-collector in the county where lands are located on which the payment or tender is made in lieu of taxes by such Federal Authority, and require the tax assessor-collector of such county to make remittance to the State Treasury in the same manner as he is now required to do when remitting for ad valorem taxes; but in no event shall any tax assessor-collector or any other county or state official be entitled to any fee for services in handling these funds.

[Acts 1945, 49th Leg., p. 198, ch. 151.]

**Art. 5248g. Grant of Portions of Bed and Banks of Pecos, Devils and Rio Grande Rivers to United States**

Sec. 1. The Governor of the State of Texas is hereby authorized to grant to the United States of America in accordance with the conditions hereinafter set out, such of those portions of the bed and banks of the Pecos and Devils Rivers in Val Verde County and the Rio Grande in Brewster, Cameron, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb and Zapata Counties as may be necessary or expedient in the

construction and use of the storage and flood control dams and their resultant reservoirs, diversion works and appurtenances thereto, provided for in the Treaty between the United States of America and United Mexican States, concluded February 3, 1944.

Sec. 2. When the United States Commissioner, International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area which is deemed necessary or expedient for use under said Treaty, the Governor shall issue a grant for and on behalf of the State of Texas to the United States of America conveying to it the area described in the application, which said grant shall reserve unto the State of Texas all minerals except rock, sand and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act subject to the proviso that the minerals so reserved to the state shall not be explored for, developed or produced in a manner which will at any time prevent or interfere with the operation or construction by the United States of America of any of the works described in Section 1 of this Act; and providing further, that prior to exploring for or developing such reserved minerals the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells. Successive applications may be made by the said United States Commissioner, and successive grants may be made to the United States of America by the Governor for and on behalf of the State of Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon such grants; provided, however, that nothing herein shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws of the State of Texas, of the private owners of land abutting the Pecos, Devils, and Rio Grande Rivers in the counties herein referred to. The authority herein granted to the Governor of the State of Texas extends only to the bed and banks of the Pecos, Devils, and Rio Grande Rivers to the extent that title to such bed and banks is by law vested in the State of Texas whether under the civil law, or common law, or court decisions of the State of Texas, or otherwise; provided, however, that any grant or grants made to the United States of America in accordance with this authority shall contain a reservation that in the event any part of the property so granted shall ever cease to be used for the purposes set out within this Act for a continuous period of five (5) years after the beginning of such use, the part or parts of said property which are not so used shall immediately

and automatically revert to the State of Texas after the expiration of said five (5) year period.

[Acts 1949, 51st Leg., p. 902, ch. 483. Amended by Acts 1955, 54th Leg., p. 861, ch. 324, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 167, ch. 61, § 1.]

#### Art. 5248g-1. Grant of Portions of Bed and Banks of Rio Grande to United States

Sec. 1. The Governor of the State of Texas is authorized to grant to the United States of America, in accordance with the conditions set out in this Act, those portions of the bed and banks of the Rio Grande or easements thereupon in Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties consisting of the bed and banks as exist on the United States side of the boundary, as may be necessary or expedient to facilitate the accomplishment of projects for the relocation and rectification of the Rio Grande and construction of works for flood control in the Presidio-Ojinaga Valley, the rectification of and channel stabilization on the Rio Grande between Fort Quitman in Hudspeth County and Haciendita in Presidio County, the relocation and rectification of the Rio Grande upstream from Hidalgo-Reynosa in Hidalgo County, the preservation of the Rio Grande as the boundary by prohibiting the construction of works which may cause deflection or obstruction of the normal flow of the Rio Grande or of its floodflows, and other channel relocations and rectifications and boundary adjustments approved by the governments of the United States and Mexico, as provided for in the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and the United Mexican States, which entered into force April 18, 1972, and the American-Mexican Boundary Treaty Act of 1972, Public Law 92-549 (86 Stat. 1161), approved October 25, 1972.<sup>1</sup>

Sec. 2. When the Commissioner of the United States Section of the International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area and the interest therein which is determined necessary or expedient for use under the treaty and the Act, the governor shall issue a grant of such interest for and on behalf of the State of Texas to the United States of America, conveying to it the area and the interest described in the application, and the grant, except as provided in Section 3 of this Act, shall reserve to the State of Texas all minerals, except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act, subject to the proviso that the minerals so reserved to the state may not be explored for, developed, or produced in a manner which will at any time prevent or interfere with the operation or construction

by the United States of America of any of the works described in Section 1 of this Act, and providing further, that prior to exploring for or developing the reserved minerals, the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells and/or other minerals.

Sec. 3. In locations where the United States Commissioner applies for fee title to the bed and banks of the Rio Grande to be granted to the United States for the relocation and rectification of the channel under the treaty causing a portion of the existing channel to be within the territorial limits of Mexico after its relocation and rectification, the grant shall contain the same reservations and provisos as those prescribed in Section 2 of this Act on that portion only of the existing channel which will remain within the territorial limits of the United States on completion of the relocation and rectification project.

Sec. 4. Successive applications may be made by the United States Commissioner, and successive grants may be made to the United States of America by the governor for and on behalf of the State of Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon the grants. However, nothing in this Act shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws of the State of Texas, of private owners of land abutting the Rio Grande in the counties referred to in this Act. The authority granted by this Act to the Governor of the State of Texas extends only to the bed and banks of the Rio Grande to the extent that title to the bed and banks is by law vested in the State of Texas, whether under the civil law, or common law, or court decisions of the State of Texas, or otherwise.

[Acts 1975, 64th Leg., p. 584, ch. 238, §§ 1 to 4, eff. May 20, 1975.]

<sup>1</sup> 22 U.S.C.A. § 277d-34 et seq.

**Art. 5248h. Consent to Acquisition of Land for Flood Control**

Sec. 1. The consent of the State of Texas is hereby given to the acquisition by the United States by purchase, gift, or condemnation with adequate compensation, of such lands, or any right or interest therein, in Texas as in the opinion of the Government of the United States may be needed for programs and works of improvement for run-off and water-flow retardation and soil erosion prevention, or other purposes, in the interest of flood control, within the State. Provided, that such lands may be acquired subject to reservations of rights-of-way, timber, minerals, and easements; provided further,

that one (1%) per cent of the purchase price be remitted per annum in lieu of taxes to the County and School Districts. Provided further, that nothing herein shall be construed as consenting to the acquisition of any lands by condemnation unless the apparent owner of such lands shall have consented to such acquisition; and provided further, that the State shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the State against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this Act had not passed.

Sec. 2. Power is hereby conferred upon the Congress of the United States to pass such laws and to make or provide for the making of such rules and regulations of both a civil and criminal nature, and to provide punishment for the violation thereof, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this Act.

Nothing contained in this Act shall be applicable to any county or counties in Texas except the counties in the Trinity Watershed lying wholly within the 22nd Senatorial District.

[Acts 1949, 51st Leg., p. 1092, ch. 555.]

**Art. 5248i. Consent to Acquisition of Land in Trinity Watershed**

Sec. 1. The consent of the State of Texas is hereby given to the acquisition by the United States by purchase, gift, or condemnation with adequate compensation, of such lands, or any right or interest therein, in Texas, as in the opinion of the Government of the United States may be needed for programs and works of improvement for run-off and water-flow retardation and soil erosion prevention, or other purposes, in the interest of flood control, within the State. Provided that such lands may be acquired subject to reservations of rights-of-way, timber, minerals, and easements; provided further, that one (1%) per cent of the purchase price be remitted per annum in lieu of taxes to the County and School Districts. Provided further, that nothing herein shall be construed as consenting to the acquisition of any lands by condemnation unless the apparent owner of such lands shall have consented to such acquisition; and provided further, that the State shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil process in all cases, and such criminal process as may issue under the authority of the State against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this Act had not passed.

Sec. 2. Power is hereby conferred upon the Congress of the United States to pass such laws and to

make or provide for the making of such rules and regulations of both a civil and criminal nature, and to provide punishment for the violation thereof, as in its judgment may be necessary for the administration, control and protection of such lands as may be from time to time acquired by the United States under the provisions of this Act.

Nothing contained in this Act shall be applicable to any county or counties in Texas except that portion of the Trinity Watershed lying within Cooke, Grayson, Fannin, Collin, Hunt, Rockwall, Kaufman, Van Zandt, Dallas and Tarrant Counties.

[Acts 1950, 51st Leg., 1st C.S., p. 88, ch. 25.]

# TITLE 86

## LANDS—PUBLIC

Chapter	Article
1. Administration .....	5249
2. Surveyors and Surveys .....	5268
3. Surface and Timber Rights .....	5306
4. Oil and Gas .....	5338
5. Minerals .....	5383
6. Patents .....	5404
7. General Provisions .....	5415

### Repeal

*This Title 86, with certain enumerated exceptions, was repealed by art. I, § 2(a)(1) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.*

*For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.*

### CHAPTER ONE. ADMINISTRATION

#### 1. THE COMMISSIONER

**Art.**  
5249 to 5260a. Repealed.

#### 2. GENERAL LAND OFFICE

5261 to 5267. Repealed.

#### 1. THE COMMISSIONER

**Arts. 5249 to 5260a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

#### 2. GENERAL LAND OFFICE

**Arts. 5261 to 5267. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

### CHAPTER TWO. SURVEYORS AND SURVEYS

#### 1. LICENSED LAND SURVEYORS

**Art.**  
5268 to 5282. Repealed.

#### 1A. REGISTERED PUBLIC SURVEYORS

**Art.**  
5282a. Repealed.

#### 1B. LICENSED STATE LAND SURVEYORS

5282b. Repealed.

#### 1C. LAND SURVEYING PRACTICES

5282c. Land Surveying Practices Act of 1979.

#### 2. COUNTY SURVEYORS

5283 to 5298. Repealed.

5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900.

#### 3. SURVEYS AND FIELD NOTES

5299 to 5305a. Repealed.

#### 1. LICENSED LAND SURVEYORS

**Arts. 5268 to 5282. Repealed by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Without reference to repeal of these articles by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, art. 5268a was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.026, to read:

"The Board of Examiners of State Land Surveyors is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979."

See, now, the Licensed State Land Surveyors' Act, art. 5282b.

#### 1A. REGISTERED PUBLIC SURVEYORS

**Art. 5282a. Repealed by Acts 1979, 66th Leg., p. 1277, ch. 597, § 30(1), eff. June 13, 1979**

See, now, art. 5282c.

#### 1B. LICENSED STATE LAND SURVEYORS

**Art. 5282b. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(2), eff. June 13, 1979**

See, now, art. 5282c.

#### 1C. LAND SURVEYING PRACTICES

**Art. 5282c. Land Surveying Practices Act of 1979**

#### Short Title

Sec. 1. This Act may be cited as the Land Surveying Practices Act of 1979.

**Definitions**

Sec. 2. In this Act:

(1) "Public surveying" means the practice for compensation of determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property for public or private use by using relevant elements of law, research, measurement, analysis, computation, mapping, and land description writing. Public surveying includes the practice for compensation of land, boundary, or property surveying or other similar professional practices.

(2) "Registered public surveyor" is any person registered as a public surveyor by the Texas Board of Land Surveying.

(3) "State land surveying" means the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public for compensation and comprises the determination by means of survey of the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office of the State of Texas.

(4) "Licensed state land surveyor" is a surveyor licensed by the Texas Board of Land Surveying to survey land in which the state or the public free school fund has an interest, or other original surveys, for the purpose of filing field notes in the General Land Office. When acting in this official capacity, such a surveyor is an agent of the State of Texas.

(5) "Board" means the Texas Board of Land Surveying created by this Act.

(6) "Commissioner" means the Commissioner of the General Land Office of the State of Texas.

(7) "Chief clerk" means the chief clerk of the General Land Office of the State of Texas appointed by the commissioner to perform any of the duties of the commissioner if he is sick, is absent, dies, or resigns.

(8) "Secretary" means the executive secretary of the board as herein provided.

(9) "Land surveyor" means a registered public surveyor or licensed state land surveyor.

(10) "Responsible charge" means the direct control and personal direction of the investigation, design, construction, or operation of land surveying work requiring initiative, professional skill, and independent judgment.

(11) "Practice or offer to practice" means to engage in land surveying or by verbal claim, sign, letterhead, card, or in any other way to represent

oneself as legally able to perform land surveying in this state.

**Practice of Surveying**

Sec. 3. In order to safeguard the life, health, or property of the public, the practice of public or state land surveying in Texas is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or offer to practice land surveying in this state as defined in this Act or to use in connection with his or her name or otherwise assume or advertise any title or description tending to convey the impression that such person is a land surveyor, unless that individual is duly registered, licensed, or exempted under the provisions of this Act.

**Exemptions**

Sec. 4. The provisions of this Act do not apply to any of the following:

(1) a county surveyor acting in an official capacity as authorized by law in counties under 25,000 population, but only until the expiration of the term of persons currently holding such office;

(2) an officer of a state, county (except as provided by Subsection (1) of this section when applicable), city, or other political subdivision whose official duties include land surveying when acting in his official capacity, but only until the expiration of the term of persons currently holding such office;

(3) a deputy, assistant, or employee of any person exempt from the provisions of this Act by Subsections (1) and (2) of this section when acting under the direction and supervision of such exempt person;

(4) a land surveyor engaged in public surveying acting solely as an officer or as an employee of the government of the United States;

(5) a land surveyor engaged in public surveying who is not a resident of this state and has no established place of business in this state, who is legally qualified for professional service in his own state, and who gives prior written notification to the board of his intent to practice temporarily in this state and of the nature and duration of that intended practice; or

(6) an assistant or employee of any Public Surveyor registered under this Act when he works for, receives a substantial part of his income from, and acts under the direction and supervision of the Registered Public Surveyor.

**Texas Sunset Act**

Sec. 5. The Texas Board of Land Surveying is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act the board is abolished and this Act expires effective September 1, 1991.



**Texas Board of Land Surveying; Qualifications for Board Members; Appointment of Members; Oath of Office**

Sec. 6. (a) There is hereby created a Texas Board of Land Surveying which shall consist of the following 10 members, each of whom shall be a citizen of the United States and a resident of this state:

- (1) the commissioner;
- (2) three members of the general public;
- (3) two licensed state land surveyors; and
- (4) four registered public surveyors.

The chief clerk shall perform the duties of the commissioner as a member of the board if the commissioner is sick, is absent, resigns, or dies and in such capacity shall have the same powers and authority as the commissioner.

The licensed state land surveyor members of the board shall be appointed by the governor upon the recommendation of the commissioner and with the advice and consent of the senate and shall have been actively engaged in the practice of state land surveying for not less than five consecutive years immediately prior to his or her appointment. Such members may also be registered as registered public surveyors.

The registered public surveyor members of the board shall be appointed by the governor with the advice and consent of the senate and shall have been actively engaged in the practice of public surveying in this state for not less than five years immediately prior to his or her appointment. The teaching of surveying in a recognized school of engineering or surveying may be regarded as the practice of public surveying. Such members may also be licensed as licensed state land surveyors.

The public members of the board shall be appointed by the governor with the advice and consent of the senate and such members shall not hold a certificate of registration or license as a surveyor.

(b) The members of the board shall serve a term of six years or until a successor shall be appointed and qualified. Upon the appointment of the first board under this Act and upon February 10th of each odd-numbered year thereafter, the governor shall appoint from among the membership of the board a chairman. Before entering upon the duties of his or her office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the secretary of state. All vacancies occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term of the membership in the manner provided by this Act. All appointments made under this Act shall be made without regard to race, creed, sex, religion, or national origin. A member of the board may be appointed to succeed himself or herself, except that no member

shall be eligible to serve more than two consecutive terms.

(c) The persons serving on the effective date of this Act as appointed members of the Board of Examiners of Licensed State Land Surveyors and of the State Board of Registration for Public Surveyors plus one public member constitute the initial Texas Board of Land Surveying.

A person who holds office on the effective date of this Act as a member of the State Board of Registration for Public Surveyors holds office as a member of the Texas Board of Land Surveying for the term for which the member was originally appointed. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1980, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1979. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1983, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1983.

The governor shall appoint to the Texas Board of Land Surveying a public member for a term expiring September 6, 1981. The governor shall appoint to the board two public members to fill the offices of the two registered public surveyors whose terms expire September 6, 1979.

The term of office succeeding a Texas Board of Land Surveying member's term that expires September 6, 1979, expires January 31, 1985. The term of office succeeding a board member's term that expires September 6, 1981, expires January 31, 1987. The term of office succeeding a board member's term that expires September 6, 1983, expires January 31, 1989. Each succeeding term of office expires January 31 of an odd-numbered year.

**Conflict of Interest Provisions for Board Members and Employees**

Sec. 7. (a) A member or employee of the board may not be at any time during the member's term in office or the employee's term of employment any of the following:

- (1) an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry; or
- (2) related within the second degree of affinity or consanguinity to a person who is an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry.

(b) Members of the board, except those members who are licensed or registered under this Act, may not personally have nor be related to persons within the second degree by affinity or third degree by

consanguinity who have, except as consumers, financial interests in the practice of public or state land surveying as officers, directors, partners, owners, employees, attorneys, or paid consultants.

(c) Any person who violates this section is ineligible to hold or continue to hold office or a position of employment with the board.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board. The general counsel and board members may appear and represent the board at committee hearings and other formal meetings of organs of the legislative or executive departments of government when invited to do so.

#### Organization and Meetings of the Board

Sec. 8. (a) The first board created under the provisions of this Act shall hold its first meeting within 90 days after the effective date of this legislation and shall elect from its number a vice-chairman, who shall thereafter be elected at the first meeting of the board subsequent to February 10th of each odd-numbered year. An executive secretary shall be appointed by the board to hold office at the pleasure of the board. The secretary shall make and file a bond with the comptroller of public accounts in an amount not less than \$2,500. The premium for the bond shall be paid out of the "Land Surveying Fund" as provided in this Act. It is the duty of the Texas Board of Land Surveying to hold meetings at least twice each year at such times and places as the board may determine for the purpose of transacting its business and to examine all applicants for registration or licensure as a public surveyor or state land surveyor. Regular meetings of the board shall be held at such times as the board may fix and determine. Special meetings of the board shall be held at such times as the board may fix and determine. Special meetings of the board may be called by the chairman or in his absence from the state or inability to act by the vice-chairman of the board. A majority of the membership of the board constitutes a quorum.

(b) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(c) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

#### Powers of the Board

Sec. 9. (a) The board shall have the authority and power to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act for the performance of its duties in administering this Act and for the purpose of establishing standards of conduct and ethics for surveyors registered or licensed under this Act. The board shall not promulgate rules restricting competitive bidding by licensees and shall not promulgate rules restricting advertising by licensees except to the extent necessary to prohibit false, misleading, and deceptive practices. The violation by any registered public surveyor or licensed state land surveyor of any provision of this Act or any rule or regulation of the board is sufficient reason or ground to suspend or revoke the certificate of registration or licensure of the surveyor. In addition to any other action, proceeding, or remedy authorized by law, the Texas Board of Land Surveying has the right to institute an action in its own name in a district court of Travis County against any person, firm or corporation, partnership, or any other group or combination of persons to enjoin a violation of any provision of this Act or any rule or regulation of the board. Either party to such an action may appeal to the appellate court having jurisdiction of the cause. The board shall not be required to give an appeal bond in any cause under this Act. The attorney general or his assistants shall act as legal advisor to the board and render such legal assistance as shall be necessary. If the appropriate standing committees of both houses of the legislature, acting under Subsection (g) of Section 5 of the Administrative Procedure and Texas Register Act, as added (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under this section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective as of the date upon which the board receives the committees' statements.

(b) All rules and regulations promulgated by the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors prior to the effective date of this Act shall remain in full force and effect until 180 days from the effective date of this Act or until sooner ratified by the board in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) A roster showing the names and places of business of all licensed state land surveyors and registered public surveyors, the rules and regulations promulgated by the board, and a copy of this Act and any amendments thereto shall be prepared by the secretary of the board during the month of July of each odd-numbered year. Copies of this roster shall be mailed to each person so registered or licensed, placed on file with the secretary of

state, and furnished to the public upon request without charge.

(d) The board may adopt rules and regulations creating and providing for the administration of a staggered renewal program for all certificates of registration and licensure issued by it beginning in 1981.

(e) The board shall establish a public information program for the purpose of informing the public regarding the practice and regulation of land surveying in this state, including a standard complaint form, and such information shall be made readily available to the general public and other appropriate agencies of the state. Such program shall also include information designed to inform prospective applicants regarding the qualifications and requirements for registration or licensure under this Act.

(f) The board shall employ an executive secretary to conduct the administrative affairs of the board under the board's direction. The board may also employ or retain such other persons as are necessary for the proper performance of its work under this Act, including services of an investigative nature, and may make expenditures for this purpose. The board is authorized to accept at no cost to the board such services from private sources. The compensation paid under this Act shall not be in excess of compensation paid for similar work in other state departments.

(g) The board shall arrange for such suitable office space and equipment as it may deem necessary, and the rental for such office space and the cost of such equipment shall be considered administration expenses.

#### Compensation and Expenses of Board Members

Sec. 10. Members of the board, other than the commissioner, shall receive as compensation the sum of \$25 per day for each day they are actually engaged in official board duties, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of their duties. All per diem and expenses incurred under this Act shall be paid from the "Land Surveying Fund" as provided in this Act. The commissioner shall not receive per diem compensation or actual expenses for the discharge of his duties as a member of the board, except as otherwise provided by law.

#### Records and Reports

Sec. 11. (a) The board shall keep a record of its proceedings, which is open to public inspection at all reasonable times, and which includes a record of all money received and expended by the board and a register of all applicants for registration or licensure, showing the following:

- (1) the name, age, and residence of each applicant;
- (2) the date of application;

- (3) the place of business of such applicant;
- (4) the applicant's qualifications;
- (5) any reasons for rejection of an application;
- (6) the dates and results of all examinations;
- (7) the date and number of all certificates of registration or licensure issued; and
- (8) such other information as may be deemed necessary by the board.

(b) The board also shall keep a record of all registered professional engineers engaged in public surveying who register with the board, which includes the following:

- (1) the name, age, and residence of all registrants;
- (2) the place of business of the registrant;
- (3) the date and serial number of registration as a professional engineer;
- (4) the date of registration with the board; and
- (5) any other information that may be deemed necessary by the board.

#### Provisions for the Transfer of Personnel, Property, and Assets

Sec. 12. The personnel employed by the State Board of Registration for Public Surveyors and the records, property, and assets in the custody of the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors on the effective date of this Act are hereby transferred to the Texas Board of Land Surveying.

#### Receipts and Disbursements

Sec. 13. The secretary of the board shall receive and account for all fees received under the provisions of this Act and shall deposit these funds in the State Treasury to the credit of a special fund to be known as the "Land Surveying Fund." At the beginning of each biennium all money then in such fund which is not then appropriated or obligated shall be set over and paid into the General Revenue Fund. This fund shall be paid out only by warrants of the comptroller of public accounts upon itemized vouchers approved by the secretary of the board. Under no circumstances shall the total amount of warrants issued by the comptroller of public accounts in payment of the expenses and compensation provided for in this Act exceed the amount in the Land Surveying Fund. All payments to persons retained or employed by the board or to members of the board and all per diem and expenses incurred under this Act shall be paid out of the Land Surveying Fund provided herein, and no part of the expense of administering this Act shall ever be a charge against the general funds of the State of Texas. The board shall as of August 31 of each year after the passage of this Act make a report to the governor, lieutenant governor, and speaker of

the house of representatives for all receipts and disbursements under this Act. The financial transactions of the board shall be audited annually by the state auditor.

#### Practitioners at the Time of Enactment

Sec. 14. (a) All persons holding valid certificates of registration or licenses on the effective date of this Act from either the State Board of Registration for Public Surveyors or the Board of Examiners of Licensed State Land Surveyors shall be automatically registered or licensed under this Act. Those holding a certificate of registration as a registered public surveyor shall be registered as registered public surveyors and those holding a licensed state land surveyor's license shall be licensed as licensed state land surveyors. Those so registered shall retain their same registration numbers and those so registered or licensed shall retain their former certificate or license until such certificate or license is renewed as provided herein.

(b) Any person holding a valid license on the effective date of this Act from the State Board of Registration for Professional Engineers who has been engaged in the practice of surveying for a period of not less than one year immediately preceding the effective date of this Act may apply for registration as a public surveyor within a period of one year from the effective date of this Act and on payment of the registration fee shall be registered as a public surveyor. The Texas Board of Land Surveying and the State Board of Registration for Professional Engineers shall determine whether an applicant qualifies for registration under this subsection. If the boards disagree about whether an applicant qualifies for registration under this subsection, the decision of the State Board of Registration for Professional Engineers controls.

(c) All persons registered or licensed under this section are presumed to be qualified as long as they annually renew their certificate of registration or licensure as required under this Act.

#### Qualifications for Registration and Licensure

Sec. 15. (a) No person, except those exempt from the operation of this Act, shall engage or continue in the practice of public surveying as defined in this Act, unless the person is registered or licensed as provided by this Act.

(b) The following classes of persons are qualified for registration or licensure:

(1) all registered professional engineers engaged in the practice of surveying on the effective date of this Act who register with the board in accordance with this Act;

(2) all persons who apply to take and successfully pass a written examination developed and given as provided by this Act under rules developed by the board to determine the knowledge and ability of the applicant shall be qualified for registration as a registered public surveyor; and

(3) all registered public surveyors who apply to take and successfully pass a written examination as provided by this Act under rules developed by the board on the theory of surveying, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the board may determine shall be qualified for licensure as a licensed state land surveyor.

(c) All applicants for licensure as a registered public surveyor, except a registered professional engineer, must meet the following minimum requirements:

(1) be of good professional character and reputation;

(2) have satisfied one of the following educational and experience requirements:

(i) have successfully completed a full four-year course of study at an accredited college or university leading to a bachelor's or higher degree and have a specific experience of two or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. The course of study shall have included not less than 32 semester hours of study or its academic equivalent in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences; or

(ii) have successfully completed a course of study in land surveying or board-approved survey-related courses of 32 semester hours of study or its academic equivalent and have a specific experience record of four or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge as defined herein; or

(iii) have graduated from an accredited high school and have a specific experience record of six or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. Applicants under this subsection without the college, university, or board-approved courses listed in paragraphs (i) and (ii) must show they have become self-educated in the surveying field.

(d) Notwithstanding the requirements for registration set forth in Subdivision (2) of Subsection (c) of this section, the board shall adopt reasonable rules and regulations necessary to establish a surveyor-in-training program designed to reduce the educational and experience requirements set forth

in said Subsection (c) through a concentrated course of study and training. Such program shall include the following provisions:

(i) minimum educational requirements of a lesser degree than those set forth in said Subsection (c);

(ii) examination for basic mathematical skills necessary to the practice of public surveying;

(iii) a board-approved program of intensive study through formal educational programs, private educational and professional programs and seminars, or both; and

(iv) a board-approved program of intensive experience covering a lesser period of time than that set forth in said Subsection (c); and

(v) examination for other basic skills and knowledge necessary to the practice of public surveying.

Upon proof of qualification under Paragraph (i) of this subsection and successful completion of the basic examination required by Paragraph (ii) of this subsection, an applicant shall receive a certificate declaring him or her a surveyor-in-training in a form to be approved by the board, and a record shall verify and note successful completion of each additional requirement of the surveyor-in-training program by the applicant. Upon successful completion of the program, the applicant shall receive a certificate of registration as a registered public surveyor upon payment of the necessary fee.

#### Applications, Examinations, and Fees for Licensure

Sec. 16. Any applicant seeking registration as a registered public surveyor or licensure as a licensed state land surveyor shall file an application in writing with the Texas Board of Land Surveying. An application fee, not to exceed \$50, shall be submitted with the application. If the board determines that the applicant is qualified to take the examination, it shall set and notify the applicant of the time and place of the examination. The applicant may take the examination on payment of an examination fee determined by the board, not to exceed \$100 for registered public surveyor examinations or \$50 for licensed state land surveyor examinations.

Applications for registration or licensure shall be on forms prescribed and furnished by the board and shall contain statements made under oath showing the applicant's education and experience. Applications for registration shall contain a detailed summary of the applicant's technical work and references of at least three surveyors having personal knowledge of his surveying experience.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability in order to insure the public safety, welfare, and property rights.

Not later than the 30th day after the day on which a person completes an examination adminis-

tered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

An applicant failing an examination may apply for and take a subsequent examination at the expiration of six months from the date of the preceding examination by filing an updated application and paying an additional examination fee not to exceed \$100.

On passing the appropriate examination, the applicant is entitled to a certificate of registration as a registered public surveyor or a certificate of licensure as a licensed state land surveyor. No certificate of licensure as a licensed state land surveyor shall be issued until the applicant has taken the oath of office and filed the bond as required by this Act. Each registered public surveyor shall also be issued a registration number which shall not thereafter be assigned to nor used by any other surveyor. The number shall be placed on the certificate of registration and recorded in the permanent records of the board and shall constitute the registration number of that surveyor to be used on all official documents. The certificate of registration and the certificate of licensure shall also show the full name of the registrant or licensee and shall be signed by the chairman and secretary of the board.

#### Renewal, Renewal Fees, Penalty for Late Renewals

Sec. 17. All certificates of registration or licensure shall expire on December 31 of each year or on a date set by the board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that shall be required for its renewal for one year. The notice shall be mailed at least one month in advance of the date of expiration of the certificate. For this and other purposes, each registrant or licensee shall notify the secretary of any change of address as it occurs. For the year in which the expiration date is changed, renewal fees payable on December 31 shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the renewal fee which is allocable to the number of months during which the renewal is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. Renewal may be effected at any time during the month of expiration by the payment of a fee set by the board, not to exceed \$50 for certificates of registration of registered public surveyors or \$25 for certificates of licensure for licensed state land surveyors. On receipt of the required fee within the time and in the manner prescribed by the board, the designated officer or employee of the board shall issue to the licensed or registered surveyor a

certificate of renewal of his or her certificate for the term of one year. The failure on the part of a surveyor to renew a certificate annually by the expiration date established by the board shall not deprive an individual of the right of renewal, but shall result in an increase in the renewal fee of \$20. If failure to renew shall continue for more than 90 days after the date of expiration of the certificate of registration or licensure, the board may require such registrant or licensee to reapply for registration or licensure and he or she must qualify and pay all fees provided herein as an original applicant therefor. All renewal certificates of registration shall carry the same registration number as the original certificate. All original and renewal certificates of registration or licensure shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a registered public surveyor or a licensed state land surveyor so long as the certificate is valid and in force. Each person holding a certificate of registration or licensure shall display it at his or her place of business or practice and be prepared to substantiate annual renewal for the current year. The secretary shall immediately notify the commissioner whenever the license of any licensed state land surveyor is rendered invalid for his or her failure to timely renew such license.

#### Official Seals

Sec. 18. Each registered public surveyor on receiving a certificate of registration shall obtain an authorized seal bearing the registrant's name and number and the legend "Registered Public Surveyor." No licensee shall affix his or her name, seal, or certification to any plat, design, specification, or other work constituting the practice of the occupation regulated by this Act and prepared by an unlicensed person, unless the work was performed under the direction and supervision of the licensee and the unlicensed person is an employee of the same firm and under the licensee's direct supervision. For the purpose of this section, an "employee" means an individual who receives compensation for work performed from a firm which employs or has a principal licensed or registered surveyor on a full-time basis. No licensee shall allow a nonlicensed person to exert control over the end product of his or her professional work. Only one surveyor's seal is required for the documents of a single project as prepared by each firm. However, the surveyor whose seal is to be used must be a principal in the firm who has the primary responsibility for the particular project. In addition, the seals of other professionals in the firm may be used. When there is a joint surveying venture comprising an association of two or more firms, each firm shall use the seal of the surveyor who has the primary responsibility for the firm. Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his or her official title, and between the points of the star in the seal shall

be the word "Texas." A licensed state land surveyor shall attest with the seal all official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records of the General Land Office unless certified to under the seal of the surveyor.

#### Oath and Bond

Sec. 19. (a) Before a licensed state land surveyor's license is issued and before one who has successfully passed the examination as provided in this Act is authorized to perform the duties of a licensed state land surveyor, he or she shall take the official oath and shall make a good and sufficient bond in the sum of \$1,000, payable to the governor and conditioned that he or she will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of his or her skill and ability in all matters wherein he or she may be employed. No state land surveyor's license may be issued under this Act to any person residing outside the State of Texas.

(b) The bond may be executed by two or more solvent personal sureties or by a solvent surety company authorized to transact business in this state. If the bond is signed by personal sureties, each shall take and subscribe an oath that he or she is worth, over and above all debts and exemptions, at least double the penalty of the bond. A personal bond also shall be approved by the commissioners court of the county where the applicant resides. After the oath and bond have been executed as provided by this Act, they shall be recorded in the office of the county clerk of the county in which the applicant resides and after being so recorded shall be filed at the Texas Board of Land Surveying, accompanied by a filing fee in an amount to be fixed by the board. Thereupon a license shall be issued to the applicant, and he or she is authorized to enter upon the discharge of the duties of a licensed state land surveyor. If for any reason the liability on the bond provided for by this Act is terminated, the licensee is not authorized to perform the duties of a licensed state land surveyor until a new bond is made as in the first instance. No surety on a bond shall be relieved of liability on the bond without first giving the board 30 days' notice in writing. The termination of a bond as provided in this Act or the revocation of a surveyor's license does not relieve the sureties on the bond from any liability that may have theretofore accrued on the bond. The board is directed to provide the General Land Office with a current list of bondholders.

(c) The secretary shall immediately advise the commissioner whenever any applicant has qualified for and has been issued a license as a licensed state land surveyor under this Act. The secretary shall also immediately advise the commissioner whenever the liability on the bond of any licensee under this Act has been terminated for any reason.

**Reciprocal Certificate**

Sec. 20. The Texas Board of Land Surveying shall issue a certificate of registration as a registered public surveyor on a reciprocal basis to any person who:

(1) holds a public surveyor license or other form of permission issued by a governmental authority outside of this state if the licensing standards of the governmental authority are substantially equivalent to those of this state; and

(2) applies with the board for the certificate of registration and pays a fee set by the board not to exceed \$50.

**Firm Names; Assumed Names**

Sec. 21. Registrants and licensees holding current certificates of registration or licensure may organize or engage in any form of individual or group practice of surveying allowed by the statutes of this state, if the firm identity of that practice does not publicly imply registration authority to practice public or state land surveying without properly identifying the registrant responsible for that practice. Any person engaging in the practice of surveying in this state under any business title other than the real name or names of those legally authorized to engage in public or state land surveying, whether individually or as an association, partnership, or corporation, shall file in the office of this board a certificate stating the full name and residence of each person engaging in that practice and the place, including street, number, city, and zip code, where that practice or business is principally conducted.

**Resignation of a Licensed State Land Surveyor**

Sec. 22. A licensed state land surveyor may resign as such surveyor at any time by filing a resignation in writing with the Texas Board of Land Surveying. On the receipt of the resignation, the board shall note the receipt and inform the General Land Office. Resignation does not relieve the principal and sureties of the surveyor's official bond of any liability that may have accrued prior to the effectiveness of the resignation.

**Penalties**

Sec. 23. (a) The Texas Board of Land Surveying has the power to reprimand or suspend or to revoke the license and/or registration of any surveyor found guilty of:

(1) the practice of any fraud or deceit in obtaining a certificate of registration for registered public surveyors or a certificate of licensure for licensed state land surveyors;

(2) any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor or licensed state land surveyor; or

(3) the violation of a provision of this Act or a rule or regulation promulgated by the board.

(b) The license of any licensed state land surveyor found to be directly or indirectly interested in the purchase or acquisition of title to public land is subject to revocation.

(c) After the effective date of this Act, any person found guilty of the following offenses shall be deemed guilty of a Class B misdemeanor:

(1) practicing or offering to practice public surveying or state land surveying in this state without being registered or licensed or exempt in accordance with the provisions of this Act;

(2) presenting or attempting to use the certificate of registration or licensure or seal of another;

(3) giving any false or forged evidence in order to obtain or assist another in obtaining a certificate of registration or licensure; or

(4) violating any of the provisions of this Act or any rules or regulations promulgated by the board.

**Enforcement; Complaints; Hearings**

Sec. 24. (a) Any person may file a complaint with the Texas Board of Land Surveying regarding a violation of this Act or any rule or regulation of the board. The board may also institute proceedings against a registrant or licensee on its behalf without a formal written third party complaint. Each alleged violation of applicable statutes, when duly reported and substantiated by sworn affidavits, shall be investigated. The board may employ the investigators or inspectors necessary to enforce properly the provisions of this Act.

(b) If it is determined that the complaint is not within the board's jurisdiction, the complainant shall be notified in writing within 30 days. If the board determines the complaint to be within its statutory jurisdiction, a written notice stating the nature of the charge or charges and the time and place of the hearing before the board shall be served on the accused not less than 20 days prior to the date of the hearing and within three months after the date on which the complaint was filed. The board or its legal counsel is authorized to hold conferences before or during the hearing process for the settlement or simplification of the issues and for such purposes as the demands of justice require. At any hearing, the respondent is entitled to appear in person and by counsel, present all relevant evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. The failure of a respondent to appear at a hearing may be deemed a waiver of all rights except the right to be served with any sanction imposed by the board. The board may, however, grant continuances on a written request, indicating good cause for failure to appear, filed with the board prior to the date of the hearing. The board is empowered to issue notices, subpoena witnesses, administer oaths, hear testimony, rule on objections and motions, and otherwise regulate and expedite the course and conduct of the hearing.

Any individual appearing at a hearing in response to a subpoena or by request or permission of the board may be accompanied, represented, or advised by counsel.

(c) After all the parties have been given an opportunity to present proposed findings and arguments, the board shall prepare findings of fact, conclusions of law, and any subsequent order, ruling, or decision of the board to be served on all parties. In the proceedings under this section and the other sections of this Act, a majority of the board shall constitute a quorum.

(d) A stenographic record or tape recording of all hearings shall be kept and transcribed. A transcript shall be made available to any party on payment of the lawfully prescribed cost.

(e) A person, firm, partnership, or corporation aggrieved by an order, ruling, or decision of the board may file a motion for rehearing which must be filed within 15 days after the rendition of the order, ruling, or decision. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. A party aggrieved by a final order, ruling, or decision of the board has the right to file suit in a district court of Travis County. The petition must be filed within 30 days after the decision, ruling, or order in question is final and appealable. The board may not be required to give bond in any cause or appeal arising under this Act. Neither the Texas Board of Land Surveying nor any member of the board is liable to any person, firm, or corporation charged or investigated by the board for any damages incident to the investigation or incident to any complaint, charge, prosecution, proceeding, or trial of the results of the investigation.

(f) The board for reasons it may deem sufficient may reissue a certificate of registration or licensure to any surveyor whose certificate has been revoked provided five or more members vote in favor of the reissuance. A new certificate of registration or licensure to replace a certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board and a charge of \$5.

(g) The attorney general or his assistants shall act as legal advisor to the board and shall render such legal assistance as may be necessary in enforcing the provisions of this Act and the rules and regulations of the board.

(h) The board shall keep an information file on the disposition of each complaint filed with the board relating to a registrant or licensee. If a written complaint is filed with the board relating to a registrant or licensee, the board at least as frequently as quarterly shall notify the complainant of the status of the complaint until finally determined.

**Authority of Licensee and Method of Obtaining Right to Survey on Private Land**

Sec. 25. (a) Licensed state land surveyors licensed under this Act are authorized to perform

WTSC Civil Statutes—21

surveys under the provisions of Section 21.011, Natural Resources Code, and to perform the duties that may be performed by the county surveyors and are subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be coextensive with the limits of the state.

(b) Licensed state land surveyors may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors. The election of a county surveyor for a particular county does not limit the jurisdiction of the surveyor to that county, and the election of a county surveyor for any particular county does not prevent any licensed state land surveyor from performing the duties of a surveyor in that county.

(c) All official field notes made by a surveyor licensed under this Act shall be signed by the surveyor, followed by the designation, "Licensed State Land Surveyor."

(d) If a licensed state land surveyor is denied permission to cross the land owned by a private party when surveying in his or her official capacity, the county attorney of the county in which the land is located shall promptly seek an order from a court of competent jurisdiction giving the licensee authority to cross the private lands.

**Field Notes to be Recorded**

Sec. 26. The field notes and plats of every survey of public land made by a licensed state land surveyor licensed under this Act shall be recorded in the county surveyor's records of the county in which the land is situated. The field notes and plats of public land made by a licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state have the same force and effect and are admissible in evidence the same as field notes made by a county surveyor.

**Undisclosed Land**

Sec. 27. If a licensed state land surveyor discovers any undisclosed tract of public land, the surveyor shall not make known that fact to anyone except to such person as may have it enclosed, except that the surveyor shall forward to the Commissioner of the General Land Office a report of the existence of the tract, the acreage in the tract, and its probable value.

**County Surveyor Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records**

Sec. 28. (a) In cases where a county has a county surveyor, the county surveyor alone is authorized to file and record field notes and plats of all surveys



made in that county and other documents required by law to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown by the records of a county surveyor. However, if a county surveyor and his or her authorized deputy or deputies are absent from the office, the county clerk of the county has free access to the county surveyor's office and public records and, in such event, is authorized to record field notes, plats, and other documents required to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown on the official records of the county surveyor. In cases where a county has no county surveyor, the county clerk of the county is the legal custodian of the surveyor's records and is authorized to make all the certificates and certify the copies that a legally authorized county surveyor may make.

(b) The fees for recording documents in the surveyor's records and issuing certificates and making certified copies are the fees now or hereafter provided by law. The county surveyor is entitled to fees for all documents recorded by the county surveyor or his or her deputies and for all certificates and certified copies issued by the county surveyor or his or her deputies. The county clerk is entitled to all fees for documents recorded by the county clerk and for all certificates and certified copies issued by the county clerk under the provisions of this Act.

(c) All licensed state land surveyors shall for the purpose of information and examination have access to the records of county surveyors, and no examination fee shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regulating the sale or lease of the same or of identifying and establishing the boundaries of public land. All examinations shall be made under such regulations as may be provided by the county surveyor or the commissioners court for the safekeeping and preservation of the records.

#### Informing the Public Concerning the Regulation of Surveying

Sec. 29. All written contracts for surveying services in this state shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over that licensed individual in responsible charge of providing those services and shall contain a statement that complaints about<sup>1</sup> surveying services may be forwarded to that regulatory board.

<sup>1</sup> So in enrolled bill.

[Acts 1979, 66th Leg., p. 1261, ch. 597, §§ 1 to 29, eff. June 13, 1979.]

## 2. COUNTY SURVEYORS

**Arts. 5283 to 5298. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900**

(a) In any county which has a population of not less than 39,800 nor more than 39,900 according to the last preceding federal census, the office of county surveyor is abolished.

(b) The person who is serving as the county surveyor on the effective date of this Act shall continue to serve until his present term expires.

(c) At the expiration of the county surveyor's present term, the county surveyor shall deliver to the county clerk all records, maps, and papers which belong to the office of the county surveyor and the office shall cease to exist.

(d) After the office of county surveyor ceases to exist, the commissioners court, when it finds it necessary, may employ a qualified person to perform one or more of the functions formerly performed by the county surveyor.

[Acts 1969, 61st Leg., p. 986, ch. 315, eff. Sept. 1, 1969.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

## 3. SURVEYS AND FIELD NOTES

**Arts. 5299 to 5305a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

## CHAPTER THREE. SURFACE AND TIMBER RIGHTS

### 1. GENERAL PROVISIONS

**Art.**  
5306 to 5308. Repealed.

### 2. SALES

5309 to 5311a. Repealed.  
5311b. Validating Sales.  
5312 to 5326h. Repealed.  
5326i. Reinstatement of Purchases in Hutchinson County.  
5326j to 5330. Repealed.

## Art.

- 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office.
- 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized.

## 3. LEASES

- 5331 to 5337. Repealed.

## 4. EASEMENT

- 5337-1. Repealed.
- 5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply.

## 1. GENERAL PROVISIONS

- Arts. 5306 to 5308. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

## 2. SALES

- Arts. 5309 to 5311a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5311b. Validating Sales**

In cases where public free school and asylum land has been advertised as being subject to forfeiture for non-payment of interest and to be forfeited and canceled and come on the market for sale at some future sale date and such land was declared forfeited and the sale canceled on the records of the General Land Office and sale awards issued upon applications filed at such sale date, and said sale award has been held by the Supreme Court to be void and all other sale awards which may be void or voidable or the titles to which may have become defective from any cause, are hereby validated, and when the said land shall be fully paid for together with payment of all fees it shall be patented; provided, in cases where the sale award of the land advertised as aforesaid has not stood one year the owner of said land at date of forfeiture shall have the right to apply to the General Land Office for a re-instatement of said former sale upon the payment of all past due interest at any time within six months after the taking effect of this Act.

[Acts 1925, S.B. 84.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th*

*Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

- Arts. 5312 to 5322. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

- Art. 5323. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13**

- Arts. 5323a to 5326h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5326i. Reinstatement of Purchases in Hutchinson County**

Sec. 1. In cases where lands belonging to the Public Free School Funds located in Hutchinson County, Texas, stand forfeited on the records of the General Land Office, and where said forfeitures have been made by the Commissioner of the General Land Office after September 1, 1942, and prior to February 1, 1943, and where such lands have been used or occupied by the original purchaser of said lands from the State of Texas for a continuous period of twenty-seven years or more, the said forfeitures may be set aside and the original purchases re-instated by the said Commissioner upon the payment of all moneys due and owing on such land, including interest and principal; providing that such re-instatement shall not be effective as to any intervening rights of third parties.

Sec. 2. In cases where lands belonging to the Public Free School Fund located in Hardeman County stand forfeited on the records of the General Land Office and said forfeitures having been made by the Commissioner of the General Land Office prior to September 25, 1943, and after January 1, 1943, and where the lands have been improved by the present occupant or user to the extent of One Hundred (\$100.00) Dollars or more, the said forfeitures may be set aside and the original purchases re-instated by the said Commissioner upon payment of all moneys due and owing on such land, including interest and principal; providing that such reinstatement shall not be effective as to any intervening rights of third parties.

Sec. 3. If any section, sub-section, clause, sentence, or provision of this Act, for any reason, be held to be invalid or unconstitutional, it shall not affect in any wise the remaining provisions of this Act not so held, and all that portion not so held invalid shall remain in full force and effect; it being the express intention of the Legislature to enact such Act without respect to such section, sub-sec-

tion, clause, sentence, or provision, or a part thereof, so held to be invalid or unconstitutional.

[Acts 1950, 51st Leg., 1st C.S., p. 84, ch. 21.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5326j to 5330. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office**

#### Land Offered to Claimants; Consideration

Sec. 1. All of the lands along the 100th degree of west longitude on the East side of the Panhandle of the State of Texas and the west side of the State of Oklahoma, found to be in the State of Texas by the final decree of the Supreme Court of the United States, entered March 17th, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, Intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are hereby offered for sale to the claimants of said lands as reflected by the Deed Records or other public records of the State of Oklahoma and under the laws of the State of Oklahoma at the time of the rendition of said decree by the Supreme Court of the United States, and said lands shall be sold to such claimants as would have then owned said lands had the same been a part of Oklahoma, or who have acquired or may hereafter acquire title by foreclosure of a line valid and enforceable under the laws of Oklahoma at the time of the rendition of such decree. The consideration for such sale shall be the sum of One (\$1.00) Dollar per acre.

#### Special Land Board Abolished; Transfer of Rights and Duties

Sec. 2. The rights and duties of the Special Land Board are transferred to the General Land Office, and the Special Land Board is abolished. The General Land Office shall have the power to ascertain the bona fide claimants of said lands as shown by the public records and under the laws of the State of Oklahoma, to make such surveys and investigations as may be necessary to carry out the provisions of this Act, and to adopt such rules, regulations and forms as it may deem expedient.

#### Application; fee; Investigation and Award

Sec. 3. Any claimant to any portion of said lands who would have had title to same had it been located in Oklahoma, may make application to the Commissioner of the General Land Office to purchase the land claimed. Such application shall be accompanied by field notes of the tract claimed, together with a filing fee of One (\$1.00) Dollar, an examination fee of Fifteen (.15¢) Cents per acre, and with such other information as the Land Board may require to be given, including certified copies of all muniments of title under the laws of Oklahoma. Upon receipt of such application the Land Board shall cause an investigation to be made as to the status of the public records of the State of Oklahoma, and in event it is found that the applicant would have been the owner of said land at the time of the decree of the Supreme Court of the United States had the same been located in Oklahoma, or holds title by reason of foreclosure of a lien valid and enforceable under the laws of Oklahoma at the time of such decree of the Supreme Court of the United States, such application shall be approved, and said land awarded to said applicant. Within sixty days after such award such applicant shall pay to the Commissioner of the General Land Office the sum of One (\$1.00) Dollar per acre for said land, and upon receipt of such payment the Commissioner of the General Land Office shall issue to the claimant a patent to said lands in such form as the Land Commissioner shall prescribe.

#### Sale to Lien Holder

Sec. 4. In event the claimant fails or refuses to purchase same or to apply for a patent as provided for herein, then the holder of a lien against any of said lands may make such purchase or apply for such patent on behalf of said owner and pay the consideration provided for, and all fees and expenses, and such amounts when paid by such lien holder shall be added to and become a part of the total amount secured by the lien. A failure on the part of the said owner to make purchase, or application for patent, for a period of four months after the last publication by said Land Board as provided in this Act shall constitute such failure to apply as will warrant the lien holder in making such application to purchase. The patent issued upon application and purchase of a lien holder shall be in the name of the person, persons or company who would have owned said lands had the same been a part of Oklahoma.

#### Recording Deeds, Mortgages, Etc.; Evidence; Force and Effect

Sec. 5. All deeds, mortgages, contracts and instruments of every nature, or in case of loss of any such instrument a certified copy from the record in the Oklahoma County may be so used, affecting the title to said lands, or that would have formed a part of the chain of title to the same under the laws of the State of Oklahoma, and now of record on the

public records of the State of Oklahoma, may be filed and recorded in the county in Texas in which the land is now located. All deeds, mortgages, conveyances and all other instruments which would be valid under the laws of the State of Oklahoma and admissible in evidence under the laws of said State, shall be valid in Texas and shall be admissible in evidence in any court in this State, and copies of said instruments certified as provided by the laws of Oklahoma, as well as the originals thereof, may be introduced in evidence in the same manner as if executed with the formalities required by the laws of the State of Texas, and as if certified as required by the laws of this State. All such deeds, deeds of trust, mortgages, conveyances and contracts, affecting the title to any of said lands shall be given the same force and effect in the State of Texas as same would have been given in the State of Oklahoma, and all bona fide liens, incumbrances, or debentures, now outstanding and unsatisfied, and existing against said lands at the time of the rendition of said decision of the Supreme Court of the United States are here expressly validated, save and except as to purchase money due to the State of Oklahoma, or the United States, and except taxes, general or special, due to the State of Oklahoma, or any city, county, school district or other political subdivision of the State of Oklahoma. In determining whether any lien against said land shall be enforced, the period of time intervening between the rendition of the decision by the Supreme Court of the United States and the issuance of a patent to the land involved by the State of Texas, shall not be computed in applying the Statutes of Limitation of either the State of Oklahoma or the State of Texas, and this Act shall be liberally construed in the enforcement of liens against said land, it being the intention of the Legislature that all sections and parts hereof are independent of each other, and if any section or part hereof be held unconstitutional such invalid section shall not affect the remaining sections or parts hereof.

#### Deposit and Use of Fees

Sec. 6. The examination fees provided for in Section 3 of this Act shall be deposited with the State Treasurer in a special fund to the credit of the Land Board created in Section 2 hereof. All such moneys so paid into the State Treasury are hereby specifically appropriated to said Land Board for the purpose of defraying the authorized and necessary expenses incident to the enforcement of this Act incurred by said Board in determining the identity of persons entitled to the benefits of this Act. The Comptroller shall, from time to time, upon requisition of the Commissioner of the General Land Office, draw warrants upon the State Treasurer for the amounts specified in such requisition, not exceeding, however, the amount of such fund on deposit at the time of the making of any requisition therefor. Any sum remaining in such fund after all expenses have been paid shall be transferred to the Permanent School Fund. The amount of money

accruing to the State of Texas as consideration for the sale of the land as provided for in Section 3 hereof shall be placed to the credit of the Permanent School Fund.

#### Determination by Board; Proclamation; Time for Application

Sec. 7. The Land Board, upon the passage of this Act, is authorized to determine when such lands are available for purchase, and said Board shall by proper proclamation give notice to all persons desiring to file an application to purchase said land, by causing such proclamation to be published once each week for two consecutive weeks in some newspaper of general circulation in each county in which any part of said lands may be located, and by filing a copy of such proclamation with the County Clerk of each such county. Applications to purchase such lands shall be filed with the Commissioner of the General Land Office within four months from and after the last publication, and if said claims are not filed within said time an additional filing fee of Ten (10¢) Cents per acre shall be required. No land shall be patented or sold under the provisions of this Act unless claimed and applied for within twelve months after the publication of said proclamation, and the proclamation shall so state.

[Acts 1931, 42nd Leg., p. 311, ch. 185. Amended by Acts 1941, 47th Leg., p. 242, ch. 170, § 1; Acts 1951, 52nd Leg., p. 298, ch. 177, § 1.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized

From and after the effective date of this Act all public lands in this State situate along the western boundary of the State of Oklahoma and the eastern boundary of the State of Texas and along the 100th degree of west longitude, found to be in the State of Texas by final decree of the Supreme Court of the United States entered March 17, 1930, in the case of the State of Oklahoma vs. the State of Texas, the United States of America, intervenor, theretofore claimed by Oklahoma but now located in Lipscomb, Hemphill, Wheeler, Collingsworth and Childress Counties, are to be offered for sale in accordance with the provisions of Article 5330A, Revised Civil Statutes of Texas Acts 1931, Forty-second Legislature, Page 311, Chapter 185.

[Acts 1939, 46th Leg., p. 478, § 1.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

## 3. LEASES

**Arts. 5331 to 5337. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

## 4. EASEMENTS

**Art. 5337-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5337-2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply**

Sec. 1. The Commissioner of the General Land Office is hereby authorized and empowered, acting for and on behalf of the State of Texas, to execute any and all grants of easements in, on, and across all unsold Public Free School Lands, and in, on, and across all islands, salt water lakes, bays, inlets, marshes, and reefs owned by the state within the tidewater limits, and in, on, and across that portion of the Gulf of Mexico within the jurisdiction of Texas, to Nueces County Water Control and Improvement District Number 4 for right-of-ways for pipe lines and for the installation of all works, facilities, and appliances, in any and all manners incident to, helpful or necessary for securing, storing, processing, treating, transporting, and selling an adequate supply of fresh water; provided, however, said Nueces County Water Control and Improvement District Number 4 shall pay the sum of Ten Dollars (\$10.00) as consideration for the granting of each easement.

Sec. 2. The Commissioner of the General Land Office may grant the easements provided in Section 1 hereof for such term and shall cover only such area which in the judgment of the Commissioner may be required to carry out the purposes for which said District was created, and, if he deems it necessary, the Commissioner of the General Land Office may grant such easements perpetually.

Sec. 3. During the existence of the easements authorized and granted pursuant hereto the officers and employees, contractors and sub-contractors of the Nueces County Water Control and Improvement District Number 4 are hereby authorized to go in and upon the lands described herein to construct such pipe lines and to install all works, facilities, appliances, and to repair and to remove same from time to time.

Sec. 4. All easements granted under Section 1 of this Act shall be on forms approved by the Attorney General.

Sec. 5. All income received by the Land Commissioner under this Act from Public School Lands shall be credited to the Available School Fund.

Sec. 6. The powers and authority herein conferred and vested in the Commissioner of the General Land Office shall be cumulative of all powers and authority heretofore and hereafter vested in the Commissioner of the General Land Office under the Constitution and laws of this state.

[Acts 1959, 56th Leg., p. 688, ch. 314.]

## Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

## CHAPTER FOUR. OIL AND GAS

## 1. UNIVERSITY AND OTHER LANDS

Art.

5338 to 5341c. Repealed.

5341d. Extension of Leases on University Land; War Agency Restrictions.

5341e. Suspension of running of Terms of Leases While Owner is Denied Access by United States.

5342 to 5352. Repealed.

## 2. GULF LANDS

5353 to 5366. Repealed

5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf.

## 3. SOLD ASYLUM AND SCHOOL LANDS

5367 to 5379. Repealed.

## 4. GENERAL PROVISIONS

5380 to 5382b. Repealed.

5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949.

5382c to 5382f. Repealed.

## 1. UNIVERSITY AND OTHER LANDS

**Art. 5338. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13**

**Arts. 5339 to 5341c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5341d. Extension of Leases on University Land; War Agency Restrictions**

Sec. 1. In the case of any non-producing oil, gas or mineral lease on University land, if one hundred twenty (120) days before expiration of the primary term there be in effect any restrictions issued by a Federal war agency prohibiting the drilling or completion of a well thereon, the holder of such lease shall have the right to negotiate an extension or

renewal of such lease for a period of not longer than two (2) years with the Board of Regents of the University of Texas and the Commissioner of the General Land Office.

The Board of Regents of the University of Texas and the Commissioner of the General Land Office, in considering an application for an extension or renewal of any such lease above described, shall take into consideration in establishing the consideration for such lease the diligence with which the lessee has followed his duties under the existing lease, the present value of the land upon which an extension or renewal of the lease is sought, and all other good business practices. The lessee in presenting his application for extension or renewal of such lease or leases shall present evidence to the Board of Regents of the University of Texas and to the Commissioner of the General Land Office showing it was impossible for him or any of his co-owners to comply with the restrictions which he claims prohibited the drilling or completion of the well on said tract.

If the lessee should claim as grounds for an extension or renewal of any such lease that there is insufficient acreage within the tract under lease by him to comply with the Federal restriction then no extension or renewal shall be granted unless said lessee also show that there is no adjacent and adjoining acreage to said tract wherein said applicant is a party in interest that could have been combined with the tract upon which the application for extension or renewal is made in order to comply with the Federal restriction.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lease owner such instrument in writing in the nature of an extension or renewal of such lease as may be necessary or proper to carry into effect the foregoing provision of this Act.

Sec. 3. The provisions of this Act are and shall be held and construed to be cumulative of all General Laws of this state on the subject treated of and embraced in this Act when not in conflict herewith, but in case of conflict, in whole or in part, this Act shall control.

Sec. 4. If any section, subdivision, paragraph, sentence, or clause of this Act be held to be unconstitutional, the remaining portions of same shall nevertheless be held valid and binding.

[Acts 1943, 48th Leg., p. 359, ch. 233.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5341e. Suspension of Running of Terms of Leases While Owner is Denied Access by United States

If the owner of any valid oil and gas lease granted by the State covering University lands is denied access to or is denied a permit to drill upon or produce from the leased premises by any duly constituted authority of the United States of America, after a bona fide attempt has been made by such owner to obtain access or permit to drill upon or produce from the leased premises, and denial of access as used herein shall include agreements by the lessee or his assigns under any such lease with a duly constituted authority of the United States not to enter upon and engage in drilling operations on any such oil and gas lease made under compulsion or threat of condemnation by such duly constituted authority of the United States, such owner may file with the Board for Lease of University Lands an application describing and giving the date of the action which deprives him of the right of access or the right to drill upon or produce from the premises, and if said Board is satisfied that the facts set forth in the application are true, the Board may enter an order upon its minutes suspending the running of both the primary and the principal term of such lease, or suspending any condition, obligation, or duty thereunder as of the date of the origin of the cause of suspension and during the existence of the cause of suspension, so long as the lessee continues to make on each anniversary date of such lease the annual rental payments stipulated in the lease during the period of suspension. Such oil and gas lease shall remain in status quo, and all obligations and conditions existing during such lease or such of them as may be suspended by said Board, shall be inoperative and of no force and effect, except the obligation to pay delay rentals as provided for herein, until ninety (90) days after the Board for Lease of University Lands shall enter an order upon its minutes reciting that the cause for suspension has ceased to exist, at which time such oil and gas lease shall, provided the rental payments have been made during the period of suspension, again become operative and all of the suspended obligations and conditions, including the payment of rentals under same, shall again attach and be in force, and in the case of the suspension of the primary and/or principal terms of the lease, the lease shall thereafter continue in force for a period equivalent to the unexpired term of the lease on the date or origin of the cause for suspension. The Commissioner of the General Land Office shall give notice immediately to the lessee of the entry of the order that the cause for suspension has ceased to exist; provided, however, that the annual rental payments have been met.

[Acts 1945, 49th Leg., p. 300, ch. 217, § 1.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th*

*Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5342 to 5352. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**2. GULF LANDS**

**Arts. 5353 to 5366. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf**

Sec. 1. In each case in which an oil and gas mineral lease has heretofore been granted or may hereafter be granted by the State of Texas on an area covered by the coastal waters of the State or within the Gulf of Mexico and in which the War Department of the United States refuses to grant a permit to the lessee or owner of such lease to drill a well thereon for oil, gas or other minerals (the area included in such lease being within the navigable waters of the United States) and in the event the primary term of such lease should expire during the period of time in which the War Department of the United States may continue to refuse to issue such permit, then and in such event the primary term of such lease is hereby extended for successive periods of one (1) year from and after the end of the original primary term of such lease while and so long as the War Department may continue such refusal to issue to the lessee or to the owner of such lease a permit to drill for oil gas or other minerals, on the area covered thereby; provided, that in order to make such extensions effectual the lessee or the owner of such lease shall, during each of the annual periods during which the primary term of the lease is so extended, apply to and seek to obtain from the War Department a permit to drill a well for oil, gas or other minerals on the area covered by such lease and be unsuccessful in its attempts to obtain a permit, or, if successful in obtaining a permit, commence operations for drilling a well upon the leased premises within sixty (60) days after obtaining such permit; and provided further that the lessee or the owner of such lease continues to pay the annual renewal rentals at the rate provided for in such lease for the period of time involved in such extensions. Should such lease be so extended and should the War Department at any time while such lease is still in force and effect issue a permit to the lessee or to the owner of such lease to drill a well thereon for oil, gas or other minerals, such lease shall

continue in force and effect if the lessee commences drilling operations upon the leased premises within sixty (60) days after obtaining such permit, and so long as the lessee or the owner of such lease shall continue to conduct drilling or mining operations thereon, or if oil, gas or other mineral be discovered thereon by the lessee or the owner of such lease, so long as oil, gas or other mineral is produced from such leased premises. Should the production of oil, gas or other mineral on said leased premises after once secured, cease from any cause, such lease shall not terminate if the lessee or owner of such lease commences additional drilling, reworking or mining operations within thirty (30) days thereafter or if it be within the original primary term of such lease, commences or resumes the payment or tender of rental on or before the rental paying date, if any, next ensuing; but if there be no rental paying date next ensuing, the lease shall in no event terminate prior to the expiration of the primary term.

Sec. 2. The Commissioner of the General Land Office is hereby authorized to issue to the lessee or owner of said lease such instrument in writing in the nature of an extension of said lease as may be necessary or proper to carry into effect the foregoing provisions of this Act.

[Acts 1941, 47th Leg., p. 456, ch. 287.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**3. SOLD ASYLUM AND SCHOOL LANDS**

**Arts. 5367 to 5368a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5368b. Repealed by Acts 1949, 51st Leg., p. 477, ch. 259, § 4**

**Arts. 5369 to 5373. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5374. Repealed by Acts 1931, 42nd Leg., p. 452, ch. 271, § 13**

**Arts. 5375 to 5379. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

#### 4. GENERAL PROVISIONS

**Arts. 5380 to 5382. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5382a. Repealed by Acts 1953, 53rd Leg., p. 27, ch. 20, § 1**

**Art. 5382b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5382b-1. Validation of Leases Advertised for 30 Days Prior to Act of 1949**

All oil and gas leases sold at a sale held on June 7, 1949 by the School Land Board of the State of Texas, and issued by the Commissioner of the General Land Office under the seal of his office, covering areas within tidewater limits which were advertised and offered for lease on June 7, 1949 as the lease sale date, by advertisement for not less than thirty (30) days prior to June 7, 1949, and prior to June 6, 1949, the effective date of Chapter 321, page 603, Acts of the 51st Legislature, 1949,<sup>1</sup> are hereby ratified and title validated and confirmed in the lessees named in such leases, their heirs, successors or assigns, subject only to the terms and provisions of said leases and the laws applicable thereto; however, nothing herein shall validate, affect, or apply to any such oil and gas lease which is not otherwise valid and in force on the effective date of this Act.

[Acts 1953, 53rd Leg., p. 440, ch. 128, § 1.]

<sup>1</sup> Article 5382b (repealed; see, now, Natural Resources Code, § 31.101 et seq.)

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5382c to 5382f. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

#### CHAPTER FIVE. MINERALS [REPEALED]

**Arts. 5383 to 5403. Repealed by Acts 1967, 60th Leg., p. 35, ch. 16, § 10, eff. March 15, 1967**

Acts 1967, 60th Leg., p. 35, ch. 16, classified as article 5421c-10, provides in part, in § 10, that rights, powers, duties and obligations conferred or imposed by the repealed laws shall be governed by such laws.

#### CHAPTER SIX. PATENTS

**Art.**

5404 to 5414. Repealed.

5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams.

5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams.

5414b. Repealed.

5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law.

**Arts. 5404 to 5414. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams**

Sec. 1. All patents to and awards of lands lying across or partly across water courses or navigable streams and all patents and awards covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the lands, and minerals therein contained, lying across, or partly across watercourses or navigable streams, which lands are included in surveys heretofore made, and to which lands patents or awards have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, and the State of Texas hereby relinquishes, quit-claims and grants to patentees and awardees and their assignees all of the beds, and minerals therein contained, or water courses or navigable streams, and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, patents or awards have been issued and outstanding for a period of ten years from the date



thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams, and provided further that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall relinquish or quit-claim any number of acres of land in excess of the number of acres of land conveyed to said patentee or awardees in the original patents granted by the State, but the patentees or awardees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same patent or award; provided that this Act shall not in any way affect the State's title, right or interests in and to the sand and gravel, lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or Mexican Governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas as valid. [Acts 1929, 41st Leg., p. 298, ch. 138.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5414a-1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Sec. 1. All deeds of acquittance to lands lying across or partly across water courses or navigable streams and all deeds of acquittance covering or including the beds or abandoned beds of water courses or navigable streams or parts thereof, which deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited, are hereby confirmed and validated.

Sec. 2. The State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the lands, and minerals therein contained, lying across, or partly across water courses or navigable streams, which lands are included in surveys heretofore made, and to which lands deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof and have not been cancelled or forfeited; and the State of Texas hereby relinquishes, quit claims and grants to grantees and their assignees all of the beds, and minerals therein contained, of water courses or nav-

igable streams and also all of the abandoned beds, and minerals therein contained, of water courses or navigable streams, which beds or abandoned beds or parts thereof are included in surveys heretofore made, and to which beds or abandoned beds, or parts thereof, deeds of acquittance have been issued and outstanding for a period of ten years from the date thereof, and have not been cancelled or forfeited; provided that nothing in this Act contained shall impair the rights of the general public and the State in the waters of streams or the rights of riparian and appropriation owners in the waters of such streams; and provided further, that with respect to lands sold by the State of Texas expressly reserving title to minerals in the State, such reservation shall not be affected by this Act; nor shall the State of Texas relinquish or quit claim any number of acres of land in excess of the number of acres of land conveyed to said grantees in the deeds of acquittance granted by the State, but the grantees and their assignees shall have the same rights, title and interest in the minerals in the beds or abandoned beds, or parts thereof, of such water courses or navigable streams, that they have in the uplands covered by the same deed of acquittance; provided that this Act shall not in anyway affect the State's title, right or interest in and to the sand and gravel lying within the bed of any navigable stream within this State, as defined by Article 5302, Revised Statutes of 1925.

Sec. 3. All of the provisions of this Act shall apply equally to all Spanish and Mexican land grants and titles issued by the Spanish or Mexican governments prior to the Texas Revolution of 1836, which have subsequently been recognized by the Republic of Texas, or by the State of Texas, as valid.

Sec. 4. No provision of this Act shall affect the rights of any parties involved in pending litigation at the effective date of this Act. The provisions of this Act are and shall be held and construed to be cumulative of all laws of this State on the subject treated of and embraced in this Act. All laws or parts of laws in conflict herewith are hereby repealed. If any section, subdivision, paragraph, sentence or clause of this Act shall be held to be unconstitutional, the remaining portions of this Act shall nevertheless be held valid and binding.

[Acts 1955, 54th Leg., p. 660, ch. 232.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5414b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

**Art. 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law**

That in any case where any land in the State of Texas was titled prior to the adoption of the Common Law on March 20, 1840, and there has been a judicial finding that the original grantee of said land abandoned said land prior to the adoption of the Common Law, and the State of Texas has at any time instituted suit for the recovery of said land, resulting in a final judgment adverse to the State of Texas whether on demurrer, exception, or a jury finding of fact, it shall be conclusively presumed that those now claiming said land under conveyance from, or judgment against, the original grantee or his heirs, are vested with all title to said land which was vested in said original grantee by virtue of any patent or title from the sovereignty of the soil to him.

[Acts 1933, 43rd Leg., p. 398, ch. 156.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**CHAPTER SEVEN. GENERAL PROVISIONS****Art.**

- 5415 to 5414e-1.5. Repealed.
- 5415e-2. Coastal Waterway Act of 1975.
- 5415e-3. Repealed.
- 5415e-4. Dredge Materials Act.
- 5415f to 5415h. Repealed.
- 5415i. Deepwater Port Procedures Act.
- 5415j to 5421a. Repealed.
- 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake.
- 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries.
- 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created.
- 5421c-1 to 5421c-3. Repealed.
- 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board.
- 5421c-5. Repealed.
- 5421c-6. Patents Validated.
- 5421c-7, 5421c-8. Repealed.
- 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations.
- 5421c-10, 5421c-11. Repealed.
- 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision.
- 5421c-13. Trade of Interests in Public Free School Fund Lands.
- 5421c-14. Sale of Surplus Real Property by Independent School Districts.
- 5421d. Patents to Lands Formerly Claimed as in New Mexico.
- 5421e. Repealed.
- 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands.

**Art.**

- 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts.
- 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326.
- 5421g. Repealed.
- 5421h-1 to 5421i. Repealed.
- 5421j. Grant of Filled-in Land to City of Corpus Christi.
- 5421j-1. Lease of Filled-in Land by City of Corpus Christi.
- 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State.
- 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission.
- 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County.
- 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County; Conveyance to State Highway Commission.
- 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation.
- 5421l. Control of Certain Property in Austin Transferred to University Regents.
- 5421m, 5421n. Repealed.
- 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect.
- 5421p to 5421s. Repealed.

**INDIAN LANDS**

- 5421z. Indian Commission.
- 5421z-1. Repealed.

**Arts. 5415 to 5415c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5415d. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 1023, ch. 235, art. 5, § 2(b), eff. Sept. 1, 1983**

Sections 1 to 6 and 8 to 10 of this article were repealed by the 1977 repealing act. Section 7 of this article was repealed by the 1983 repealing act.

Acts 1977, 65th Leg., ch. 871, repealing §§ 1 to 6 and 8 to 10 of this article, enacts the Natural Resources Code.

For disposition of the subject matter of former §§ 1 to 6 and 8 to 10 of this article, see the Disposition Table preceding the Natural Resources Code.

For disposition of the subject matter of former § 7 of this article, see Natural Resources Code, § 61.251 et seq.

**Arts. 5415d-1 to 5415d-4. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, amended § 7 of art. 5415d-3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1). As so amended (with deletions in brackets and additions underscored), § 7 reads:

**Jurisdiction and Powers of Board**

"Sec. 7. All lands used as parks in connection with public beaches but not located within the boundaries of any incorporated city and not within the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Revised Civil Statutes of Texas), and all public beaches owned in fee by the county, shall be under the jurisdiction of the board. The commissioners court of such county may designate any additional parks and facilities owned by the county, or to be managed by the county under the terms of a written contract, to be under the management and control of the board. In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:

"(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

"(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain;

"(c) To accept, receive, and expend gifts of money or other things of value from any person, group of persons, corporation, or association for the purpose of performing any function, power or authority herein invested in the board;

"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board;

"(e) To accept and receive from the county and to expend such funds as may be appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control;

"(f) To enter into contracts, leases, or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any lands under its jurisdiction, or any facilities under its control, and to execute and perform its lawful powers and functions on lands leased from others;

"(g) To have general power to make and enter into all contracts, leases, and agreements with persons, associations, and corporations relating to the management, operation, and maintenance of any concession, facility, improvement, leasehold, lands, or other property of any nature whatsoever over which such board shall have jurisdiction and control; provided that the board shall not enter into any such lease or agreement for a longer term than 40 years;

"(h) To adopt, promulgate, and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

"(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and other such agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties, and compensation. In addition, the board may also employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. For such legal services as it may require the board may call upon the county attorney of such county and in lieu thereof or in addition thereto the board may employ and compensate its own counsel and legal staff. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on other such instruments as may be required by the board;

"(j) To sue and be sued in its own name;

"(k) To expend any moneys appropriated by the commissioners court for the purpose of cleaning and maintaining lands within its

jurisdiction and public beaches including any moneys appropriated to the commissioners court by the State of Texas for such purpose;

"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas [parks] and facilities. Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed 10 [six] percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, except that the annual interest rate and discount may not exceed 10 percent per annum, (but not for less than par and accrued interest), shall be executed by the chairman and secretary of the board, shall be signed by the chairman and the secretary of the board, or shall bear the facsimile signature of either or both, shall display the seal of the board either impressed, printed, or lithographed thereon, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the board shall specify in the resolution or resolutions authorizing such bonds. All bonds issued under the provisions of this Act are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto;

"(m) The board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the county for park purposes after the same have been authorized at an election held in the manner required by law;

"(n) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for the original bonds;

"(o) To enter into contracts with adjacent counties, with Beach Park Boards in adjacent counties, and with Beach Park Boards in any city of the same county as the board, to accomplish any of the purposes authorized by this Act;

"(p) To charge and collect a reasonable fee for access or entrance to, or parking upon, any lands under its jurisdiction other than public beaches owned by the county, or for the use of any facility located on land under the jurisdiction of the board."

**Art. 5415e. Repealed by Acts 1973, 63rd Leg., p. 421, ch. 185, § 18, eff. Aug. 27, 1973**

See, now, Natural Resources Code, § 33.001 et seq.

**Art. 5415e-1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

**Art. 5415e-1.5. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979**

See, now, Natural Resources Code, § 33.201 et seq.

**Art. 5415e-2. Coastal Waterway Act of 1975**

**Short Title**

Sec. 1. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

**Policy**

Sec. 2. It is the policy of the State of Texas (i) to support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries; and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

**Findings**

Sec. 3. The legislature finds and declares that:

(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated

in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

**Definitions**

Sec. 4. As used in this chapter:

(a) "Coastal public lands" means all or any portion of the state-owned submerged land, the waters overlying those lands, and all state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(b) "Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(c) "Commission" means the State Highway Commission.

(d) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel that is generally referred to as the Gulf Intracoastal Canal.

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

**Administrative Provisions**

Sec. 5. (a) This Act shall be administered by the State Highway Commission.

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(c) Nothing in this Act shall diminish the duties, powers, and authorities of the School Land Board to manage the coastal public lands of the state.

**Duties and Powers**

Sec. 6. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(c) Subject to the provisions of Subsection (g) of this section, the commission is authorized to acquire by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway, including but not limited to easements and rights-of-way for dredge material disposal sites and easements and rights-of-way for channel expansion, relocation, or alteration, save and except oil, gas, sulphur, and other minerals of any kind or character which can be recovered without utilizing the surface of any such land for exploration, drilling, or mining purposes. All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. However, the commission does not have the authority to condemn any submerged public lands under the jurisdiction of the School Land Board.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act. All such agencies and political subdivisions are hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the commission to meet its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway.

(f) The commission, in cooperation with all appropriate persons, shall continually evaluate the Gulf Intracoastal Waterway as it relates to Texas. Such evaluations shall include an assessment of the importance of the Gulf Intracoastal Waterway, including an identification of direct and indirect beneficiaries; identification of principal problems and possible solutions to such problems, including estimated costs, economic benefits, and environmental effects; evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and specific recommendations for legislative actions that the commission believes to be in the best interest of the state in carrying out the policy of the state as declared in Section 2 of this Act. The results of this evaluation shall be published in a report to be presented to each regular session of the legislature.

(g) Prior to approval or implementation by the commission of any plan or project for acquisition or acquisition of any property or interest in property for any dredge material disposal site, or for the

widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway which requires the acquisition of any additional property or interest in property, to satisfy federal local sponsor requirements, the commission shall hold public hearings for the purpose of receiving evidence and testimony concerning the desirability of such proposed dredge material disposal site and of any such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, prior to which hearing the commission shall publish notice of such plan, project, and hearing, at least once a week for three successive weeks in a newspaper of general circulation published in the county seat of each county in which any such proposed dredge material disposal site or part thereof is located and in which the channel or any portion of the channel of the Gulf Intracoastal Waterway to be widened, relocated, or altered is located, of the date, time, and place of such hearing. If after such public hearing the commission shall determine that such proposed dredge material site plan or project or such proposed plan or project for widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, as the case may be, can be accomplished without unjustifiable waste of publicly or privately owned natural resources and without permanent substantial adverse impact on the environment, wildlife, or fisheries, the commission may then, upon its approval of such plan or project, proceed to implement such plan or project and acquire, in such manner as is provided in Section 6(c) of this Act, such additional property or interest in property necessary to satisfy federal local sponsorship requirements for implementation of such plans for such dredge material site or for such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway.

#### Funding

Sec. 7. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purposes of this Act.

[Acts 1975, 64th Leg., p. 405, ch. 181, §§ 1 to 7, eff. Sept. 1, 1975.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5415e-3. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979**

See, now, Natural Resources Code, § 33.231 et seq.

**Art. 5415e-4. Dredge Materials Act**

#### Short Title

Sec. 1. This Act may be cited as the Dredge Materials Act.

**Policy**

Sec. 2. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

**Definitions**

Sec. 3. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Texas Water Quality Board.<sup>1</sup>

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

<sup>1</sup> See, now, the Department of Water Resources, Water Code, § 5.001 et seq.

**Limitations**

Sec. 4. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

(1) by the corps of engineers;

(2) by persons operating under contract with the corps of engineers;

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or postmarked before the effective date of the agreement described in this Act.

**Agreement**

Sec. 5. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the United States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

**Not Severable**

Sec. 6. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

[Acts 1977, 65th Leg., p. 1906, ch. 759, §§ 1 to 6, eff. Aug. 29, 1977.]

**Arts. 5415f to 5415h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5415i. Deepwater Port Procedures Act****Short Title**

Sec. 1. This Act shall be entitled the Texas Deepwater Port Procedures Act.

**Purpose**

Sec. 2. The purpose of this Act is to authorize state and local governmental agencies to perform and fulfill the responsibilities of the State of Texas under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and to establish the procedures by which such state and local agencies will determine that applications for deepwater ports off the Texas Gulf Coast are in compliance with applicable state and local laws.

**Definitions**

Sec. 3. In this Act:

(1) "Adjacent coastal county" means any Texas county, bordering on the Gulf of Mexico, in which are located the onshore storage facilities of a deepwater port, as defined in Subdivision (5) herein.

(2) "Applicant" means a person who has filed an application, as defined in Subdivision (3) below.

(3) "Application" means any application submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license.

(4) "Commissioner" means the commissioner of the general land office, or his designated representative.

(5) "Deepwater port" means (A) the facilities defined in Section 3(10) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes (B) the onshore storage tank facilities and the pipelines located within the State of Texas which connect such onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Governor" means the Governor of the State of Texas.

(7) "Person" means any individual, association, organization, trust, partnership, or corporation.

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

(9) "State or local agency" means any board, commission, department, office, agency, or political subdivision of the state or of any county or city in the state, or any other public body created by or pursuant to state law.

**Administration of the Act**

Sec. 4. The governor is hereby designated as the officer of the state to approve or disapprove an application to the secretary of transportation to own, construct, or operate a deepwater port off the Texas Gulf Coast. The commissioner of the general land office is hereby designated the officer of the state charged with the administration, implementation, and coordination of the provisions of this Act relating to the determination by state or local agencies that such an application complies with state and local laws relating to environmental protection, land and water use, and coastal zone management.

**Determination of Compliance with State and Local Law**

Sec. 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to the commissioner of the general land office and to the Attorney General of Texas.

(b) If the governor determines that the application transmitted from the secretary of transportation is substantially similar to a previous application already reviewed under the terms of this Act, the governor may notify the secretary of transportation whether the governor approves or disapproves the application, and there shall be no further proceedings under this Act on such application.

(c) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

(d) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within

whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein.

(e) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (d) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

(f) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

(g) If any state or local agency reports to the commissioner that the application is not in compliance, such agency shall set forth in detail the manner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

(h) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (f) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

(i) One copy of the application shall be filed in the general land office and in the office of the county judge of the adjacent coastal county for public inspection and shall be available to the public for inspection or duplication during normal business hours. A person requesting a copy of the application may be charged a reasonable fee for duplicating and mailing costs. The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.

#### Hearings on the Application

Sec. 6. (a) As provided in Section 5(f) of this Act, an applicant shall be entitled to a public hearing on the provisions in his application which have been determined by a state or local agency not to be in compliance with the laws which they have jurisdiction to administer.

(b) Upon receipt of a request from an applicant for such a hearing, the commissioner shall publish notice of such hearing as provided in Section 5(b) of this Act. The notice shall describe the purpose of

the hearing and the date, time, and place of the hearing. The date of the publication and of any personal notice of the hearing shall be not less than 10 days before the date set for the hearing.

(c) The commissioner may also hold a public hearing on the determination of compliance reports submitted to him by the state and local agencies. Notice of such hearing shall be given as provided by Subsection (b) of this section.

(d) The commissioner may consolidate any hearing held under this section with the hearing required by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., to be held in Texas by the secretary of transportation.

(e) All hearings on the application shall be concluded not later than 120 days after the date on which the commissioner received the application from the governor; provided, however, that the commissioner shall be entitled to hold a hearing after such 120 day period if the federal hearing required to be held in Texas has not been held and the commissioner has determined and given notice that a hearing provided for in this section will be held in conjunction with the federal hearing.

(f) Notwithstanding Subsection (e) of this section, the commissioner shall be required to comply with the date provided in Section 7(a) for transmitting his report to the governor.

#### Report to the Governor

Sec. 7. (a) Within 150 days after the receipt of an application from the governor, the land commissioner shall transmit to the governor a report in the form of a written summary of the determination of compliance reports submitted by any state or local agency, together with the transcript and testimony from any public hearing held by the commissioner or any joint hearing held in the state with the secretary of transportation.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in his report the manner in which the application does not comply and how the application can be brought into compliance.

(c) The failure of the commissioner to transmit his summary report to the governor within the time period established in Subsection (a) of this section shall constitute a presumption that the application complies with state and local law.

#### Action on the Application by the Governor

Sec. 8. (a) Upon receipt of the report from the commissioner, and not later than 45 days after the last public hearing held on the application by the secretary of transportation pursuant to Section 5(g) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall notify the



secretary of transportation whether he approves or disapproves the application.

(b) If the governor concludes that the application does not comply with state laws relating to environmental protection, land and water use, and coastal zone management, he may disapprove the application. However, if he concludes that the application can be amended to comply with such laws, he may approve the application and shall notify the secretary of transportation of the manner in which the application does not comply and how the application can be brought into compliance with such laws.

(c) The governor shall transmit copies of his notification to the secretary, the applicant, the commissioner, and to the state and local agencies to whom were transmitted copies of the application by the commissioner pursuant to Section 5(d) herein.

#### MISCELLANEOUS PROVISIONS

Secs. 9 to 12. [Amends art. 6020a, §§ 1, 3; adds § 4 of art. 6020b and § 12A of art. 5415g (now all repealed; see Natural Resources Code)].

#### Effect on Other Laws

Sec. 13. Nothing herein shall be construed in any way to limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency, but all power and authority vested in and exercised by such agencies are hereby specifically reserved as to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed, or repealed by the provisions hereof.

[Acts 1975, 64th Leg., p. 2213, ch. 705, §§ 1 to 13, eff. June 21, 1975. Amended by Acts 1977, 65th Leg., 1st C.S., p. 73, ch. 5, § 2, eff. July 26, 1977.]

**Art. 5415j. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979**

See, now, Natural Resources Code, § 201.001 et seq.

**Arts. 5416, 5416a. Repealed by Acts 1969, 61st Leg., p. 3024, ch. 889, § 2, eff. Sept. 1, 1969**

Acts 1969, 61st Leg., p. 2735, ch. 889, repealing these articles, enacts Titles 1 and 2 of the Texas Education Code.

**Arts. 5417 to 5421a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake**

Sec. 1. All public land lying beneath or adjacent to the waters of Caddo Lake in Marion, Harrison and adjoining counties, and all such public lands heretofore sold by the State that may hereafter revert to the State and become a part of the public

domain, be and the same is hereby withdrawn from the market and the title thereto shall remain in the State of Texas to be enjoyed by the public for fishing and hunting and for State park purposes as may hereafter be provided by Law; and the Land Commissioners<sup>1</sup> is hereby directed to offer no portion of said land for sale nor to receive any bids therefor.

Sec. 2. The Commissioner of the General Land Office may lease any or all of said land for mineral purposes, as now provided by Law, but before the same shall be leased it shall be advertised in some newspaper published at Marshall or Jefferson Texas, stating what land is to be leased and the prices offered therefor; and such advertisement shall invite other and additional bids thereon, and the lease shall only be made to the highest bidder.

[Acts 1929, 41st Leg., p. 430, ch. 198.]

<sup>1</sup> So in Session Laws.

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries**

Sec. 1. All or any part of the Public Lands belonging to the State situated in and under the bed of Caddo Lake and the tributaries thereto and all or any part of such lands adjacent thereto shall be subject to lease for mineral development by the Commissioner of the General Land Office to any person, firm or corporation in accordance with the provisions of existing or future laws pertaining to the leasing and development of all islands, salt-water lakes, bays, inlets, marshes and reefs, owned by the State within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and all unsold public free school land, both surveyed and unsurveyed, in so far as same are not in conflict herewith.

Sec. 2. The development and operation upon the lands included herein shall be conducted so far as practicable in such manner as to prevent such pollution of the water as will destroy fish or wildlife. The Commissioner of the General Land Office, with the advice and assistance of the Game and Fish Commission, shall prescribe and enforce such rules and regulations as may be necessary for that purpose.

[Acts 1955, 54th Leg., p. 844, ch. 311.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created**

Secs. 1 to 8. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977.

Sec. 8-A. The beds of rivers and channels belonging to the State shall be subject to development by the State and to lease or contract for the recovery of petroleum oil and/or natural gas, in tracts of such size as may from time to time be determined by the hereinafter created board, subject to the conditions contained in this Section.

Subsecs. 1 to 6a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977.

Subsec. 6b. As to any and each lease and/or contract heretofore made by the Board of Mineral Development, such Board shall be, and it is hereby, authorized and empowered to revise the same, with the consent of the lessees and/or contracting parties thereunder, their heirs, successors or assigns, in such wise as to subject such lease and/or contract thenceforth to the public policy declared in Subsection 6a. Such revision shall be accomplished by supplemental or modificatory instrument on such terms as the Board of Mineral Development may deem fair and advantageous to this State, but only after a proposal for such revision shall be formally made, in a public document, to the said Board of Mineral Development, by the lessees and/or contracting parties under such lease and/or contract, their heirs, successors or assigns; and provided that in consideration of the consent by such lessees and/or contracting parties, their heirs, successors or assigns, to such revision the Board of Mineral Development shall not reduce the State's share of the oil and/or gas to be received in the future under such lease and/or contract to less than one-fourth of the gross production of oil and/or gas from the land described in such lease and/or contract.

Provided that any revision made under this Act as referred to hereinbefore shall contain in such supplemental or modificatory instrument the power and authority on the part of the Board of Mineral Development to re-instate any money requirement or reduced royalty requirement at any time that in the opinion of the Board such re-instatement should, in view of the then existing conditions and fairness to the State of Texas under the original lease or contract, be made; and the Board of Mineral Development shall exercise such power whenever in its opinion the interest of the State of Texas requires the exercise of such power; provided, further that said Board may modify said contract as aforesaid by adjusting up or down from time to time the State's portion of said oil and/or money payment as the conditions hereinbefore set forth may justify and which may be equitable to the State and to said contractors or their assigns, but in no event shall the State's portion be less than one-fourth nor more

than now provided in said contracts, and in no event shall the Board of Mineral Development have any authority to modify or change said original leases as to gas. Provided, further that no revision made under this Act shall release the lessees or their assigns from the payment to the State for any oil and/or gas produced or the delivery to the State of any oil produced and due the State under the original contracts and produced prior to the effective execution of any revision hereunder.

Provided further, that nothing in such revision shall in anywise relieve any lessee and/or contracting party from any obligation now existing to drill any well either as an offset or otherwise.

"And/or" as used in this Act shall mean and include both and either of the words "and" and "or."

Subsec. 6c. No change shall be made by the Board of Mineral Development that will relieve, release and/or suspend the lessees from the payment of any money and/or royalty now due and payable to the State for oil and/or gas produced to the date that the Board makes any change in the present existing lease contracts.

Sec. 8A, Subsec. 7 to Sec. 12. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977.

[Acts 1931, 42nd Leg., p. 452, ch. 271. Amended by Acts 1931, 42nd Leg., 2nd C.S., p. 64, ch. 40; Acts 1933, 43rd Leg., p. 192, ch. 88; Acts 1933, 43rd Leg., p. 309, ch. 120, §§ 1, 1a; Acts 1939, 46th Leg., p. 465, § 1; Acts 1941, 47th Leg., p. 596, ch. 365, § 1; Acts 1943, 48th Leg., p. 453, ch. 301, § 1; Acts 1953, 53rd Leg., p. 77, ch. 57, § 1; Acts 1957, 55th Leg., p. 434, ch. 209, § 1; Acts 1963, 58th Leg., p. 920, ch. 352, § 1, eff. Aug. 23, 1963; Acts 1971, 62nd Leg., p. 1698, ch. 491, § 1, eff. May 27, 1971; Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), (b), eff. Sept. 1, 1977.]

**Saved from Repeal**

*Subsections 6b and 6c of Section 8A of this article were expressly saved from repeal by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(b).*

Acts 1977, 65th Leg., ch. 871, repealing this article and expressly saving from repeal subsecs. 6b and 6c of Sec. 8A, enacts the Natural Resources Code.

**Arts. 5421c-1 to 5421c-3. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

Without reference to repeal of art. 5421c-3 by Acts 1977, 65th Leg., p. 2689, art. I, § 2(a)(1), Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, added subd. 3a thereto to read:

"The School Land Board is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985."

**Art. 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board**

Sec. 1. The School Land Board, created by House Bill No. 9 of the Forty-sixth Legislature (being Title: Public Lands, Chapter 3, of the General Laws of the Forty-sixth Legislature, 1939),<sup>1</sup> is hereby authorized to grant and issue easements or surface leases to the United States of America in accordance with the conditions hereinafter set out, on any island, salt water lake, bay, inlet, or marsh within tidewater limits, and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas, to be used exclusively for any purpose essential to the National Defense.

Sec. 2. When the proper authority or agency of the United States of America shall make application to the School Land Board describing the area which is deemed necessary for use in the National Defense said Board shall issue an easement or surface lease to the United States of America granting and conveying to it the free and uninterrupted use of the area described. Provided that before such lease or leases be granted in any county that the Board shall notify the County Judge of said county and shall fix a date for hearing at which time all interested persons may be heard in protest or otherwise. Such easement or surface lease shall be effective only so long as the area is used for the purpose of National Defense, and it shall cease and terminate and the State of Texas shall be revested with full title and possession of the area when same is no longer used for such purpose.

Sec. 3. The easements or surface leases granted hereunder shall be upon the express condition that the State of Texas shall retain all of the oil, gas, and other mineral rights in and under the area affected. The consideration to be paid for the use of said areas shall be agreed upon by the School Land Board and the United States of America and it shall be payable to the State of Texas on an annual basis.

Sec. 4. All leases for grazing purposes heretofore issued by the Commissioner of the General Land Office which are covered or partially covered by any easement or surface lease granted hereunder are hereby made subordinate to such easement or surface lease. If the lessee under any existing oil and gas lease heretofore granted by the State on any area affected by an easement or surface lease granted hereunder, shall file or cause to be filed in the General Land Office an agreement, subordinating to the easement or surface lease granted hereunder all rights held by such lessee under such oil and gas lease, then and in that event the running of both the primary and principal terms of such lease shall be suspended during the existence of such easement or lease; provided, however, that lessee continues the annual rental payment stipulated in the lease during such suspended period. Such oil and gas lease shall remain in status quo, and all

obligations, duties, rights and privileges existing under such lease shall be inoperative and of no force and effect until the expiration of said easement or surface lease, at which time said oil and gas lease shall again become operative and all of the obligations, duties, rights and privileges, including the payment of rentals under same, shall again attach and be in force as they were on the date of the suspension and continue for the unexpired term of such lease. The School Land Board shall give notice immediately to such lessees that their leases are again in force when said easement or surface lease has terminated; provided, however, that the annual rental payments have been met.

Sec. 5. All areas on which there now exists oil, gas, or other mineral production are specifically excluded from the terms of this Act.

[Acts 1941, 47th Leg., p. 20, ch. 10.]

<sup>1</sup> Articles 5421c to 5421c-3.

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421c-5. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

**Art. 5421c-6. Patents Validated**

All patents issued prior to the effective date of Article 5421-c as amended by House Bill No. 9 of the Forty-sixth Legislature, such effective date being September 21, 1939, by the authority of the State, under the seal of the State and of the Land Office, signed by the Governor and countersigned by the Commissioner of the General Land Office to parties who for a period of ten (10) years prior to the date of application for the patent had held and claimed the same in good faith, under the provisions of Section 5 of Chapter 271, Acts of the Forty-second Legislature, Regular Session,<sup>1</sup> are hereby ratified and title validated and confirmed in such patents, their heirs or assigns, subject only to the mineral reservation as contained in Section 4, Chapter 271, Acts of the Forty-second Legislature, Regular Session,<sup>2</sup> and without regard to whether or not such land was located within five (5) miles of a well producing oil or gas in commercial quantities at the time of such patent.

[Acts 1943, 48th Leg., p. 368, ch. 247, § 1.]

<sup>1</sup> Section 5 of article 5421c (repealed).

<sup>2</sup> Section 4 of article 5412c (repealed; see, now, Natural Resources Code, §§ 51.052, 51.054, 51.056).

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5421c-7, 5421c-8. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

**Art. 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations**

The time for the payment of all notes or obligations executed by purchasers of school land for the unpaid balance of principal due the state thereon which are due or will become due prior to November 1, 1966, is hereby extended to November 1, 1971, subject to all the pains and penalties provided in the Acts under which the purchases were made; provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installments of interest; and provided further, that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate of one percent (1%) per annum higher than originally provided for, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, 42nd Legislature.<sup>1</sup> In cases wherein fifty percent (50%) or more of the balance of principal remaining unpaid has been paid by November 1, 1971, then a further extension until November 1, 1981, shall be granted for the payment of the remainder, subject to the conditions herein made to the extension to November 1, 1971.

[Acts 1961, 57th Leg., p. 901, ch. 399, § 1.]

<sup>1</sup> Article 5421c, § 7 (repealed; see, now, Natural Resources Code, § 51.070).

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5421c-10, 5421c-11. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding Natural Resources Code.

**Art. 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision**

**Sec. 1.** No land owned by a political subdivision of the State of Texas may be sold or exchanged for other land without first publishing in a newspaper of general circulation in the county where the land is located or in an adjoining county, if there is no such newspaper, a notice that the land is to be offered for sale or exchange to the general public, its description, its location and the procedures under which sealed bids to purchase the land or offers to trade for the land may be submitted. Notice shall be so given at least on two separate occasions and no sale or exchange shall be held less than 14 days after the last notice.

**Sec. 2.** Bid procedures and publication requirements as set forth in Section 1 of this Article shall not be applicable in the sale or disposal of real property interests belonging to a political subdivision in the following circumstances:

(a) Narrow strips of land, or land so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development control ordinances, in which event such land may be sold to the abutting property owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(b) Streets or alleys, whether owned in fee or used by easement, in which event such land or interest may be sold to the abutting owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(c) All types of easements where the abutting property owner or owners also own the underlying fee simple title, in which event such land or interest may be sold to the abutting property owner or owners in proportion to their abutting ownership, such division between owners to be made in an equitable manner.

(d) Any land or interest therein which was originally acquired for the purpose of streets, rights-of-way or easements which the political subdivision chooses to trade or exchange as consideration for other land acquired for streets, rights-of-way or easements, including transactions which may be partly for cash and partly by trade or exchange.

(e) Land owned by a political subdivision which it desires to have developed by contract with an independent foundation.

**Sec. 3.** Nothing in this Act shall require the governing body of any such political subdivision to accept any bid or offer or be required to consummate any sale or trade and does not apply to lands in the Permanent School Fund that are authorized by Legislative Act to be exchanged or traded for other lands of at least equal value.

Sec. 4. Any conveyance, sale or trade made under the exemptions set forth in Section 2, shall never be for less than the fair market value of the land or interest being conveyed, sold, or traded, as determined by an appraisal obtained by the political subdivision, which shall be conclusive of the fair market value thereof.

[Acts 1969, 61st Leg., p. 1512, ch. 455, eff. June 10, 1969. Amended by Acts 1973, 63rd Leg., p. 256, ch. 124, § 1, eff. May 18, 1973.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5421c-13. Trade of Interests in Public Free School Fund Lands

##### Authority

Sec. 1. (a) The School Land Board in conjunction with the General Land Office is authorized to trade fee and lesser interests in Public Free School Fund Lands for fee and lesser interests in lands not dedicated to the Public Free School Fund upon a decision by the School Land Board and the Commissioner of the General Land Office that such trade or trades are in the best public interest of the People of Texas. Such trade or trades may be made either for the purpose of aggregating sufficient acreage of contiguous lands to create a manageable unit; for acquiring lands having unique biological, geological, cultural, or recreational value; or to create a buffer zone for the enhancement of already existing public land, facilities, or amenities. Such trades shall be on an appraised value basis (such appraisal to be made by appraisers of the General Land Office and concurred in by the School Land Board, and such appraisal shall be conclusive proof of the value of the land). The trades shall be for land of at least equal value. Such trades shall be by a deed to be signed jointly by the Commissioner of the General Land Office and the Governor. Failure of the Governor to sign such a deed constitutes his veto of the proposed trade, and the proposed trade shall not be made.

(b) All lands acquired by trade under the authority of this Act shall be dedicated to the Public Free School Fund.

##### Subsurface Mineral Rights

Sec. 1A. If the State of Texas retains the subsurface mineral rights to all oil, gas, and other minerals in public free school fund land traded under Section 1 of this Act, an unrestricted right of ingress to and egress from the land by the state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which rights are retained by the state. The state is entitled to lease the subsurface mineral rights retained under this sec-

tion in the same manner and under the same conditions as subsurface mineral rights in permanent school fund land in which the state owns the surface title and the subsurface mineral rights. A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section. Notwithstanding anything to the contrary in this article, the School Land Board, in order to consummate a trade of equal value, is given the discretionary right to convey the surface estate and to reserve all the oil, gas, and other minerals with the surface owner acting as agent for the state under what is commonly known as the Relinquishment Act,<sup>1</sup> thereby receiving one-half the bonus, rental, and royalty as agent for the state in leasing the land and for surface damages in the leasing of oil and gas. The surface owner shall also receive 40 percent of the bonus, rental, and royalty for leasing and as compensation for surface damages for all leases negotiated by such agent covering sulphur, coal, lignite, uranium, and potash as set out under Chapter 16, Acts of the 62nd Legislature, Regular Session, 1967, as amended (Article 5421c-10, Vernon's Texas Civil Statutes).<sup>2</sup>

##### Accountability

Sec. 2. In the event any such trade or trades be made, the School Land Board shall report each trade to the succeeding legislature, setting out such facts as warranted the trade or trades.

##### Expiration

Sec. 3. The authority granted by this Act to trade Public Free School Fund Lands shall expire on December 31, 1982, and no trades shall be made after that date.

##### Repealer

Sec. 4. All other laws or parts of laws in conflict with this Act are repealed to the extent of the conflict.

##### Severability

Sec. 5. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provisions, or part of this Act should be held to be invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is hereby declared to be the legislative intent that this Act would have been passed as to the remaining portions, regardless of the invalidity of any part.

[Acts 1973, 63rd Leg., p. 1631, ch. 590, eff. June 15, 1973. Amended by Acts 1975, 64th Leg., p. 1296, ch. 487, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 823, ch. 307, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 73, ch. 47, § 1, eff. April 11, 1979.]

<sup>1</sup> See Natural Resources Code, § 52.171 et seq.

<sup>2</sup> Repealed; see, now, Natural Resources Code, § 53.061 et seq.

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421c-14. Sale of Surplus Real Property by Independent School Districts****Definitions**

Sec. 1. In this Act:

(a) "District" means any independent school district functioning under the Texas Education Code.

(b) "Board" means the governing body of a district.

(c) "Real property" means land and all buildings and fixtures permanently attached thereto, and any interest therein.

(d) "Bonds" means bonds, notes, contracts, and any other evidences of an obligation to pay a sum of money.

**Sale of Real Property; Requirements**

Sec. 2. The board of a district may sell real property owned by the district and issue revenue bonds payable from the proceeds of the sale subject to the following requirements:

(a) The board must find and determine by order duly passed that the real property is surplus to, and not required for, the then current needs of the district for educational purposes, and the proceeds from the sale are required and will be used for (i) the construction and/or equipment of school buildings in the district and/or the purchase of any necessary sites therefor, and/or (ii) for the payment of principal of, and interest and premium on, any bonds issued pursuant to this Act.

(b) The real property may be sold for such price and upon such terms and conditions as are found and determined by order duly passed by the board to be most advantageous to the district, and the sale may be made pursuant to an installment sale agreement or contract or any other method; provided, however, that the sale must be for cash and all payments for the real property must be scheduled to be paid not more than 10 years after the date of execution of the agreement or contract of sale, and no real property shall be sold for less than an aggregate price equal its fair market value as determined by an appraisal obtained by the district not more than 180 days prior to the publication of the notice required by Section 2(c)(iii) of this Act, which appraisal shall be conclusive of the fair market value thereof for the purposes of this Act.

(c) Prior to selling or executing any agreement or contract for the sale of the real property the board shall comply with the procedures as follows:

(i) determine which real estate is proposed to be sold;

(ii) determine the scope of the terms and conditions upon which it will consider selling the real property, and, if the sale price is to be paid in installments, require the purchasers of the real property to secure the payment of the sale price by escrowing collateral acceptable to the board such as a letter of credit, United States government bonds, or any other generally recognized form of guarantee or security;

(iii) publish a notice to prospective purchasers at least two weeks prior to the date set for receiving proposals in a real estate journal and in at least two newspapers of general circulation in the district, requesting sealed written proposals from prospective purchasers to purchase the real property, such notice to include the scope of the terms and conditions of sale which will be considered, and the time, date, and place where the proposals will be received; and

(iv) find and determine by order duly passed by the board which sealed written proposal is most advantageous to the district, and accept such proposal, or reject all proposals if deemed advisable.

(d) Prior to selling the real property, such sale shall have been approved by a majority of the qualified voters of the district voting at an election held in the district at which a proposition to ascertain such approval is submitted; provided, however, that no such election shall be required if the board finds and determines by order duly passed that the proceeds from the sale of the real property are required and will be used (i) for the construction and/or equipment of, or (ii) for the payment or principal of, and interest and premium, if any, on bonds issued pursuant to this Act for the purpose of construction and/or equipment of, a school building or school buildings which is or are to be constructed pursuant to or in accordance with an order or judgment entered by a United States District Judge in any action or cause in which the district is a party.

**Nonapplicability of Laws Pertaining to Sale of Public Property**

Sec. 3. The provisions and requirements of Chapter 455, Acts of the 61st Legislature, Regular Session, 1969 (Article 5421c-12, Vernon's Texas Civil Statutes), and Chapter 276, Acts of the 61st Legislature, Regular Session, 1969 (Article 5421g, Vernon's Texas Civil Statutes), and all other general laws affecting or pertaining to the sale of public property, shall not apply to sales of real property pursuant to this Act.

**Contracts; Authority and Terms**

Sec. 4. The district is authorized to execute contracts for the construction and/or equipment of school buildings in the district and/or the purchase of any necessary sites therefor in the manner provided by law, provided that if any such contract recites that payments thereunder are to be made either from (i) the proceeds from the sale of real property under an installment sale agreement or

any similar method pursuant to this Act, or (ii) from proceeds from the sale of bonds issued pursuant to this Act, then such contract may be made payable in installments to correspond with the receipt by the district either of (i) proceeds under any such sale agreement, or (ii) proceeds from the sale of any such bonds which are to be issued and delivered in more than one issue, series, or installment; and the contract shall not be deemed to constitute a prohibited debt or indebtedness of the district if the payments thereunder are required to be made solely from the proceeds from such sale of real property or such bonds.

#### Bonds; Requirements

Sec. 5. In addition to the foregoing powers granted and authorized by this Act, any board, for and on behalf of its district, may, at its option, issue, sell, and deliver revenue bonds of its district from time to time and in one or more issues, series, or installments, with the principal of, and interest and premium, if any, on such bonds, to be payable from and secured by liens on and pledges of all or any part of any of the revenue, income, payments, or receipts derived by the district from the sale of real property pursuant to this Act, and such amounts may be pledged by the district to the payee of the principal of, and interest and premium, if any, on such bonds, subject to the following requirements:

(a) Bonds must be issued by an order duly passed by the board (a "bond order").

(b) The bonds must be issued for the purpose of the construction and/or equipment of school buildings in the district and/or the purchase of any necessary sites therefor.

(c) The bonds shall mature, come due, or be payable serially, in installments, or otherwise, within not to exceed 90 days after the last date upon which the final payment is due to the district from the sale of the real property, and provisions may be made in the bond order for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the bond order.

(d) The bonds may be executed, made redeemable prior to maturity or due date, be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and the bonds may bear interest at such rates, all as shall be determined and provided in the bond order.

(e) If so provided in any bond order the proceeds from the sale of the bonds may be used for paying interest on the bonds during the period of construction and/or equipment of any school buildings to be provided through the issuance of the bonds, or for creating a reserve fund for the payment of principal and interest on the bonds, and such proceeds may be placed on time deposit, in certificates of deposit, or invested, until needed, all to the extent, and in

the manner provided, in any bond order, and such proceeds also may be used for paying the costs and expenses of issuing the bonds and selling the real property.

(f) The bonds shall be payable only from the revenues described above, and shall not be payable or paid from any taxes levied and collected in the district.

(g) Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes) (and particularly Section 7A thereof), with respect to refunding, Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), with respect to interest rates, and Chapter 845, Acts of the 67th Legislature, Regular Session, 1981 (Article 717k-6, Vernon's Texas Civil Statutes), with respect to bond procedures, all being statutes of general application to all bonds, shall be applicable to bonds issues pursuant to this Act.

(h) If bonds are issued pursuant to this Act, such bonds, along with the appropriate proceedings authorizing their issuance, and the sale agreement the proceeds from which they are payable, shall be submitted to the attorney general of Texas for examination. If he finds that the bonds have been authorized, and such sale agreement has been executed, in accordance with law, he shall approve the bonds and the sale agreement, and thereupon the bonds shall be registered by the comptroller of public accounts of Texas, and after such approval and registration such bonds and sale agreement shall be valid, binding, and enforceable obligations in accordance with their terms and provisions for all purposes, and they shall be incontestable in any court or other forum for any reason. It is specifically provided, however, that if, after the initial issuance of any bonds under this Act payable from the proceeds of a particular sale agreement, one or more subsequent issues, series, or installments of bonds are issued as additional parity bonds, on a parity with such initial bonds and payable from the proceeds of that sale agreement, then, at the option of the board, such subsequent issues, series, or installments of bonds need not be submitted to the attorney general or approved by him, or registered by the comptroller of public accounts, and such subsequent bonds shall, upon delivery thereof and payment therefor, be valid, binding, enforceable, and incontestable in the same manner and with the same effect as if they had been approved by the attorney general and registered by the comptroller of public accounts as were the initial bonds.

#### Liberal Construction

Sec. 6. This Act shall be construed liberally to effectuate the legislative intent and the purposes of the Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

**Sale of Property and Issuance of Bonds Under  
Other Law; Nonrestriction**

Sec. 7. This Act does not restrict the power of a school district to sell property or issue bonds as provided by other law.

[Acts 1983, 68th Leg., p. 5201, ch. 948, §§ 1 to 7, eff. June 19, 1983.]

Section 8 of the 1983 Act provides:

"In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that the Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

**Art. 5421d. Patents to Lands Formerly Claimed  
as in New Mexico**

Sec. 1. That the Commissioner of the General Land Office is authorized and requested to prepare and issue, and the Governor is authorized to execute and deliver, patents for the lands and accretions thereto, heretofore claimed by New Mexico to be in that state, but determined by the Supreme Court of the United States by Decree entered April 9, 1928 (New Mexico against Texas, 276 U.S. 556) to be in Texas, to the persons who, on April 9, 1928, were in actual bona fide possession of said lands and claiming title to such lands under patent from the United States.

Sec. 2. In order to receive a patent under this Act, the person desiring such patent shall first make written application to the Commissioner of the General Land Office, describing the land for which a patent is sought and shall show in such application the facts necessary under this Act to entitle applicant to a patent hereunder, and the applicant shall verify the allegations in the application by any accompanying Affidavit, stating that such allegations are true to the best of the knowledge and belief of the applicant, and it shall be necessary that any such application be filed in the office of the Commissioner of the General Land Office within five (5) years from the date upon which this Act goes into effect, and the applicant shall, upon filing said application, deposit with the Commissioner of the General Land Office One Dollar (\$1.00) for each acre or fractional part of an acre in the land covered by the application, which shall constitute the purchase price for said land, and upon the delivery of any patent to any person under this Act, the purchase price shall be applied to the Public School Fund of the State of Texas.

Sec. 3. It is further provided that any land acquired by the patent issued under this Act shall be subject to the same liens other than liens for taxes and water and like quasi public charges that would have been against such land had it been in New Mexico.

Sec. 4. It is provided that patents issued under this Act shall be merely quitclaims, and the title conveyed by such patents shall be subject to any prior conveyances by this State, and the patents shall so read.

Sec. 5. As used in this Act, the term "person" applies to and includes an individual, corporation, partnership, or association.

[Acts 1933, 43rd Leg., p. 634, ch. 212.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421e. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

**Art. 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands**

The time for the payment of all notes or obligations executed prior to November 1, 1901, by purchasers of school land for the unpaid balances of principal due the State thereon is hereby extended for a period of ten (10) years from and after the passage of this Act, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, Forty-second Legislature.<sup>1</sup>

[Acts 1934, 43rd Leg., 3rd C.S., p. 76, ch. 37, § 1.]

<sup>1</sup> Article 5421c, § 7 (repealed; see, now, Natural Resources Code, § 51.070).

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421f-1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts**

The time for the payment of all notes or obligations executed by purchasers of school land for the unpaid balance of principal due the State thereon



which are due or will become due prior to November 1, 1951, is hereby extended to November 1, 1951, subject to all the pains and penalties provided in the Acts under which the purchases were made, provided that the extension of time herein granted shall apply only to installments of principal, and shall not apply to any installment of interest; and provided further that the unpaid balances of principal upon which an extension of time for payment is hereby granted shall bear interest during said period of extension at the rate provided for in the contract of purchase hereby extended, and past due installments of interest shall bear interest at the rate provided for in Section 7, Chapter 271, General Laws, Regular Session, Forty-second Legislature.<sup>1</sup>

[Acts 1941, 47th Leg., p. 351, ch. 191, § 1.]

<sup>1</sup> Article 5421c, § 7 (repealed; see, now, Natural Resources Code, § 51.070).

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5421f-2. Reinstatement of Claims to Lands Forfeited Under Article 5326

The purchasers or their vendees, heirs or legal representatives who have used, occupied, and made improvements on lands prior to the date of forfeiture, and which lands have been forfeited under the provisions of Article 5326, Revised Civil Statutes of Texas as amended by said House Bill No. 56,<sup>1</sup> and who shall have, within six months after the expiration of the five year limitation period provided for reinstatement in Section 3 of said House Bill No. 56,<sup>2</sup> and prior to January 1, 1947, paid or tendered payment to the Commissioner of the General Land Office of all delinquent interest, accompanied by written requests for reinstatement, may have their claims reinstated by renewing such requests and paying all delinquent interest up to the date of reinstatement.

[Acts 1947, 50th Leg., p. 275, ch. 169, § 1.]

<sup>1</sup> Acts 1941, 47th Leg., p. 351, ch. 191.

<sup>2</sup> Article 5326 (repealed).

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5421g. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

#### Arts. 5421h-1, 5421h-2. Repealed by Acts 1971, 62nd Leg., p. 658, ch. 58, § 2, eff. Aug. 30, 1971

Acts 1971, 62nd Leg., p. 110, ch. 58, repealing these Articles, enacts the Texas Water Code.

#### Art. 5421i. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

#### Art. 5421j. Grant of Filled-in Land to City of Corpus Christi

Sec. 1. All right, title and interest of the State of Texas in and to all land within the area hereinafter mentioned, hitherto lying and situated under the waters of Corpus Christi Bay for and in consideration of the sum of Ten Thousand Dollars (\$10,000) cash, is hereby relinquished, confirmed and granted unto the said City of Corpus Christi, its successors and assigns, for public purposes, to-wit:

Being all of that filled-in land lying and being situated in Nueces County, Texas, landward behind the seawall and easterly of the shoreline of Corpus Christi Bay as shown in Survey No. 803 and in the patent from the State of Texas to the City of Corpus Christi, Texas, said patent being dated January 4, 1924, and being Patent No. 86, Volume 21-A.

Sec. 2. All exchanges, sales and conveyances hitherto made by the City of Corpus Christi of property within the area described in Section 1 are hereby ratified; and such property is confirmed, relinquished and granted unto the respective assignees of the City of Corpus Christi, and to their heirs, successors, and assigns, without limitation as to the use thereof to be made by them.

Sec. 3. All exchanges of property, sales of property and conveyances thereof that may be made in the future by the City of Corpus Christi of property, within the area described in Section 1, that has been laid out and platted into lots, blocks or tracts for uses of private ownership as shown on a plat of the Bay Front Plan of said City of Corpus Christi, on file in the General Land Office of Texas and that may be necessary to adjust the titles and boundaries between the City and other owners are hereby authorized and said City of Corpus Christi is hereby empowered to make such exchanges, sales and conveyances; and all such property as may be so exchanged, sold and conveyed, is hereby confirmed, relinquished and granted unto the respective assigns of the City of Corpus Christi, and to their heirs, successors and assigns forever, without limitation as to use thereof to be made by them.

Sec. 4. The consideration for this land shall be paid to the Commissioner of the General Land Office of the State of Texas for the benefit of the Permanent Public Free School Fund; and a patent to said lands shall be issued to the City of Corpus

Christi by the Governor and the Commissioner of the General Land Office of the State of Texas. Upon the payment of the said consideration and the issuance of said patent, the title of the City of Corpus Christi to the said lands shall become absolute, subject to the reservations herein made.

Sec. 5. All mines and minerals, and the mineral rights including oil and gas are hereby specially reserved to the State under that part of said area described in Section 1, which has been filled, laid out and constructed for use by the City of Corpus Christi as streets, public drives, parks, boulevards, and seawall, and all minerals and mineral rights under the remainder of said land are hereby relinquished and released unto the City of Corpus Christi and its assigns.

Sec. 6. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

[Acts 1945, 49th Leg., p. 391, ch. 253.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5421j-1. Lease of Filled-in Land by City of Corpus Christi

All property transferred by the State of Texas to the City of Corpus Christi by the provisions of Chapter 253, Acts of the 49th Legislature, Regular Session, 1945,<sup>1</sup> may be leased by the governing body of the City of Corpus Christi for such time and under such terms and conditions and for such purposes as determined by the governing body of the City of Corpus Christi to be to the best interest of the city. The governing body of the City of Corpus Christi shall lease such property in accordance with the procedure prescribed by the charter of the City of Corpus Christi for leasing lands owned by the city.

[Acts 1957, 55th Leg., p. 488, ch. 235, § 1.]

<sup>1</sup> Article 5421j (repealed).

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

#### Art. 5421j-2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State

Sec. 1. The City of Corpus Christi is hereby authorized and given the power and authority to lease those certain submerged lands described in Section 4 herein and heretofore relinquished by the State of Texas to the City of Corpus Christi, to any person, firm or corporation, owning lands, land fill or shore area adjacent to the described submerged

lands, without restriction as to public or private use thereof, upon whatever terms and conditions the governing body of the City of Corpus Christi deems proper, for any period or term not to exceed fifty (50) years.

Sec. 2. The rights and appurtenances vesting in a Lessee of the City of Corpus Christi in and to those submerged lands shall be limited only by such limitations as might be imposed in the lease which the City of Corpus Christi deemed proper and in the best interest of the City of Corpus Christi; provided that any lease shall contain a provision prohibiting the Lessee, or assigns thereof, from erecting or maintaining thereon any structure or structures, such as buildings, with the exceptions of yacht basins, boat slips, piers, dry-docks, breakwaters, jetties or the like; and provided further that the right to use the waters embraced by the lease shall be reserved to the public, though the boat slips, piers, dry-docks, and the like may be limited to the private use of the Lessee.

Sec. 3. The power and authority granted hereunder to the City of Corpus Christi with respect to the submerged lands described in Section 4 may be exercised only after local referendum election at which a majority of those qualified and voting favor approving the passage of the ordinance authorizing such lease.

Sec. 4. This Act pertains to a strip of submerged land having dimensions of 500 feet by approximately 2050 feet, having as its West line the East line of the C.G. Glasscock 22.39 acre tract (as such tract is reflected on the map or plat prepared by J.M. Goldston under his certificate of September 8, 1954, and being a survey of the C.G. Glasscock property attached as Exhibit "A" to exchange deed between the City of Corpus Christi, Texas, and the said C.G. Glasscock dated February 2, 1955, recorded in Volume 674, Page 193 of the Deed Records of Nueces County, Texas); having as its East line a line run parallel to and 500 feet East of (measured at right angles) the East line of the C.G. Glasscock 22.39 acre tract above referred to; having as its South line an Easterly projection of the South line of the C.G. Glasscock 22.39 acre tract above referred to from the Southeast corner of said tract (identified by new 2" I.P.) to the point of intersection with the East line above referred to; and having as its North line an Easterly projection of the center line of Buford Street commencing with a new 2" I.P. located at the intersection of the extension of the center line of Buford Street with the East line of the C.G. Glasscock 22.39 acre tract and continuing along a projection of said center line to the point of intersection with the East line of this tract as above defined.

Sec. 5. This Act shall not be construed to grant or convey to the City of Corpus Christi the title to any oil, gas or other mineral which was not already owned by the City of Corpus Christi at the enactment hereof.

Sec. 6. If any laws or parts of laws are in conflict with the provisions of this Act, then the provisions of this Act shall control.

[Acts 1961, 57th Leg., p. 1184, ch. 536.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission**

Sec. 1. In order that the State Highway Commission may have title to and control of the more or less submerged right of way necessary for the construction and maintenance of a proposed Causeway and its Approaches, across Nueces Bay and the Pass connecting Nueces Bay and Corpus Christi Bay in San Patricio and Nueces Counties, as described in Section 2 of this Act, and as shown on the right of way map on file in the State Highway Department at Austin, Texas, and entitled, Control 101-5 & 6 in San Patricio and Nueces Counties, Causeway across Nueces Bay and the Pass connecting Nueces Bay with Corpus Christi Bay on Highway U.S. 181 from Beach Drive in Portland, San Patricio County, and North Beach in Corpus Christi, Nueces County, the State hereby conveys title to and control of the submerged right of ways described in Section 2 of this Act, and as shown on the right of way map above stated, but no part of this Act is to be construed so as to interfere nor conflict with the rights and authority of the State Game, Fish and Oyster Commission, except that the State Highway Commission shall have the full right and authority to take and use, at any time and in any quantity desired, any and all materials within the limits of these tracts, and is exempted from the payment of any and all compensation for any and all materials taken therefrom.

Sec. 2. Field Notes of a survey of 385.638 acres, more or less, of submerged lands and tidewater flats, and situated under the waters of Nueces Bay between Engrs. centerline Sta. 774/50 and Sta. 991/20, about Latitude 27°51' North and Longitude 97°22' West, taken from U.S.C. & G.S. Chart No. 1117, and being more particularly described as follows:

[Detailed description omitted.]

[Acts 1947, 50th Leg., p. 162, ch. 101.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421k-1. Conveyance of Lands to Widen State Highway No. 24 in Denton County**

Sec. 1. In order that the expansion and improvement program of the State Highway Commission may be carried forward in an orderly and expeditious manner the title to and control of that certain narrow strip of land consisting of six (6) separate tracts or parcels and being 4.89 acres, more or less, owned by the State of Texas and the Texas State College for Women, are hereby transferred and conveyed to the Texas Highway Commission for the widening and material improvement of State Highway No. 24 in Denton County, Texas, from North Locust Street in the City of Denton easterly to the Denton-Collin County Line, as shown on the right-of-way map on file in the State Highway Department at Austin, Texas, and more particularly described as follows, to wit:

[Detailed description omitted.]

Sec. 2. The fact that the improvement and widening of State Highway No. 24 from a point on North Locust Street in the City of Denton easterly to the Denton-Collin County Line has been long delayed because of the inability of the State Highway Commission to obtain the right of way necessary for the widening and improvement of such Highway, creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

[Acts 1947, 50th Leg., p. 268, ch. 164.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421k-2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County; Conveyance to State Highway Commission**

Sec. 1. In order that the State Highway Commission may have title to and control of the more or less submerged right of way necessary for the construction, reconstruction and maintenance of the Causeway and its Approaches across Cayo del Oso in Nueces County, as described in Section 2 of this Act, and as shown on the right-of-way map on file in the State Highway Department at Austin, Texas, and entitled Project ARMR 5A(1) Control 617-1-1, State Highway No. 358, Nueces County, from U.S. Naval Air Base on Encinal Peninsula to Junction with State Highway No. 286, the State hereby conveys to the State Highway Commission title to and control of the submerged right of way described in Section 2 of this Act, and as shown on the right-of-

way map above stated, but no part of this Act is to be construed so as to interfere nor conflict with the rights and authority of the State Game and Fish Commission, except that the State Highway Commission shall have the full right and authority to take and use, at any time and in any quantity desired, any and all materials within the limits of this tract, and is exempted from the payment of any and all materials taken therefrom; provided, however, that all mineral rights, together with the right to explore for and develop same by directional drilling are reserved to the State of Texas.

Sec. 2. The conveyance hereby made shall consist of a tract of more or less submerged land and tidewater flats, situated under the waters of Cayo del Oso between Engineers centerline Station 130 + 32.8 and Station 169 + 54.0 of State Highway No. 358, said tract being a strip of land 1000 feet wide, 500 feet on each side of the centerline of this right-of-way survey which extends from the Flour Bluff Naval Station to Junction with State Highway No. 286, 3.65 miles south of Corpus Christi, said tract extending for a distance of 3921.2 feet, the centerline being more particularly described as follows:

[Detailed description omitted.]

[Acts 1957, 55th Leg., p. 16, ch. 12.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

### Art. 5421k-3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation

#### Confirmation and Validation of Sale

Sec. 1. The sale by the State of Texas to the City of Corpus Christi of 986.97 acres of land in Nueces County, known as Tract C, as shown on a map entitled Sheet No. 1, Laguna Madre, Subdivision for Mineral Development, dated November 1, 1948, and revised September 12, 1951, by addition of Cayo Del Oso Subdivision, which land is described by metes and bounds in that certain patent heretofore issued to said City, being Patent No. 158, Volume 29-B, dated June 11, 1959, is hereby in all things confirmed and validated so that all right, title and interest of the State of Texas in and to all of the land described in said patent, submerged and unsubmerged, shall be and is hereby relinquished, confirmed and granted unto the City of Corpus Christi, its successors and assigns, and such land shall be vested in the City of Corpus Christi subject only to the conditions, limitations and restrictions contained and imposed by the provisions of this Act, which shall entirely supersede the conditions and restrictions referred to in said patent.

#### Reservation of Minerals and Mineral Rights to State for Permanent School Fund

Sec. 2. All minerals and mineral rights in, on and under said land are hereby reserved unto the State of Texas for the use and benefit of the Permanent School Fund, provided, however, that in the event of discovery of oil or gas in said land, drilling operations thereon shall be restricted so that not more than one well productive of oil or gas shall be drilled for each one hundred sixty (160) productive acres, and all operations at each such well shall be confined to an area or areas of four (4) acres at and including the well site.

#### Conflict of Claims or Boundaries

Sec. 3. In the event of any conflict or claim of conflict between the boundaries of the tract of land described in such patent and the boundaries or claimed boundaries of previously validly titled land owned or claimed by private persons, the City of Corpus Christi is hereby authorized in its own behalf and as agent for the State of Texas to take proper action to resolve such conflict or claim of conflict, without cost or expense, however, to the State of Texas. Without limiting the authority of said City otherwise herein granted or which it has by reason of its ownership, said City is hereby authorized to file suit in the name of the State of Texas to secure a judicial determination of said boundaries; and said City is further authorized to establish the boundaries between the tract covered by said patent and any adjoining private owner or claimant by agreement, which boundary agreement or agreements shall be set forth in writing and shall be effective when approved by ordinance of said City adopted for such purpose. In the event of any change in the boundaries of said tract as a result of judicial decree or by agreement in accordance herewith, corrected field notes of said tract shall be filed in the General Land Office and a corrected patent shall be issued to the City of Corpus Christi, its successors and assigns, subject to the provisions of this Act.

#### Improvement of Land; Title to Land

Sec. 4. The City of Corpus Christi, its agents or assigns shall improve such portions of the land covered by said patent or any corrected patent as such city, its agents or assigns, deems suitable and proper therefor. Such improvement shall consist of the raising or filling to a height of at least three (3) feet above the level of mean high tide, except for such part as may be devoted to channels, canals, or waterways. Title to any portion of such land (except that devoted to channels, canals, or waterways) that has not been so improved by filling to such height before July 1, 1977, shall revert to the State of Texas, and from and after that date neither said city nor its assigns shall have any right, title, claim, or interest to such portion which has not been so improved. No title shall revert, however, to the State of Texas as to any portion or portions which

are filled to such height before July 1, 1977, including portions which are devoted to channels, canals, or waterways appurtenant to or used in connection with any portion so improved.

**Powers of City to Convey or Retain Land;  
Other Powers**

Sec. 5. Said city may retain all or any part of the land subject to this Act, and it may convey all or any part or parts of such land to others. As to each tract or parcel of land which the city conveys to another or others, each such conveyance or conveyances shall:

(A) Contain a condition subsequent, which shall provide that such grantee or grantees shall by the date specified in the conveyance, which date shall in no event be later than July 1, 1977, improve the particular tract or parcel of land included in such conveyance to the extent that it will be filled to a height of at least three (3) feet above mean high tide, except for such portions thereof as may be devoted to channels, canals, or waterways. If the date specified in the conveyance is a date prior to July 1, 1977, such condition subsequent shall provide that if said condition is breached, title to the tract or parcel of land covered by said conveyance that is not so improved (except for such portions as may be devoted to channels, canals, or waterways) shall revert to the City of Corpus Christi, and the right of reentry retained by said city in the conveyance shall be immediately exercised; and said city may thereafter retain such portion or portions of such tract or parcel, or may convey such portion or portions in the same manner as provided above. If the date specified in the conveyance is July 1, 1977, such condition subsequent shall provide if said condition is breached, title to such portion or portions of the tract or parcel of land covered by said conveyance that are not so improved (except for such portions as may be devoted to channels, canals, or waterways) shall revert to the State of Texas;

(B) Provide that such portion or portions of the tract or parcel of land covered by the conveyance which have been so improved, including such portions thereof as may be devoted to channels, canals, or waterways appurtenant to or used in connection with any portion so improved, shall, upon the written application to the City of Corpus Christi describing the improved area and the area devoted to channels, canals, or waterways appurtenant or used in connection therewith, be by the city by ordinance or resolution released of the condition subsequent and a proper recordable release shall be executed and delivered. Any such ordinance or resolution of said city shall be binding upon all parties concerned, including the State of Texas, as to the making of the improvements in accordance herewith; provided, however, that in the event the City of Corpus Christi conveys or leases all or any part of said land to any other person, persons, firms, corporation or entity of any nature, said city shall pay to the Texas

Permanent Free School Fund a sum equal to one-half (1/2) of the reasonable market value thereof.

**Plans and Contracts for Improvements; Powers  
of City**

Sec. 6. The City of Corpus Christi is hereby authorized to prepare or approve plans for the improvements covered by this Act, and to make and enter into such agreements or contracts relating to such improvements as in the judgment of the governing body thereof may be necessary or desirable, and such agreements or contracts may be with grantees or prospective grantees of all or any portion of the land subject to this Act, or other parties.

**Repealer**

Sec. 7. The land subject to this Act, as identified in Section 1 hereof, shall henceforth be held subject to the provisions of this Act and all laws or parts of laws in conflict herewith are hereby repealed or modified to the extent of such conflict.

**Law Cumulative**

Sec. 8. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

[Acts 1961, 57th Leg., p. 1089, ch. 489. Amended by Acts 1965, 59th Leg., p. 91, ch. 34, §§ 1, 2, eff. Aug. 30, 1965; Acts 1971, 62nd Leg., p. 1414, ch. 392, §§ 1, 2, eff. May 26, 1971.]

**Saved from Repeal**

*This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

Section 3 of the amendatory act of 1965 ratified and validated the boundaries of the tract as determined by judicial decree; section 4 repealed all conflicting laws and parts of laws and section 5 made the act cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

Sections 3 to 5 of the 1971 amendatory act provided:

"Sec. 3. All laws or parts of laws in conflict herewith are hereby repealed or modified to the extent of such conflict.

"Sec. 4. This Act shall be and is cumulative of all former grants and authorities from the State of Texas to the City of Corpus Christi.

"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end it is the declaration of the Legislature that the provisions of this Act are severable."

**Art. 5421l. Control of Certain Property in Austin Transferred to University Regents**

From and after the effective date of this Act the control and management of, and all rights, privileges, powers and duties in connection with the property owned by the State of Texas and located on the west side of Red River Street between East Ninth and Eighteenth Streets, being the East One-half (1/2) of Outlot No. Sixty-three (63), consisting of

Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) of Division "E" of the City of Austin, Travis County, Texas, which were formerly vested in and exercised by the State Board of Control, shall be transferred to, vested in, and exercised by the Board of Regents of The University of Texas, and hereafter, the aforesaid property shall be used for the purposes and activities of The University of Texas.

[Acts 1947, 50th Leg., p. 472, ch. 272, § 1.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Arts. 5421m, 5421n. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table preceding the Natural Resources Code.

Without reference to repeal of art. 5421m, Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, added § 2(D) thereto, which reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

**Art. 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect**

Any oil, gas and mineral lease, or oil and gas lease, heretofore granted for a valid consideration by any city, including home rule cities, town, village, county or any of the following political subdivisions of this state: water control and improvement districts, water control and preservation districts, water control districts, water improvement districts, water power control districts, water supply district, or irrigation districts, shall not be cancelled or held void or voidable because the lessor in any such lease or leases has failed to give notice by newspaper published in the county in which the leased lands are located of the intention to grant any such oil, gas and mineral lease, or oil and gas lease, on lands belonging to such lessor, stating the time and place where bids for such leases were to have been received; provided, however, that such lease or leases may be declared void or voidable for any other cause; and provided further, that nothing herein contained shall be construed as affecting pending litigation in which the validity of any such lease or leases is being questioned for any reason, including the failure to give such newspaper notice.

[Acts 1955, 54th Leg., p. 773, ch. 280, § 1.]

#### Saved from Repeal

*This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th*

*Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

**Art. 5421p. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

**Art. 5421q. Repealed by Acts 1983, 68th Leg., p. 1038, ch. 235, art. 6, § 2(b), eff. Sept. 1, 1983**

See, now Parks and Wildlife Code, § 26.001 et seq.

**Art. 5421r. Repealed by Acts 1983, 68th Leg., p. 1022, ch. 235, art. 5, § 1(b), eff. Sept. 1, 1983**

See, now, Natural Resources Code, § 51.0551.

**Art. 5421s. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977**

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table preceding the Natural Resources Code.

### INDIAN LANDS

**Art. 5421z. Indian Commission**

#### Texas Indian Commission

Sec. 1. The Texas Indian Commission, formerly the Commission for Indian Affairs, is an agency of the state.

#### Application of Sunset Act

Sec. 1a. The Texas Indian Commission is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

<sup>1</sup> Article 5429k.

#### Members of Commission

Sec. 2. The commission consists of three members, one of whom shall be an Indian, appointed by the governor with the advice and consent of the senate.

#### Terms of Office

Sec. 3. Each member holds office for a term of six years and until his successor is appointed and qualified. One member's term expires on January 31 of each odd-numbered year.

#### Chairman

Sec. 4. The commission shall elect a chairman from among its members, who shall serve for a period of two years or until his successor is elected. The chairman shall preside over all meetings, ap-

point committees, make periodic reports to the governor and the legislature, represent the Texas Indian Commission at ceremonies and public functions, and make policy and budget recommendations to the legislature and fellow commission members.

#### Meetings of Commission

Sec. 5. The commission shall hold at least three public meetings per year at times and places fixed by rule of the commission. One public meeting shall be held at the Alabama-Coushatta Indian Reservation one at the Tigua Indian Reservation, and one in the Dallas area each year. The chairman shall notify each member at least two weeks prior to each regular meeting date and three days before each special meeting date. Two members of the commission constitute a quorum for the transaction of business.

#### Compensation of Members

Sec. 6. Each member is entitled to receive per diem compensation for each day he actually attends a meeting or travels or attends to commission business, and is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided in the General Appropriations Act.

#### Commission Responsibilities

Sec. 7. A responsibility of the commission is the development of the human and economic resources of the Alabama-Coushatta Indian Reservation and the Tigua Indian Reservation, and to assist the Texas Indian people in making their reservations self-sufficient. Specifically, the commission shall assist the Texas Indian tribes in improving their health, educational, agricultural, business, and industrial capacities.

#### Executive Director

Sec. 8. The commission shall appoint an executive director. The executive director serves at the will of the commission. He is responsible for the management, supervision, and implementation of the policies of the commission in carrying out the responsibilities of the commission as set forth in Section 7 of this Act. The executive director shall employ a superintendent for each reservation. The superintendents shall answer to the executive director and carry out the programs and policies of the commission. The executive director, at the direction of the commission, shall seek all possible federal funds, grants, gifts, and other types of assistance available to help expedite the commission's expressed policy for development and responsibility as outlined in Section 7 of this Act.

#### Contracts with Local Agencies

Sec. 9. The commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the reservations in order to implement

the planning and development of the reservations. Counties and local units of government are authorized to cooperate with the commission and may furnish the use of any equipment necessary in the development of the reservations.

#### Tribal Authority to Contract

Sec. 9A. (a) The Tribal council of the Alabama-Coushatta Indian Tribe or of the Tigua Indian Tribe may contract with a local government, as that term is defined by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), in the same manner and for the same purposes that local governments may contract with each other under that Act.

(b) The Tribal Council may contract with the state or a state agency in the manner and for the purposes that are mutually agreeable to the Tribal Council and the state or state agency.

#### Gifts; Grants

Sec. 10. The commission may accept gifts, grants, and donations of money, personal property, and real property for use in development of the reservations. It may acquire by gift or purchase any additional land necessary for improvement of the reservations, their income, and their economic self-sufficiency.

#### Nonprofit Status

Sec. 10A. A right, privilege, benefit, or power, including the power to accept gifts, grants, and donations, that an organization has under state law because of the organization's status as a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a Tribal Council or a business owned by a Tribal Council as if the Tribal Council or tribal business were a nonprofit corporation organized under the Texas Non-Profit Corporation Act.

#### Federal Grants

Sec. 11. The commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the reservations.

#### Assistance to Kickapoo Indians and Intertribal Indian Organizations

Sec. 11A. (a) The Traditional Kickapoo Indians of Texas are recognized as a Texas Indian tribe.

(b) The commission shall assist the Traditional Kickapoo Indians and the intertribal Indian organizations chartered in this state in applying for and managing, jointly with the commission, federal programs and funds secured from the federal government or private sources for the purpose of improving health, education, and housing standards of these Indians or increasing their economic capabilities.

(c) The commission may seek the cooperation of local and state agencies in administering programs or funds covered by Subsection (b) of this section.

#### Tribal Councils May Issue Bonds

Sec. 12. Subject to the written approval of the commission, the Tribal Councils may issue revenue bonds or any other evidence of indebtedness in order to finance the construction of improvements on the reservations and for the purchase of additional land necessary therefor or for improvement of the income and economic conditions of the reservations. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue-producing properties, interests, or facilities of the land which is held in trust by the State of Texas for the benefit of the Indians.

#### Maturity; Redemption

Sec. 13. All bonds issued by either Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

#### Form, Conditions, Details of Bonds

Sec. 14. Subject to the restrictions contained in this Act, either Tribal Council and the commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the commission, deems such action to be necessary or appropriate.

#### Sale; Terms; Price; Interest

Sec. 15. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the commission to be the most advantageous price and terms reasonably obtainable. Interest on loans and bonds shall not exceed interest limits approved by the appropriate Tribal Council and the commission; provided, however, that interest on loans and bonds shall not exceed 10 percent per annum.

#### Expenses; Fees

Sec. 16. Each Tribal Council, with the approval of the commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

#### Bonds as Investments and Security

Sec. 17. All bonds issued under this Act are legal, authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political

WTSC Civil Statutes—22

subdivisions and public agencies of the state, and when accompanied by all unmatured coupons appurtenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

#### Pledge of Revenues and Income

Sec. 18. Each Tribal Council, with the approval of the commission, may pledge the rents, royalties, revenue, and income from revenue-producing properties and facilities of the state trust lands to the payment of the interest on and the principal of the bonds, and may enter into agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge, and disposition of them. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

#### Disposition of Oil and Gas Revenue

Sec. 19. All revenue realized from leasing of Indian reservation land shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or depositories designated by the appropriate Tribal Council and commission. These funds shall be placed in a special account known as either the Alabama-Coushatta Mineral Fund or the Tigua Mineral Fund and shall be expended for such purposes as the appropriate Tribal Council shall recommend and the commission shall approve.

#### Debt Against State

Sec. 20. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by either Tribal Council under this Act shall be construed as creating a debt against the state; and every such contract, bond, note, or other evidence of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

#### Leases to Tribal Members for Residential Purposes

Sec. 21. The Tribal Council, with the approval of the commission, may execute lease agreements under which any member of the tribe, as lessee, may occupy for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, any designated lot or tract of land which may be included in the 1,280-acre tract conveyed to the Alabama Indians by authority of Chapter XLIV, Acts of the 5th Legislature, 1854.

[Acts 1965, 59th Leg., p. 552, ch. 279, eff. Sept. 1, 1965. Amended by Acts 1967, 60th Leg., p. 539, ch. 234, § 1, eff. May 19, 1967; Acts 1967, 60th Leg., p. 662, ch. 276, § 1, eff. May 23, 1967; Acts 1967, 60th Leg., p. 930, ch. 407, § 1, eff. June 8, 1967; Acts 1971, 62nd Leg., p. 1816, ch. 541, § 1, eff. June 1, 1971; Acts 1971, 62nd Leg., p. 2369, ch. 730, § 1, eff. June 8, 1971; Acts 1975, 64th Leg., p. 435, ch. 185, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1090, ch. 399, §§ 1, 2, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.160, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4869, ch. 859, § 1, eff. Sept. 1, 1983.]



**Saved from Repeal**

*This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.*

Section 2 of the 1975 Act repealed art. 5421z-1; § 3 of the 1975 Act provided:

"Those persons holding office as members of the Commission for Indian Affairs on the effective date of this Act continue to hold

office as members of the Texas Indian Commission for the terms for which they were originally appointed."

The 1977 Act, amending §§ 2 and 5 of this article, and adding § 11A, provides in § 3 as follows:

"Those persons holding office as members of the Texas Indian Commission on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

**Art. 5421z-1. Repealed by Acts 1975, 64th Leg., p. 435, ch. 185, § 2, eff. Sept. 1, 1975**

# TITLE 87

## LEGISLATURE

- Art.**  
 5422. Time of Meeting.  
 5423. Who May Organize.  
 5424. Who Shall Preside.  
 5425. Duties of Clerk.  
 5426. Credentials.  
 5427. If No Quorum.  
 5428. Election of Speaker.  
 5428a. Candidate for Speaker: Campaign Financing.  
 5428b. Legislative Bribery.  
 5429. Selection of Officers.  
 5429a. Repealed.  
 5429b. Texas Legislative Council.  
 5429b-1. Statutory Revision Program.  
 5429b-2. Code Construction Act.  
 5429c. Legislative Budget Board.  
 5429c-1. Fiscal Notes and Cost Projections of Legislative Budget Board.  
 5429c-2. Repealed.  
 5429c-3. Performance Audits and Reports by Legislative Budget Board.  
 5429c-4. Limit on Rate of Growth of Appropriations.  
 5429d. Distribution of Journals.  
 5429e. Membership on Interim Committees.  
 5429f. Legislative Reorganization Act of 1961.  
 5429g. Cooperation between Legislative Houses and Agencies.  
 5429h. State of the Judiciary Message by Supreme Court Chief Justice.  
 5429i. Economic Impact Statement Act.  
 5429j. Biennial Reports by Governor on Organization and Efficiency of State Agencies.  
 5429k. Sunset Act.  
 5429l. Faculty Information and Research Service for Texas; Project FIRST.  
 5429m. Governor for a Day and Speaker's Day Ceremonies.  
 5429n. Adjustment of State Fees in General Appropriations Act.  
 5429o. Emergency Interim Legislative Succession Act.

**Art. 5422. Time of Meeting**

The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A.D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law.

[Acts 1925, S.B. 84.]

**Art. 5423. Who May Organize**

Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives.

[Acts 1925, S.B. 84.]

**Art. 5424. Who Shall Preside**

For the purpose of such organization the Secretary of State shall preside at each recurring session of the Legislature. Should there be no Secretary of State, or in case he be absent or unable to attend, the Attorney General shall attend and perform the duties prescribed. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk who shall have been chief clerk of the House the preceding session, if he be present, to take a minute of the proceedings.

[Acts 1925, S.B. 84.]

**Art. 5425. Duties of Clerk**

The clerk, under the direction of the Secretary of State, shall:

1. Call all the counties in alphabetical order. Should returns of election in any county for members of the Legislature not be made to the office of Secretary of State, he shall nevertheless call such county.

2. When the counties are called and the members elect appear and present their credentials, administer to each the official oath.

[Acts 1925, S.B. 84.]

**Art. 5426. Credentials**

Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of Secretary of State.

[Acts 1925, S.B. 84.]

**Art. 5427. If No Quorum**

If no quorum is in attendance on the day appointed for the meeting of the Legislature, the Secretary of State and clerk shall attend from day to day until a quorum shall appear and be qualified as above.

[Acts 1925, S.B. 84.]

**Art. 5428. Election of Speaker**

When a quorum has appeared and been qualified, the House shall proceed to the election of a Speaker, unless a majority of the members present shall decide to defer said election.

[Acts 1925, S.B. 84.]

**Art. 5428a. Candidate for Speaker: Campaign Financing****Definitions**

Sec. 1. In this article:

(1) "Candidate" means any member of or candidate for the Texas House of Representatives who has announced that he will seek or by his actions, words, or deeds does seek election to the office of Speaker of the House of Representatives.

(2) "Campaign expenditure" means the expenditure of money or the use of services or any other thing of value to aid or defeat the election of any candidate.

(3) "Campaign funds" means the candidate's personal funds that are devoted to the campaign for speaker and any money, services, or other things of value that are contributed or loaned to the candidate for use in his campaign for speaker.

(4) "Filing date" means the first day of January, March, May, July, September, and November and the day preceding each regular and called session of the legislature.

**Record Keeping**

Sec. 2. Each candidate shall keep records, separate from the records required by the Election Code for his campaign for public office, of all the information required to be filed by this article.

**Filed Statement of Contributions, Loans and Expenditures**

Sec. 3. Each candidate shall file a sworn statement with the office of the secretary of state on the first filing date after the announcement or initiation of his candidacy, and on each subsequent filing date during his candidacy and thereafter until all campaign loans have been repaid, listing the following information for the period since the last filing date:

(1) each contribution of money received by him, his agents, servants, staff members or employees in behalf of his campaign, the complete name and address of the contributor, and the date and amount of the contribution;

(2) each contribution of services and other things of value, other than money, received by him, his agents, servants, staff members or employees in behalf of his campaign, the nature of the contribution, the complete name and address of the contributor, and the date and value of the contribution;

(3) each loan made to him, his agents, servants, staff members or employees in behalf of his campaign, including all loans listed in previous filings that are as yet unpaid or that were paid during the period covered by the present filing, the complete name and address of the lender, the name and address of each person responsible on the note, if any other than the candidate, the date and amount of the note, the intended source of funds to repay

the note, and any payments already made on the note and their source;

(4) each expenditure of campaign funds made by him, his agents, servants, staff members or employees in behalf of his campaign, the complete name and address of each person to whom a payment in excess of ten dollars (\$10) is made, and the purpose of each expenditure; and

(5) each candidate shall file his sworn statement on an official form designed by the secretary of state.

**Requisites of Filing**

Sec. 4. A statement shall be considered filed in compliance with this article if it is sent to the secretary of state at his official post office address by registered or certified mail from any point in this state before the filing deadline, as shown by the postmark on the letter, except as hereinafter set out. The statement filed on the day preceding the convening of any regular or called session must actually be delivered and in the hands of the secretary of state not later than 4:00 p.m. on such day.

**Failure to File; Penalty**

Sec. 5. Any candidate who wilfully fails to file the statement required by this article commits a misdemeanor punishable by a fine of not less than \$500, nor more than \$5,000, or by imprisonment for not more than one year, or by both.

**Public Inspection and Preservation of Statements**

Sec. 6. All statements filed under this article shall be open to public inspection. Each statement shall be preserved for two years after the election for which it was filed, after which it may be destroyed unless a court of competent jurisdiction has ordered further preservation.

**Contributions and Loans from Organizations Prohibited; Penalty**

Sec. 7. (a) Except as provided by Subsection (b) of this section, no corporation, partnership, association, firm, union, foundation, committee, club or other organization or group of persons may contribute or lend or promise to contribute or lend money or other thing of value to any candidate or to any other person, directly or indirectly, for the purpose of aiding or defeating the election of any candidate.

(b) This section does not apply to loans made in the due course of business to candidates for campaign purposes by a corporation that is legally engaged in the business of lending money and that has continuously conducted the business for more than one year prior to making the loan.

(c) Any agent, officer, or director of a corporation, partnership, association, firm, committee, club, or other organization or group of persons who consents to a contribution, loan, or promise of a contribution or a loan that is prohibited by this article commits a misdemeanor punishable by a fine of not

less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

(d) Any candidate who knowingly receives a contribution, loan, or promise of a contribution or loan from a corporation, partnership, association, firm, committee, club, or other organization or group of persons commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

#### Penalty for Conspiracy to Circumvent Act

Sec. 8. Any two or more persons who conspire to circumvent any of the provisions of this Act shall be guilty of a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

#### Permitted Expenditures of Campaign Funds; Penalty

Sec. 9. (a) A candidate may expend campaign funds to pay for:

- (1) travel for the candidate, his immediate family, and his campaign staff;
- (2) the employment of clerks and stenographers;
- (3) clerical and stenographic supplies;
- (4) printing and stationery;
- (5) office rent;
- (6) telephone, telegraph, postage, freight and express expenses;
- (7) advertising and publicity;
- (8) the expenses of holding political and other meetings designed to promote his candidacy;
- (9) the employment of legal counsel; and
- (10) retiring campaign loans.

(b) Any candidate who expends campaign funds for any purpose other than those enumerated in Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

#### Individual Contributions for Personal Services, Traveling Expenses and Correspondence; Penalty

Sec. 10. (a) Any individual other than a candidate may contribute his personal services and traveling expenses to aid or defeat any candidate and may expend a sum, which may not exceed \$100 in the aggregate, for the cost of correspondence to aid or defeat the election of any candidate.

(b) Except as provided in Subsection (a) of this section, all campaign expenditures must be made by the candidate from campaign funds.

(c) Any individual other than a candidate who, acting alone or together with other individuals, expends or authorizes the expenditure of funds in excess of \$100 for correspondence to aid or defeat

the election of any candidate, or who expends any funds for any other purpose except personal services and traveling expenses to aid or defeat the election of any candidate, commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

#### Contributions from Executive or Judicial Officers and Employees Prohibited; Penalty

Sec. 11. No person who is an elected officer or employee of either the executive or judicial branch of the state government may contribute his personal services, money or goods of value toward the candidacy of any person for the office of Speaker of the House of Representatives.

Any person who violates this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not more than one year, or by both.

#### Prosecutions by Indictment

Sec. 12. All prosecutions under the terms of this Act must be brought by indictment rather than by complaint and information.

[Acts 1973, 63rd Leg., p. 72, ch. 48, § 1, eff. April 18, 1973.]

#### Saved from Repeal

*Acts 1973, 63rd Leg., p. 1101, ch. 423, enacting the Campaign Reporting and Disclosure Act of 1973, provided in § 14: "Nothing in this Act repeals or otherwise affects Article 5428a, Revised Civil Statutes of Texas, 1925, as added by House Bill No. 8, Acts of the 63rd Legislature, Regular Session, 1973."*

*Acts 1975, 64th Leg., p. 2272, ch. 711, enacting the Political Funds Reporting and Disclosure Act of 1975, provided in § 15: "Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973."*

Section 2 of the 1973 Act provides:

"Severability. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable."

#### Art. 5428b. Legislative Bribery

##### Promises or Threats as Bribery

Sec. 1. A person commits legislative bribery if, with intent to influence any member of or candidate for the House of Representatives in casting his vote for Speaker of the House of Representatives, he:

- (1) promises or agrees to cause:

(A) any appointment of any person to a chairmanship or vice-chairmanship of any committee or subcommittee of the House of Representatives;

(B) any appointment of any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any preferential treatment on any legislation or appropriation;

(D) any employment for any person; or

(E) any economic benefit to any person; or

(2) threatens to cause:

(A) any failure to appoint any person to a chairmanship or vice-chairmanship of a committee or subcommittee of the House of Representatives;

(B) any failure to appoint any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any unfavorable treatment on any legislation or appropriation;

(D) any refusal of or removal from employment of any person; or

(E) any withholding of economic benefit from any person.

#### Accepting Benefits as Bribery

Sec. 2. A member of or candidate for the House of Representatives commits legislative bribery if, on the representation or understanding that he will cast his vote for a particular person for Speaker of the House of Representatives, he solicits, accepts, or agrees to accept:

(A) any appointment of or refusal to appoint any person to a chairmanship or vice-chairmanship of a committee or subcommittee of the House of Representatives;

(B) any appointment of or refusal to appoint any person to a particular committee or subcommittee of the House of Representatives or to the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, or the Legislative Audit Committee or to any other position appointed by the Speaker of the House of Representatives;

(C) any preferential or unfavorable treatment on any legislation or appropriation;

(D) any employment of, refusal of employment of, or removal from employment of any person; or

(E) any economic benefit to or withholding of economic benefit from any person.

#### Economic Benefit Defined

Sec. 3. In this Article "economic benefit" means anything reasonably regarded as economic gain or advantage, including campaign contributions.

#### Permitted Communications, Discussions and Advocacy

Sec. 4. Nothing in this Article shall be construed to prohibit any person from contacting or communicating with any member of or candidate for the House of Representatives with regard to any legislative matter or to prohibit any member of or candidate for the House of Representatives from discussing, taking a position on, or advocating any action on substantive issues in a Speaker's race or any other legislative matter.

#### Penalty

Sec. 5. Legislative bribery is a felony punishable by confinement in the penitentiary for not less than two years or more than five years.

[Acts 1973, 63rd Leg., p. 75, ch. 49, § 1, eff. April 18, 1973.]

#### Art. 5429. Selection of Officers

When an election for Speaker shall have been had, the Speaker-elect shall immediately take the Chair, and the House shall proceed to its further organization by choosing the necessary officers, to whom the Speaker shall administer the official oath.

[Acts 1925, S.B. 84. Amended by Acts 1961, 57th Leg., p. 654, ch. 303, § 3.]

Art. 5429a. Repealed by Acts 1961, 57th Leg., p. 654, ch. 303, § 24, eff. June 14, 1961

See, now, art. 5429f.

#### Art. 5429b. Texas Legislative Council

##### Creation and Membership of Council

Sec. 1. (a) The Texas Legislative Council is an agency of the legislative branch of state government that consists of four Senators appointed by the President of the Senate, nine Representatives appointed by the Speaker of the House of Representatives, and the chairmen of the Senate and House administration committees. The President of the Senate and Speaker of the House shall also be ex-officio members of the Council, and the President of the Senate shall be its Chairman and the Speaker of the House its Vice Chairman. The members appointed from each House shall be from various sections of the State. Vacancies occurring in the appointed membership shall be filled by appointments made by the Chairman if the vacancy calls for the appointment of a Senator, and by the Speaker if it calls for the appointment of a Representative.

(b) All members of the Council shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the next Regular Session of the Legislature following their appointment. The Chairman and Vice Chair-

man act as the Council during a Regular Session of the Legislature.

#### Application of Sunset Act

Sec. 1a. The Texas Legislative Council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1989.

#### Meetings

Sec. 2. The Council shall meet as often as may be necessary to perform its duties. Twelve members including the Chairman and Vice Chairman shall constitute a quorum, and a majority of a quorum shall have authority to act in any matter falling within the jurisdiction of the Council.

#### Duties

Sec. 3. (a) The Council shall have power and its duties shall be:

(1) To investigate departments, agencies and officers of the State and to study their functions and problems;

(2) To make studies for the use of the legislative branch of the State Government;

(3) To gather and disseminate information for the use of the Legislature;

(4) To make such other investigations, studies, and reports as may be deemed useful to the legislative branch of the State Government;

(5) To sit and perform its duties in the interim between sessions;

(6) To report to the Legislature its recommendations from time to time and to accompany its reports with such drafts of legislation as it deems proper;

(7) To assist the Legislature in drafting proposed legislation; and

(8) To provide data-processing services to aid the members and committees in accomplishing their legislative duties.

(b) By agreement with either House of the Legislature or any legislative agency, the council may perform other services or functions for or on behalf of the House or agency.

#### Pre-session Orientation: Expenses of Members-Elect

Sec. 3A. (a) The Council may reimburse members-elect of the Legislature for travel expenses incurred in attending an orientation program conducted by the Council between the date of the general election and the convening of the Regular Session of the Legislature. An individual then holding office as a member of the Legislature is not eligible for reimbursement under this section.

(b) Payment of reimbursement shall be in accordance with rules adopted by the Council. An individual may be reimbursed under this section for only one round trip between the individual's home and the City of Austin.

#### Minutes and Reports; Rights of Members of Legislature

Sec. 4. The Council shall keep complete minutes of its meetings, make periodic reports to all members of the Legislature, and keep said members fully informed of all matters which may come before the Council, the actions taken thereon, and the progress made in relation thereto. Any member of the Legislature shall have the right to attend any of the sessions of the Council, and may present his views on any subject which the Council may at any particular time be considering; but he shall not have the right to participate in any decision which the Council may make.

#### Witnesses

Sec. 5. The Council, or any committee thereof when so authorized by the Council, is empowered to hold public or executive hearings, at such times and places within the State as may be determined, to make investigations and surveys. Any member of the Council or any of its committees shall have power to administer oaths at said hearings to witnesses appearing thereat. By subpoena, issued over the signature of its Chairman or Vice Chairman and served by the Council's Sergeant-at-Arms or any peace officer in the manner in which District Court subpoenas are served, the Council or any of its committees may summon and compel attendance of witnesses and the production of record books, papers, documents, and records of their custody. If any witness summoned shall refuse to appear or to answer inquiries propounded or shall fail or refuse to produce books, records, or documents under his control, when the same are demanded, the Council or any of its committees shall report the fact to the District Court of Travis County, Texas, and it shall be the duty of such Court to compel obedience to the Council's or committee's subpoena by attachment proceedings for contempt as in the case of disobedience of subpoena issued from such Court. Witnesses attending the hearings or meetings of the Council under process, shall be allowed the same mileage and per diem as is allowed witnesses before any grand jury in this State. The Council shall have power to inspect and make copies of any books, records, or files of the departments and institutions and any and all other instruments and documents pertinent to the matter under investigation by said Council, including any county or political subdivision of this State, and shall also have power to examine and audit the books of any person, firm, or corporation having dealings with departments and institutions under investigation by said Council.

**Assistance from Other Agencies**

Sec. 6. The Council may call upon the Attorney General's Department, State Auditor, the State Library and all other State departments and agencies for assistance and advice; and it shall be the duty of the Attorney General's Department to render opinions, and give counsel and assistance to said Council on request of the Chairman or Vice Chairman of said Council.

**Expenses and Salaries**

Sec. 7. The Chairman and Vice Chairman of the Council and all members thereof shall be reimbursed for all necessary traveling and other expenses incurred in the performance of their duties; and the Council shall determine the salaries of its assistants and employees.

**Appropriation**

Sec. 8. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, the sum of Twenty-five Thousand (\$25,000.00) Dollars, or so much thereof as may be necessary, to pay the expenses of members of the Council and salaries of assistants, employees and for necessary supplies and equipment for the remainder of the fiscal year ending August 31, 1949. The amounts of allowable expenditures by said Council thereafter shall be as determined and provided for in the general biennial appropriation bill or in any bill hereafter passed making appropriation to pay salaries of legislative employees and/or expenses of the Legislature. The certificate of the Chairman or the Vice Chairman shall be sufficient evidence to the Comptroller of the validity of all claims for mileage and per diem expenses, salaries of employees, and other expenses authorized; and he shall issue the necessary warrants for same upon the Treasury of the State of Texas.

**Saving Clause**

Sec. 9. If any section, subsection, paragraph, or provision of this Act shall be held invalid by any Court for any reason, it shall be presumed that this Act would have been passed by the Legislature without such invalid portion; and such finding and construction shall not in any way affect the validity of the remainder of this Act.

[Acts 1949, 51st Leg., p. 607, ch. 324. Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.163, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 600, ch. 126, §§ 1, 2, eff. May 17, 1983.]

Section 4 of the 1983 amendatory act provides:

"As part of the sunset review of the legislative council preceding and during the 1989 regular session of the legislature, the sunset commission and the legislature shall specifically consider the need for creating a separate agency to serve the data-processing needs of the legislative branch of government."

**Art. 5429b-1. Statutory Revision Program**

Sec. 1. There is created a permanent statutory revision program for the systematic and continual study of the statutes of this state and for formal

revisions on a topical or code basis to clarify, simplify and make generally more accessible, understandable and usable the statutory law of Texas. In carrying out the revision program, the sense, meaning or effect of any legislative act shall not be altered.

Sec. 2. The Texas Legislative Council shall plan and execute the statutory revision program. The work of revision shall include but not be limited to:

(a) The preparation of a statutory record showing the status and disposition within the classification of the revised statutes of all acts enacted by the Legislature.

(b) The preparation and submission to the Legislature from time to time in bill form revisions of the statutes on a topic or code basis. Such revisions shall be accompanied by reports containing the revisor's notes explaining in detail the work done.

(c) The formulation and implementation of a continuous revision program whereby the statutes which have been revised and enacted by the Legislature may be kept up to date, thus obviating the necessity of subsequent major revisions.

Sec. 3. (a) A Statutory Revision Advisory Committee shall be appointed by the Chairman of the Texas Legislative Council to consult with and advise the Council with respect to matters relating to the classification and arrangement of the statutes, the numbering system to be used and the preparation of a revisor's manual. The Advisory Committee shall consist of seven (7) members, who shall serve without compensation but shall be allowed actual expenses incurred in attending official meetings of the Committee. All such expenses incurred shall be paid out of any funds appropriated to the Texas Legislative Council. The Advisory Committee shall select one of its members as chairman, and shall meet at the call of the Chairman of the Texas Legislative Council. The Committee shall include representatives of the State Bar of Texas, the judiciary, and the Texas Law Schools. The Advisory Committee shall serve for a period of two (2) years from the date of appointment.

(b) Subsequent Advisory Committees may be appointed to consult with and advise the Legislative Council with respect to matters relating to the revision of particular subjects of the law when the Legislative Council determines a need exists for such a committee. Such Committees shall be appointed in the same manner, shall be similarly constituted and subject to the same provisions as provided in Paragraph (a) of this Section.

[Acts 1963, 58th Leg., p. 1152, ch. 448, eff. Aug. 23, 1963.]

**Art. 5429b-2. Code Construction Act****SUBCHAPTER A. GENERAL PROVISIONS****Purpose**

Sec. 1.01. This Act provides rules to aid in the construction of codes (and amendments to them)

enacted pursuant to the state's continuing statutory revision program. The rules set out in this Act are not intended to be exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of the codes.

#### Applicability

Sec. 1.02. This Act applies to

- (1) each code enacted by the 60th or a subsequent Legislature as part of the state's continuing statutory revision program;
- (2) each amendment, repeal, revision, and reenactment of a code, or provision thereof, which amendment, repeal, revision, or reenactment is enacted by the 60th or a subsequent Legislature;
- (3) each repeal of a statute by a code; and
- (4) each rule promulgated under a code.

#### Citation of Codes

Sec. 1.03. A code may be cited by its name followed by the specific part concerned. For example:

- (1) Business & Commerce Code, Tit. 1;
- (2) Business & Commerce Code, Ch. 5;
- (3) Business & Commerce Code, Sec. 9.304;
- (4) Business & Commerce Code, Sec. 15.06(a);
- (5) Business & Commerce Code, Sec. 17-18(b)(1)(B)(ii).

#### General Definitions

Sec. 104. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

- (1) "oath" includes affirmation;
- (2) "person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity;
- (3) "population" means that shown by the most recent federal decennial census;
- (4) "property" means real and personal property;
- (5) "rule" includes regulation;
- (6) "signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing;
- (7) "state", when referring to a part of the United States, includes any state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legislative authority of the United States of America;
- (8) "swear" includes affirm;
- (9) "United States" includes department, bureau, and any other agency of the United States of America;
- (10) "week" means seven consecutive days;

(11) "written" includes any representation of words, letters, symbols, or figures; and

(12) "year" means 12 consecutive months.

### SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

#### Common and Technical Usage of Words

Sec. 2.01. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

#### Tense, Number, and Gender

Sec. 2.02. (a) Words in the present tense include the future tense.

(b) The singular includes the plural, and the plural includes the singular.

(c) Words of one gender include the other genders.

#### Authority and Quorum of Public Body

Sec. 2.03. (a) A grant of authority to three or more persons as a public body confers the authority upon a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

#### Computation of Time

Sec. 2.04. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

#### References to a Series

Sec. 2.05. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

### SUBCHAPTER C. CONSTRUCTION OF STATUTES

#### Intentions in Enactment of Statutes

Sec. 3.01. In enacting a statute, it is presumed that

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;



- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

#### Prospective Operation of Statutes

Sec. 3.02. A statute is presumed to be prospective in its operation unless expressly made retrospective.

#### Construction Aids

Sec. 3.03. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws upon the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title, preamble, and emergency provision.

#### Captions Not Part of Statute

Sec. 3.04. Title, subtitle, chapter, subchapter, and section captions do not limit or expand the meaning of any statute.

#### Irreconcilable Statutes and Amendments

Sec. 3.05. (a) Except as provided in Section 3.11(d) of this Act, if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided in Section 3.11(d) of this Act, if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

#### Special or Local Provision Prevails Over General

Sec. 3.06. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

#### Statutory References

Sec. 3.07. Unless expressly provided otherwise, a reference to any portion of a statute applies to all

reenactments, revisions, or amendments of the statute.

#### Uniform Construction of Uniform Acts

Sec. 3.08. A uniform act included in a code shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

#### Enrolled Bill Controls

Sec. 3.09. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

#### Repeal of Repealing Statute

Sec. 3.10. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

#### Saving Provisions

Sec. 3.11. (a) Except as provided in Subsection (b) of this section, the reenactment, revision, amendment, or repeal of a statute does not affect

- (1) the prior operation of the statute or any prior action taken under it;
- (2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;
- (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred in respect to it, prior to the amendment or repeal; or
- (4) any investigation, proceeding, or remedy in respect to any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment (if not already imposed) shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature which enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision which revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature which enacted the code, the statute controls.

#### Severability of Statutes

Sec. 3.12. If any Act passed by the Legislature shall contain a provision for severability, such provision shall prevail in the interpretation of such stat-

ute. If any Act passed by the Legislature shall contain a provision for non-severability, such provision shall prevail in the interpretation of such statute. In the absence of such determination by the Legislature in a particular Act for severability or non-severability, the following construction of such Act shall prevail: If any provision of a statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute which can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

[Acts 1967, 60th Leg., p. 1036, ch. 455, eff. Sept. 1, 1967.]

#### Art. 5429c. Legislative Budget Board

##### Members; Quorum; Meetings; Committees

Sec. 1. There is hereby created a Legislative Budget Board to be composed of the Speaker of the House of Representatives, and four (4) members of the House of Representatives, who shall be appointed by the Speaker, one of whom shall be the Chairman of the Appropriations Committee and one of whom shall be the Chairman of the Revenue and Taxation Committee, and of the Lieutenant Governor and four (4) members of the Senate, who shall be appointed by the Lieutenant Governor, one of whom shall be the Chairman of the Finance Committee and one of whom shall be the Chairman of the State Affairs Committee. The Lieutenant Governor shall be the Chairman of said Board, and the Speaker of the House shall be Vice-Chairman of said Board.

A quorum to transact business shall consist of a majority of the members of each House. The Board shall meet at the call of the Chairman or upon the written petition of a majority of the members of each House.

The meetings of the Board shall be conducted at the seat of government; provided, however, that by a majority vote of the members of each House, the Board may meet in such place or places as may be determined by the Board.

The Chairman of the Board may, with the approval of the Board, appoint a committee or committees to visit, inspect and report on any institution, department, agency, officer or employee of the State.

##### Application of Sunset Act

Sec. 1a. The Legislative Budget Board is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1989.

<sup>1</sup> Article 5429k.

##### Director of Budget

Sec. 2. The Board shall appoint a Director of the Budget who shall serve for a period of one year from September 1st of each year, unless sooner

discharged by said Board for any reason. The said Director shall be accountable only to said Board. The salary of the Director shall be fixed by said Board. The Chairman of the Board shall approve all items of expense of the Board, prior to payment thereof.

The Director may, with the approval and consent of the Board, employ such clerical and stenographic assistance as may be deemed necessary, and the salaries of such employees shall be fixed by the Board.

The Director of the Board shall have no vote in the deliberations and meetings of the Board, but may submit recommendations from time to time and shall make recommendations when specifically requested to do so by the Board on such matters as the Board may decide, relating to any functions or duties of any department, institution or agency or of any officer, officers, employee or employees of this State.

The Director of the Budget, under the direction of the Board, shall prepare the general appropriation bills for introduction at each regular session of the Legislature.

##### Estimates and Reports

Sec. 3. All departments, institutions, agencies, officers and employees or agents of the State shall, in addition to those estimates and reports now provided by law relating to appropriations, submit such estimates and reports relating to appropriations as may be requested by the Board, or under its direction, and at such times as may be directed by the Board and in such manner and form as may be provided by the Board under rules and regulations to be prescribed by said Board.

##### Inspections and Hearings

Sec. 4. The Legislative Budget Board or any personnel under its direction may inspect the properties, equipment and facilities of the various departments or agencies of the State government for which appropriations are to be made, and all accounts, general or local funds, either before or after such estimates have been submitted, and consider the same and conduct such hearings on said estimates as, in the discretion of the Board, may be desired.

##### Copies of Budget of Estimated Appropriations

Sec. 5. The Director of the Budget shall, within five days after the convening of any Regular Session of the Legislature, transmit to all members of the Legislature and to the Governor copies of the budget of estimated appropriations prepared by him.

##### Estimates and Reports Under Existing Laws

Sec. 6. All estimates and reports with reference to appropriations heretofore and presently required by law to be made by any department, institution,

agency, officer or employee of the State shall continue to be made as provided in Chapter 206, Acts of the 42nd Legislature, Regular Session 1931, Sections 1 to 9, inclusive, and known as Article 689a-1 to 689a-7 inclusive, of the Revised Civil Statutes of Texas, 1925, as amended.

It is intended hereby that the provisions of this bill, when enacted, shall be cumulative of and additional to the provisions of the law mentioned in the next preceding paragraph of this Section.

[Acts 1949, 51st Leg., p. 908, ch. 487. Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.162, eff. Aug. 29, 1977.]

**Art. 5429c-1. Fiscal Notes and Cost Projections of Legislative Budget Board**

**System of Fiscal Notes**

Sec. 1. The Legislative Budget Board shall establish a system of fiscal notes identifying the probable costs of any bill or resolution which authorizes or requires the expenditure or diversion of any state funds for any purpose other than those provided for in the general appropriations bill.

**Cost Estimates**

Sec. 2. The Legislative Budget Board shall project cost estimates for a five-year period beginning with the effective date of the affected bill or resolution, and the board shall state whether or not costs or diversions will be involved thereafter.

**Attachment of Fiscal Notes to Bill or Resolution**

Sec. 3. Such fiscal notes shall be attached to the affected bill or resolution before a committee hearing may be conducted. The fiscal note shall be printed on the first page of the bill or resolution on committee report or second printing and on all subsequent printings. The fiscal note shall remain with the bill or resolution throughout the legislative process including submission to the Governor.

**Severability Clause**

Sec. 4. 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.

[Acts 1973, 63rd Leg., p. 675, ch. 284, eff. Aug. 27, 1973.]

**Art. 5429c-2. Repealed by Acts 1983, 68th Leg., p. 602, ch. 126, § 3, eff. Sept. 1, 1983**

**Art. 5429c-3. Performance Audits and Reports by Legislative Budget Board**

**System of Performance Audits and Evaluation of State Agencies**

Sec. 1. The Legislative Budget Board is directed to establish a system of performance audits and

evaluation designed to provide a comprehensive and continuing review of the programs and operations of each state agency, department, commission or institution.

**Performance Reports to Legislature**

Sec. 2. (a) The Legislative Budget Board shall make a performance report to the Legislature on the third Tuesday of each January in which the Legislature meets in Regular Session.

(b) The performance report shall be published in such form as the Legislative Budget Board shall direct, but in content the performance report shall treat the programs and operations of each agency, department, commission or institution receiving an appropriation in the most recent General Appropriations Act, after the first full fiscal year of operation of each such agency, department, commission or institution.

(c) The performance report shall analyze the operational efficiency of state agency operations and program performance in terms of explicitly stating the statutory functions each agency, department, commission and institution are to perform and how these statutory functions are being accomplished, in terms of unit-cost measurement, workload efficiency data, and program output standards as the Legislative Budget Board shall establish.

**Assistant Director for Program Evaluation; Personnel**

Sec. 3. (a) The Director of the Legislative Budget Board shall, with the approval of the Legislative Budget Board, appoint an assistant director for program evaluation who shall report to, and be responsible to, the director of the Legislative Budget Board.

(b) The Director of the Legislative Budget Board shall employ sufficient personnel to effectuate the provisions of this Act.

**Severability Clause**

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions 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.

[Acts 1973, 63rd Leg., p. 764, ch. 338, eff. Aug. 27, 1973.]

**Art. 5429c-4. Limit on Rate of Growth of Appropriations**

**Limit**

Sec. 1. In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by the constitution exceed the estimated rate of growth of the state's economy.

**Board to Establish**

Sec. 2. (a) Prior to submission of the budget adopted by the Legislative Budget Board, the board shall establish the following:

(1) the estimated rate of growth of the state's economy from the then current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution which could be appropriated for the succeeding biennium within the limit established by the estimated rate of growth of the state's economy.

(b) Estimated rate of growth of the state's economy shall be the quotient of the estimated Texas total personal income for the next following fiscal biennium divided by the estimated Texas total personal income for the current biennium. The estimate shall be made by projecting through the biennium estimates of Texas total personal income as reported by the United States Department of Commerce, or its successor in this function, using standard statistical methods. However, if a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee, the board may utilize this definition in its calculation of the limit on appropriations.

**Publication; Hearing**

Sec. 3. Prior to final board approval of the stipulated items of information in Section 2 of this article, the board shall publish in the Texas Register the proposed items of information together with a description of the methodology and sources utilized in the calculations. In addition, the board shall hold a public hearing no later than December 1 of each even-numbered year at which testimony shall be solicited with regard to the proposed items of information and the methodology utilized in the calculations.

**Adoption by Committee**

Sec. 4. (a) After the board approves the items of information required by Section 2 of this article, it shall submit them for final adoption to a committee composed of the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller of public accounts.

(b) The committee shall meet within 10 days after the date the board submits the items and finally adopt the items, either as submitted by the board or as amended by the committee.

(c) If the committee fails to act within the allotted 10-day period, the items of information as submitted by the board are treated as if the committee had adopted them.

**Limit on Budget Recommendations**

Sec. 5. Unless authorized by a majority vote of house and senate members of the board separately, the budget recommendations of the board with respect to proposed appropriations of state tax revenues not dedicated by the constitution may not exceed the limit adopted by the committee under Section 4 of this article.

**Transmission to Legislature, Governor**

Sec. 6. The proposed limit of appropriations from state tax revenues not dedicated by the constitution shall be included in the recommendations of the Legislative Budget Board and shall be transmitted to all members of the legislature and the governor.

**Effect of Proposed Limit; Enforcement**

Sec. 7. The proposed limit is binding on the legislature with respect to all appropriations of tax revenue not dedicated by the constitution made for the ensuing biennium unless the legislature adopts a resolution raising the limit under the provisions of Article VIII, Section 22(b), of the Texas Constitution. Enforcement of this provision shall be provided for in the rules of the house of representatives and the senate.

[Acts 1979, 66th Leg., p. 695, ch. 302, art. 9, § 1, eff. May 31, 1979.]

**Art. 5429d. Distribution of Journals**

Sec. 1. The Presiding Officers of the House of Representatives and Senate shall appoint one (1) of their employees to perform the duty of distributing the Journal for each House respectively.

Sec. 2. It shall be the duty of such appointee to distribute to the Governor, to each Member of the Legislature and upon request, to heads of departments, a copy of the printed Journals of both Houses.

[Acts 1951, 52nd Leg., p. 218, ch. 131.]

**Art. 5429e. Membership on Interim Committees**

(a) The membership of any duly appointed Senator or Representative on the Legislative Budget Board, Legislative Library Board, Legislative Audit Committee, or Legislative Council, or on any other Interim Committee shall, on the following contingencies, terminate, and the vacancy created thereby shall be immediately filled by appointment for the unexpired term in the same manner as other appointments to the Legislative Budget Board, Legislative Library Board, Legislative Audit Committee, Legislative Council, or other Interim Committee, as the case may be, are made:

(1) Resignation of such membership;

(2) Cessation of membership in the Legislature for death or any reason; or

(3) Failure of the member to be nominated or elected to membership in the Legislature for the next succeeding term.

(b) This section does not terminate the standing house or senate committee chairmanship of a person who, because of the person's position as committee chairman, serves on the Legislative Budget Board, Legislative Library Board, or Legislative Audit Committee.

[Acts 1953, 53rd Leg., p. 915, ch. 377, § 1. Amended by Acts 1961, 57th Leg., p. 654, ch. 303, § 9; Acts 1983, 68th Leg., p. 2752, ch. 472, § 1, eff. Aug. 29, 1983.]

#### Art. 5429f. Legislative Reorganization Act of 1961

##### Short Title

Sec. 1. This Act shall be known and cited as the "Legislative Reorganization Act of 1961."

##### Purpose

Sec. 2. The people of Texas having adopted an Amendment to the Constitution in November, 1960, providing for annual salaries to Members of the Legislature, it is the purpose and intent of the Legislature to place its activities on a continuing basis to the end that the responsibilities imposed by law on the Legislature, and on the Members thereof, will be conducted on a more efficient basis and, to the extent possible, without regard to the formal Sessions of the Legislature. The Legislature feels that the functions of government must be conducted on a full-time basis, and it is the purpose of this Act to authorize the committees and other instrumentalities of the Legislature to continue their work and carry on their responsibilities with some degree of continuity whether or not the Legislature is convened in formal Session.

##### Selection of Officers

Sec. 3. [Amends art. 5429]

##### Selection of Committees

Sec. 4. Each House of the Legislature shall have authority, by adoption of its Rules of Procedure or by Simple Resolution, to determine the number, composition, function, membership, and authority of its committees, and the two Houses acting together by Concurrent Resolution shall have similar authority with respect to committees created jointly by the two Houses.

##### Function of Standing Committees

Sec. 5. Standing committees of each House of the Legislature shall be and they are hereby charged with the duty and responsibility of formulating legislative programs, initiating legislation, and making inquiry into the administration and execution of all laws pertaining to the matters within the jurisdiction of such committee. Each standing committee shall make a continuing study of the matters under its jurisdiction, as well as the instru-

mentalities of government administering or executing such matters, and shall conduct such investigations as the committee deems necessary to supply it with adequate information and material to discharge its responsibilities. To the extent that each standing committee shall deem it necessary and desirable, it shall draft legislation within the area of its jurisdiction and shall recommend such legislation to whichever House of the Legislature such committee is a part. It shall be the duty of the Chairman of each standing committee to introduce, or cause to be introduced, the legislative programs developed by such committee and to mobilize the efforts of such committee to secure the enactment into law of the proposals of such committee. No standing committee of either House of the Legislature shall be confined in its legislative endeavors to bills, Resolutions or proposals submitted to it by individual Members of the Legislature, but each standing committee shall have full authority and responsibility to seek out problems within its area of jurisdiction and to develop, formulate, initiate and secure passage of legislative programs which the committee deems desirable in its approach to such problems.

##### Meetings of Standing Committees

Sec. 6. To the extent practicable when the Legislature is in session, each standing committee shall conduct regular committee meetings in accordance with the Rules of Procedure and other requirements of its respective House of the Legislature. Each standing committee shall meet at such other times as may be determined by the committee. When the Legislature is not in session, to the extent authorized by the respective Houses by Resolution, each committee shall have full power and authority to determine the times and places it shall meet. Each committee shall meet as often as necessary to transact effectively the business of such committee. Unless otherwise determined by the committee, all committee meetings shall be in Austin, but such committee may meet elsewhere within the State of Texas if authorized by Resolution of the House creating such committee and if deemed necessary by the committee for the orderly transaction of its business.

##### Special Committees

Sec. 7. Each House of the Legislature acting individually, or the two Houses acting jointly, shall have full power and authority to provide for the creation of special committees to perform such functions and to exercise such powers and responsibilities as shall be determined in the Resolution creating such committee. During the life of a special committee, it shall have and exercise the same powers and authority as are herein granted to standing committees, subject to such limitations as may be imposed in the Resolution creating such special committee, and shall have such other and additional powers and authority as may be delegated to it by the Resolution creating the committee, subject to the limitations of law.

#### General Investigating Committees

Sec. 8. (a) There is hereby authorized to be created by Resolution of the respective Houses, a General Investigating Committee of the Senate and a General Investigating Committee of the House of Representatives. Each Committee shall consist of five (5) members. The five (5) Senate members shall be appointed by the President of the Senate who shall also designate a Chairman, and the five (5) Representatives shall be appointed by the Speaker of the House of Representatives, who shall also designate a Chairman. All members shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the next Regular Session of the Legislature following their appointment. The five (5) Representatives heretofore appointed by the Speaker of the House of Representatives pursuant to the House Simple Resolution No. 50 shall constitute the House General Investigating Committee for the Fifty-seventh Legislature, and the five (5) Senators to be appointed by the President of the Senate shall constitute the Senate General Investigating Committee for the Fifty-seventh Legislature, and each member of such Committees shall serve for a term beginning with the respective dates of their appointment and ending with the convening of the Regular Session of the Fifty-eighth Legislature.

(b) If such Committees hereinabove authorized are created, the following provisions shall apply to the General Investigating Committee of the Senate and to the General Investigating Committee of the House of Representatives, as the case may be, each of which is hereinafter referred to as the Committee.

(1) Each Committee may begin its work as soon as it desires after its members are appointed. The Committee shall elect from among its members a Vice-Chairman and a secretary. Said Committee shall meet, organize and promulgate the rules and procedure by which it shall function. It shall have full freedom to determine the times and places when and where it shall meet, both during the Regular Session, any Called Sessions, and during any interim between Sessions. Any vacancy on said Committee shall be filled in the same manner as the other members were appointed. The Committee shall have full authority to continue or initiate any and all inquiries and hearings into matters pertaining to the State Government and any agency or subdivision of Government within the State of Texas, the expenditure of public funds at any and all levels of government within the State, and all other matters and things considered by said Committee to be needed for the information of the Legislature or for the welfare and protection of the citizens of the State of Texas. A majority of the Committee shall constitute a quorum.

(2) Each Committee shall adopt its own rules of evidence and procedure and such other rules and regulations as may be necessary to govern the

hearings and affairs of the Committee, which are not inconsistent with Section 13 of this Act. Joint Rules may be adopted for joint hearings of the Committees.

(3) The Committee shall keep a record of its proceedings, and it shall have the power to hold such meetings as it may deem necessary and at any place in the State of Texas. The Committee shall also have power to issue process to witnesses, at any place in this state, to compel their attendance, and the production of all books, records and instruments, to issue attachments where necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by either the Sergeant-at-Arms appointed by the said Committee or by any peace officer of this State; and to cite for contempt, and cause to be prosecuted for contempt, anyone disobeying the subpoenas or other process lawfully issued by it in the manner and according to the procedures provided in this Act and by any other provisions of General Law. The Chairman of the Committee shall issue, in the name of the Committee, such subpoenas as a majority of the Committee may direct. The Committee is hereby authorized to request the assistance of the State Auditor's Department, the Texas Legislative Council, the Department of Public Safety, the Attorney General's Department and all other State agencies and officers, and it shall be the duty of said departments, agencies and officers to assist the Committee when requested to do so. The Committee shall have the power to inspect the records, documents and files of every State department, agency and officer, and of all municipal, county or other political subdivisions of the State, and to examine into their duties, responsibilities and activities.

(4) Witnesses attending proceedings of said Committee under process shall be allowed the same mileage and per diem as is allowed witnesses before any grand jury in this State. Their testimony shall be under oath and subject to the privileges of Article 1289 of Vernon's Penal Code of the State of Texas.

(5) Three (3) or more members of the Committee shall constitute a quorum for the transaction of business and the Chairman or other presiding officer of the Committee shall have power to administer oaths and affirmations.

(6) The Committee shall have authority to employ and compensate assistants to assist in any investigation, to assist in any audits, and to assist in any legal matters where, for any reason, it is necessary to obtain such services in addition to the services of the State Auditor, the Texas Legislative Council and Attorney General's Department, and the Department of Public Safety; and it may employ and compensate clerks, stenographers and other employees in order to conduct its investigations and hearings and to make proper records thereof. However, it is expressly provided that no employment or compensation shall be authorized until it has been

first submitted to the Speaker of the House or the President of the Senate, as the case may be, and he has authorized it in writing.

(7) The Committee shall make such reports to the Members of the Legislature as it may deem necessary and appropriate.

(8) Members of the Committee shall be reimbursed for their actual and necessary expenses incurred while engaged in the work of the Committee and while traveling between their places of residence and the places where meetings of the Committee are held. Compensation of the Committee's employees, expenses incurred by members of the Committee, and all other expenses of the Committee shall be paid out of any appropriation for mileage and per diem and contingent expenses of the Legislature.

(c) Upon a majority affirmative vote of each Committee, the Committees may conduct hearings and inquiries jointly; otherwise each shall operate severally. Provided, however, should a Committee conduct investigations without the active participation of the other, current liaison will be effected to the Chairman of the inactive Committee so as to fully inform of the nature and progress of the inquiry. In the event of joint inquiries or investigations the Chairman of the Senate Committee shall be Chairman of the Joint Committee and the Chairman of the House Committee shall be Vice-Chairman. Seven (7) members shall constitute a quorum of a Joint Committee.

Sec. 9. [Amends art. 5429e]

#### Administering Oaths

Sec. 10. The President of the Senate, the Speaker of the House of Representatives, the Chairman or Acting Chairman of any standing or special committee of either House of the Legislature, or the Chairman or Acting Chairman of any Joint Committee created by the two Houses, shall have authority and is empowered to administer oaths to all witnesses offering testimony on any matter under consideration. Any Member of either House of the Legislature, when circumstances so require, shall have authority and is empowered to administer oaths to all witnesses offering testimony on any matter pending in either House of the Legislature of which he is a Member, or any committee thereof.

#### Oath Required

Sec. 11. All committees of the Legislature or of either House thereof, whether standing or special, and whether created by a single House or by the joint action of both Houses, shall require all witnesses to give their testimony under oath, subject to the penalties of perjury as herein provided, unless such oath shall be waived by the committee.

#### Process for Witnesses

Sec. 12. Each committee of the Legislature, or of either House thereof, standing or special, when

authorized by Resolution or by Rule of Procedure of the House or Houses creating such committee, shall have the power and authority to issue process to witnesses at any place in the State of Texas, to compel the attendance of such witnesses, and to compel the production of all books, records, documents and instruments as the committee shall require; and if necessary to obtain compliance with subpoenas and other process issued by the committee, each committee shall have the power to issue writs of attachment. All process issued by a committee may be addressed to and served by any Peace Officer of the State of Texas or any of its political subdivisions or may be served by a Sergeant-at-Arms appointed by such committee. The Chairman shall issue in the name of the committee such subpoenas and other process as the committee shall determine.

#### Refusal to Testify

Sec. 13. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, may nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary, or otherwise. Any person testifying before the Legislature or any committee thereof shall have the right to counsel.

#### Contempt of the Legislature

Sec. 14. Every person who, having been summoned as a witness by the authority of either House of the Legislature, or by any committee of either House, or by any Joint Committee of both Houses, to give testimony or produce papers upon any matter under inquiry before either House, or any committee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the matter under inquiry, or refuses to produce any books, papers, records or documents, as required, when ordered to do so, shall be deemed guilty of a misdemeanor known as Contempt of the Legislature, and on conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) and by imprisonment in jail for not less

than thirty (30) days nor more than twelve (12) months.

#### Prosecution for Contempt

Sec. 15. Whenever a witness summoned as mentioned in Section 12 hereof fails to appear to testify, or fails to produce any books, papers, records or documents, as required, or whenever any witness so summoned refuses to answer any questions pertinent to the subject under inquiry before either House of the Legislature, or any committee thereof, and the fact of such failure or failures is reported to either House while the Legislature is in session, or when the Legislature is not in session, a statement of facts constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, as the case may be, it shall be the duty of the said President of the Senate or the Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the Seal of the Senate or the House, as the case may be, to the District Attorney of Travis County, Texas, whose duty it shall be to bring the matter before the Grand Jury for its action, and it shall further be the duty of said District Attorney to see that any indictment returned by the Grand Jury is prosecuted in the manner prescribed by law.

#### Perjury

Sec. 16. Every person appearing as a witness before either House of the Legislature, or any committee thereof, or any Joint Committee of the two Houses, and who testifies before such House or such Committee, as the case may be, by either written or verbal testimony, and who deliberately and willfully makes a false statement, when such testimony is given under oath or affirmation as authorized by law and as required by such House or such Committee, shall be deemed guilty of perjury, and on conviction thereof, shall be punished by imprisonment in the penitentiary not less than two (2) nor more than ten (10) years.

#### Fees to Witnesses

Sec. 17. Witnesses attending proceedings of either House of the Legislature, or any committee thereof, under process of such House or such committee, shall be allowed the same mileage and per diem as is allowed witnesses before any Grand Jury in the State of Texas, such mileage and such per diem to be paid from the Contingent Expense Fund of the respective House of the Legislature, or the Committee thereof, before whom such proceedings are pending.

#### State Agencies to Co-operate

Sec. 18. Each standing committee is hereby authorized and empowered to request the assistance, where needed in the discharge of its duties, of the State Auditor's Department, the Texas Legislative Council, the Texas Department of Public Safety, the

Attorney General's Department, and all other State agencies, departments, and offices, and it shall be the duty of such departments, agencies and offices to assist each such Committee when requested to so do. Each Committee shall have the power to inspect the records, documents and files of every department, agency and office of the State, to the extent necessary to the discharge of its duties within the area of its jurisdiction.

#### Committee Staff

Sec. 19. Each House of the Legislature is hereby authorized to provide, from its Contingent Expense Fund, for necessary committee clerks, clerical assistance, and staff to each Committee created by such House.

#### Travel Expenses of Legislative Members and Employees

Sec. 20. Members and employees of each House of the Legislature, while in travel status properly authorized by that House, are entitled to receive, as provided by resolution, either actual and necessary expenses or a per diem not to exceed that provided by law for state officials or state employees, and shall also be reimbursed for mileage or other transportation expenses at the same rate as provided by law for state officials or state employees. While in authorized travel status outside the state, members and employees shall be reimbursed for actual and necessary expenses if in excess of the per diem.

#### Contingent Expenses

Sec. 21. Each House of the Legislature is hereby authorized to provide for the contingent expenses of its Members for the entire term of office for which they have been elected, and it is also authorized to appropriate such money as may be necessary to pay all salaries, per diem and other expenditures authorized by law. Provided, however, that the appropriation shall specify separate appropriations for the House of Representatives and the Senate, and the Comptroller shall keep the accounts separate and distinct and no money may be transferred from one account to the other except by law.

[Acts 1961, 57th Leg., p. 654, ch. 303. Amended by Acts 1975, 64th Leg., p. 1975, ch. 656, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1104, ch. 405, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 998, ch. 437, § 1, eff. Aug. 27, 1979.]

#### Art. 5429g. Cooperation between Legislative Houses and Agencies

Sec. 1. In this Act, "legislative agency" means:

- (1) the Senate;
- (2) the House of Representatives;
- (3) a committee, division, department, or office of the Senate or the House;
- (4) the Texas Legislative Council;



- (5) the Legislative Budget Board;
- (6) the Legislative Reference Library;
- (7) the State Auditor's Office; or
- (8) the Legislative Information System Committee.

Sec. 2. A legislative agency may provide administrative, professional, clerical, and other services to another legislative agency with or without reimbursement. Reimbursement, if any, shall be made pursuant to a written contract executed by the officer or officers who are authorized to execute contracts for each agency.

[Acts 1977, 65th Leg., p. 3, ch. 3, §§ 1, 2, eff. Feb. 23, 1977.]

Section 3 of the 1977 Act provided:

"From funds appropriated to the House of Representatives for the fiscal year ending August 31, 1977, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$125,000, and from funds appropriated by Section 10(e), Chapter 334, Acts of the 64th Legislature, Regular Session, 1975, there is hereby transferred and appropriated to the Texas Legislative Council the sum of \$250,000, to provide for document processing, printing, distribution, computer services, and other services for the legislature."

**Art. 5429h. State of the Judiciary Message by Supreme Court Chief Justice**

At a convenient time at the commencement of each regular session of the legislature, the chief justice of the supreme court of the state shall deliver a "state of the judiciary" message evaluating the accessibility of the courts to the citizens of the state and the future directions and needs of the courts of the state. It is the intent of the legislature that such "state of the judiciary" message promote better understanding between the legislative and judicial branches of government and thereby promote the more efficient administration of justice in Texas.

[Acts 1977, 65th Leg., p. 172, ch. 83, § 1, eff. Aug. 29, 1977.]

**Art. 5429i. Economic Impact Statement Act**

**Short Title**

Sec. 1. This Act may be cited as the Economic Impact Statement Act.

**Definition**

Sec. 2. In this Act, "state agency" means:

- (1) any department, commission, board, office, or other agency that:
  - (A) is in the executive branch of state government;
  - (B) has authority that is not limited to a geographical portion of the state; and
  - (C) was created by the constitution or a statute of this state; or
- (2) an institution of higher education as defined in Section 61.003, Texas Education Code, as amended,

other than a public junior college or community college.

**State Policy**

Sec. 3. The Legislature of the State of Texas, recognizing the impact of the laws, rules, and regulations of this state on the economy, employment, and enterprise of its people, hereby declares it to be the continuing policy of this state to maintain and create conditions which will sustain and promote the economy, employment, and economic opportunities of the people of Texas.

**Economic Impact Statement**

Sec. 4. (a) At the request of the lieutenant governor or the speaker of the house of representatives, a state agency shall prepare an economic impact statement for any pending bill or joint resolution that directly affects that agency. Preparation of the economic impact statement shall be coordinated through the director of the Legislative Budget Board.

(b) The economic impact statement shall include:

- (1) a brief description of the nature and effect of the proposal; and
- (2) the manner and extent to which the proposal, if implemented, will directly or indirectly during each of the two years following its effective date:

(A) affect employment in the state, including the number of people affected, the geographic area or areas affected, and the existing level of employment and unemployment in those areas;

(B) affect the construction, modification, alteration, or utilization of any structure, equipment, facility, process, or other asset in the state, the estimated dollar measure of the action, and the geographic area or areas affected;

(C) result in changes in costs of goods and services in the state;

(D) result in changes in revenue and expenditures of state and local governments;

(E) have economic impacts within the state other than those specifically described by this subsection.

(c) An economic impact statement that omits any information required by this Act shall specifically note its omission, state the reason for its omission, and estimate the additional time and effort required to obtain the information.

[Acts 1977, 65th Leg., p. 653, ch. 243, eff. May 25, 1977.]

**Art. 5429j. Biennial Reports by Governor on Organization and Efficiency of State Agencies**

**Definitions**

Sec. 1. In this Act:

- (1) "State agency" means a department, commission, board, office, or other agency, except a univer-

sity system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, that:

(A) is in the executive branch of the state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

(2) "Functional area" means one of the following areas of concern to the state government: natural resources, health and human resources, education, economic development and transportation, agriculture, public protection, consumer protection, manpower, and other areas in which the governor creates an interagency planning council.

#### Governor's Report

Sec. 2. (a) Before the end of each even-numbered year, the governor shall prepare and submit to the legislature a report on the organization and efficiency of state agencies.

(b) In preparing the report, the governor shall use the staff of the Governor's Budget and Planning Office.

(c) In the report, the governor shall group state agencies into functional areas and shall include the following matters about the state agencies in each functional area;

(1) information regarding the efficiency with which the state agencies operate;

(2) recommendations regarding the reorganization of the state agencies and the consolidation, transfer, or abolition of their functions; and

(3) any other material relating to the organization or efficiency of state agencies that the governor considers necessary to include.

(d) The Legislative Budget Board shall coordinate the collection of information in this report.

#### Recommendations of Interagency Planning Councils

Sec. 3. (a) In preparing the report, the governor shall request and consider information from each interagency planning council regarding the efficiency of state agencies within the functional area represented by that interagency planning council and recommendations regarding the need for reorganization of state agencies within the functional area.

(b) Before submitting the report to the legislature, the governor shall present to each interagency planning council for review and comment the part of the proposed report dealing with the state agencies in the functional area represented by that interagency planning council, and the comments of each interagency planning council shall accompany the report when it is submitted to the legislature.

#### Preparation of Legislation

Sec. 4. The staff of the Texas Legislative Council shall draft any legislation required to put the governor's recommendations into effect.

[Acts 1977, 65th Leg., p. 939, ch. 350, eff. Aug. 29, 1977.]

#### Art. 5429k. Sunset Act

##### Short Title

Sec. 1.01. This Act may be cited as the Texas Sunset Act.

##### Definitions

Sec. 1.02. In this Act:

(1) "State agency" means:

(A) an agency that is expressly made subject to this Act; or

(B) a department, commission, board, or other agency (except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended) that:

(i) is created by statute after January 1, 1977;

(ii) is part of any branch of state government; and

(iii) has authority that is not limited to a geographical portion of the state.

(2) "Advisory committee" means a committee, council, commission, or other entity created by or pursuant to state law whose primary function is to advise a state agency.

(3) "Commission" means the Sunset Advisory Commission.

##### Sunset Advisory Commission

Sec. 1.03. (a) The Sunset Advisory Commission is created.

(b) The commission is composed of four members of the senate and one public member appointed by the lieutenant governor and four members of the house and one public member appointed by the speaker of the house. Each appointing authority may designate himself as one of the legislative appointees. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is regulated by a state agency that is to be reviewed by the commission during the term for which the person would serve; or

(2) is employed by, participates in the management of, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by a state agency that is to be reviewed by the commission during the term for which the person would serve.

(c) It is a ground for removal of a public member from the commission if the member does not have at the time of appointment or maintain during the

service on the commission the qualifications required by Subsection (b) of this section for appointment to the commission. The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a public member from the commission existed.

(d) Legislative members appointed by the lieutenant governor and the speaker of the house serve four-year terms, with terms staggered so that the terms of one-half of the legislative members appointed by the lieutenant governor and of one-half of the legislative members appointed by the speaker expire every two years. If the lieutenant governor or the speaker serves on the commission, he continues to serve until resignation from the commission or until he ceases to hold the office. Public members appointed by the lieutenant governor or speaker serve two-year terms.

(e) Once a person has served six years on the commission, he is not eligible for appointment to another term or part of a term. A member who has served more than half of a full term may not be appointed to an immediately succeeding term. These restrictions do not apply to the lieutenant governor or the speaker of the house.

(f) Each appointing authority shall make his appointments to the commission before July 1 of each odd-numbered year.

(g) A legislative member of the commission vacates his position on the commission when he ceases to be a member of the house from which he was appointed.

(h) A vacancy on the commission shall be filled for the unexpired part of the term in the same manner as the original appointment.

(i) The commission shall have, as presiding officers, a chairman and a vice-chairman. The chairmanship and vice-chairmanship must alternate every two years between the two membership groups appointed by the lieutenant governor and the speaker of the house. The chairman and vice-chairman may not be from the same membership group. The lieutenant governor shall designate a presiding officer from his appointed membership group and the speaker of the house shall designate the other presiding officer from his appointed membership group.

(j) A quorum shall consist of at least six members of the commission. No final action or recommendation may be made unless approved by a record vote of a majority of the full membership of the commission.

(k) Each member of the commission is entitled to reimbursement for the expenses he actually and necessarily incurs in performing the duties of the commission. Each legislative member is entitled to reimbursement from the appropriate fund of the member's respective house. Each public member is entitled to reimbursement from funds appropriated to the commission.

#### Staff

Sec. 1.04. (a) The commission shall employ an executive director to act as the executive head of the commission.

(b) The executive director shall employ persons necessary to carry out the provisions of this Act through funds made available by the legislature.

(c) The chairman and vice-chairman of the commission each may employ staff to work for them on matters related to the activities of the commission.

#### Report on Advisory Committees

Sec. 1.05. Before October 30 of each calendar year, each state agency shall file an annual report with the Secretary of State to register all of its advisory committees and report the following information regarding the agency's advisory committees:

- (1) the official names of the advisory committees;
- (2) the statutory authority, if any, for the advisory committees;
- (3) the advisory committees' objectives and functions;
- (4) the period of time necessary for the advisory committees to carry out their objectives;
- (5) a reference to the reports that the advisory committees have presented to the agency;
- (6) the names and occupations of the current members of the advisory committees; and
- (7) other available information that will assist the staff and the commission to determine the need for continuing the advisory committees.

#### Agency Report to Commission

Sec. 1.06. Before October 30 of the odd-numbered year before the year a state agency is abolished according to this Act, the agency shall report to the commission:

- (1) information regarding the application to the agency of the criteria in Section 1.10 of this Act;
- (2) information specified in Section 1.05 of this Act regarding each of the agency's advisory committees; and
- (3) any other information that the agency considers appropriate or that is requested by the commission.

#### Commission Duties

Sec. 1.07. Before September 1 of the even-numbered year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall:

- (1) review and take action necessary to verify the reports submitted by the agency under Section 1.06 of this Act;
- (2) consult the Legislative Budget Board, the Governor's Budget and Planning Office, the state

auditor, and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 1.10 of this Act;

(3) conduct a performance evaluation of the agency based on the criteria provided in Section 1.10 of this Act and prepare a written report, which is a public record; and

(4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session.

#### Public Hearings

Sec. 1.08. Between September 1 and December 1 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall conduct public hearings on but not limited to the application to the agency of the criteria provided in Section 1.10 of this Act, except that the commission may hold the public hearings before September 1 if the evaluation required by Section 1.07(3) of this Act has been completed and made available to the public.

#### Commission Report

Sec. 1.09. At each regular session, the commission shall present to the legislature and the governor a report on agencies and advisory committees scheduled to be abolished. In the report the commission shall include its specific findings with regard to each of the criteria set forth in Section 1.10 of this Act, its recommendations based on the matters set forth in Section 1.11 of this Act, and other information considered necessary by the commission for a complete evaluation of the agency.

#### Criteria for Review

Sec. 1.10. The staff and the commission shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency with which the agency or advisory committee operates;

(2) an identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;

(3) an assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public;

(4) the extent to which the advisory committee is needed and is used;

(5) the extent to which the jurisdiction of the agency and the programs administered by the agen-

cy overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;

(6) whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates;

(7) the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;

(8) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;

(9) the extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals;

(10) the extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section;

(11) the extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees;

(12) the extent to which the agency complies with the "Open Records Act," Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), and with the "Open Meetings Act," Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes); and

(13) the impact in terms of federal intervention or loss of federal funds if the agency is abolished.

#### Recommendations

Sec. 1.11. In its report on a state agency, the commission shall:

(1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;

(2) make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when such programs duplicate functions performed in agencies under review;

(3) recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended under Subdivisions (1) and (2) of this section; and

(4) include drafts of legislation necessary to carry out the commission's recommendations under Subdivisions (1) and (2) of this section.

#### Rules

Sec. 1.12. The commission shall adopt rules necessary to carry out this Act.

#### Abolition of Advisory Committees

Sec. 1.13. Except as otherwise expressly provided by law, every advisory committee whose primary function is to advise a particular state agency is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

#### Agencies Created in Future

Sec. 1.14. Every state agency created by law enacted after January 1, 1977, is subject to this Act and to this section except as otherwise expressly provided by the law creating the agency. A state agency created by law enacted in a fiscal biennium is abolished at the end of the sixth succeeding fiscal biennium unless continued by law.

#### Continuation by Law

Sec. 1.15. (a) During the regular session immediately preceding the abolition of a state agency or an advisory committee that is subject to this Act, the legislature by law may continue the agency or advisory committee for a period not to exceed 12 years.

(b) Nothing in this Act shall be construed to prohibit the legislature from terminating a state agency or advisory committee subject to this Act at a date earlier than that provided in this Act. Nothing in this Act shall be construed to prohibit the legislature from considering any other legislation relative to a state agency or advisory committee subject to this Act.

#### Legislative Consideration

Sec. 1.16. (a) No more than one state agency and its functions and advisory committees may be considered for continuation, transfer, or modification in a bill, except that when consolidation of agencies or advisory committees or their functions is proposed, only the agencies or advisory committees involved in the consolidation may be considered in a legislative bill.

(b) In a bill to continue a state agency, to transfer its functions, or to consolidate it with another agency, the affected agency or agencies shall be mentioned in the title of the bill.

#### After Termination

Sec. 1.17. (a) On abolishment in the odd-numbered year, each state agency may continue in existence until September 1 of the next succeeding year for the purpose of concluding its business. Unless otherwise provided by law abolishment does not

reduce or otherwise limit the powers or authority of each respective state agency during such concluding year. Upon the expiration of the one-year period after abolishment each respective state agency is terminated and shall cease all activities.

(b) Any unobligated and unexpended appropriations of a state agency or advisory committee lapse on September 1 of the even-numbered year after abolishment of the agency or advisory committee.

(c) All money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee is transferred to the General Revenue Fund, except as provided in subsection (f) of this section and as otherwise provided by law. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment of the agency.

(d) If an abolished state agency or advisory committee is funded in the General Appropriations Act for both years of the biennium, the abolished agency or advisory committee may not spend or obligate any of the money appropriated to it for the second year of the biennium, unless otherwise provided by law or rider in the appropriations bill.

(e) Property and records in the custody of a state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee are transferred to the State Board of Control, except that where an appropriate state agency is designated by the governor pursuant to Subsection (f) of this section, the property and records are transferred to the state agency so designated.

(f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness incurred by any agency abolished by the terms of this Act, and it is not the intention of this Act to impair or impede the payment of bonded indebtedness in accordance with its terms. If an abolished state agency has remaining outstanding bonded indebtedness, the bonds remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds, notwithstanding the abolishment of the agency that issued the bonds. The governor shall designate an appropriate state agency, which shall continue to carry out all covenants contained in the bonds and the proceedings authorizing them, including the issuance of bonds to complete the construction of projects, and shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full. All funds established by laws or proceedings authorizing the bonds shall remain with the State Treasurer or previously designated trustees, if so provided in the proceedings; if not so provided, the funds shall be transferred to the designated state agency.

**Subpoena Power**

Sec. 1.18. The commission may issue process to witnesses at any place in the state and compel their attendance and the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the committee proceedings. The commission may issue attachments when necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by any peace officer in this state. The chairman of the commission shall issue, in the name of the commission, the subpoenas that a majority of the commission may direct. In the event the chairman is absent, the designee of the chairman is authorized to issue subpoenas or any other process in the same manner as the chairman. Witnesses attending proceedings of the commission under process are entitled to the same mileage and per diem as allowed witnesses before a grand jury in this state. The testimony taken under subpoena must be reduced to writing and must be given under oath subject to the penalties of perjury.

**Assistance of and Access to State Agencies**

Sec. 1.19. (a) The commission may request the assistance of state agencies and officers, and they shall assist the commission when requested to do so.

(b) In carrying out their functions under this Act, the commission or its designated staff member may inspect the records, documents, and files of any state agency.

**Relocation of Employees**

Sec. 1.20. When an employee is displaced because of the abolishment, reorganization, or continuation of a state agency or its advisory committees, the agency and the Texas Employment Commission shall make a reasonable effort to relocate the displaced employee.

**Saving Clause**

Sec. 1.21. Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

[Acts 1977, 65th Leg., p. 1826, ch. 735, art. 1, eff. Aug. 29, 1977. Amended by Acts 1977, 65th Leg., 1st C.S., p. 56, ch. 3, § 1, eff. July 22, 1977; Acts 1981, 67th Leg., p. 2617, ch. 702, § 1, eff. Sept. 1, 1981.]

Article 2 of the 1977 Act enumerated various specific expiration provisions which appear throughout the statutes and codes.

Section 2 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Sunset Advisory Commission on the effective date of this Act continues to hold the office for the term for which the member was appointed.

"(b) The lieutenant governor and the speaker shall each appoint a public member before October 1, 1981, to serve until regular appointments are made in 1983.

"(c) The lieutenant governor shall appoint the chairman and the speaker of the house shall appoint the vice-chairman before October 1, 1981."

Section 4 of Acts 1983, 68th Leg., p. 602, ch. 126 provides:

"As part of the sunset review of the legislative council preceding and during the 1989 regular session of the legislature, the sunset commission and the legislature shall specifically consider the need for creating a separate agency to serve the data-processing needs of the legislative branch of government."

**Art. 5429I. Faculty Information and Research Service for Texas; Project FIRST****Committee**

Sec. 1. The FIRST Committee is created as the governing body of Project FIRST, the Faculty Information and Research Service for Texas.

**Membership**

Sec. 2. (a) The committee is composed of the following ex officio members:

- (1) chairman of the Senate Committee on Natural Resources;
- (2) chairman of the House Committee on Environmental Affairs;
- (3) director of the Legislative Reference Library;
- (4) president of the Texas Association of College Teachers (TACT);
- (5) president of the Texas chapter of the American Association of University Professors (AAUP);
- (6) representative of the Independent Colleges and Universities of Texas (ICUT);
- (7) representative of the Texas Junior College Teachers Association (TJCTA);
- (8) representative of the Texas Public Community/Junior Colleges Association (TPC/JCA);
- (9) representative from the University Council of Presidents; and
- (10) representative of the Texas Legislative Council.

(b) A member of the committee may designate a representative to act in his place at a meeting of the committee.

(c) Organizations representing the interests of accredited public or private institutions of higher education, their administrators or faculties, and which are not included as members of the committee in this section, may participate in the FIRST network and send a representative to the committee by requesting and receiving permission of the chairman.

**Officers, Meetings, Quorum**

Sec. 3. (a) The committee annually shall elect from its members a chairman and other officers that it considers necessary.

(b) The committee shall meet at the call of the chairman or as provided by a rule of the committee.

(c) A majority of the members of the committee constitutes a quorum.

**Additional Functions of Other Public Office**

Sec. 4. The functions performed by a member of the committee who holds public office are additional functions of the public office.

**Compensation and Expenses**

Sec. 5. A member of the committee or his designated representative may not receive compensation for his services on behalf of the committee. A member of the committee or his designated representative may not receive reimbursement for actual or necessary expenses incurred in performing services on behalf of the committee unless the reimbursement is provided by the organizations represented on the committee.

**Staff**

Sec. 6. (a) To administer its functions, the committee may employ staff and may use the voluntary assistance of the faculty and administrators of institutions of higher education in this state.

(b) The committee may use services and facilities contributed to the committee by an officer or employee of the legislature.

**Gifts, Grants, Donations**

Sec. 7. The community may accept, on behalf of the state, gifts, grants, or donations from any source to be used by the committee to administer its functions.

**Project FIRST**

Sec. 8. (a) The committee shall establish the Faculty Information and Research Service for Texas, Project FIRST. As part of FIRST, the committee:

(1) shall make available to legislative members, committees, and agencies the expertise of the faculties and administrators of the public and private institutions of higher education in this state;

(2) shall use that expertise to attempt to provide answers to requests for information from legislative members, committees, and agencies; and

(3) may direct, as a supplement to existing sources of information, a legislative member, committee, or agency to a source of information located at an agency or other organization of this state before the committee uses the expertise of the faculties and administrators.

(b) If requested by the governor and approved by the committee, the committee shall provide to the governor's office the services that the committee provides to legislative members, committees, and agencies.

(c) Faculty and administrators providing information for FIRST are volunteers and provide information to FIRST only if their time permits and if they have expertise relating to the information requested. A faculty member or administrator is not re-

quired to respond to a request for information from FIRST.

**Funding**

Sec. 9. The committee is to be financed with funds appropriated to the committee or to another organization in the state government designated by the committee as having operational control of FIRST.

**Rules**

Sec. 10. The committee may adopt rules necessary for it to administer its functions.

**Application of Sunset Act**

Sec. 11. The committee is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the committee is abolished and this Act expires on September 1, 1993.

**Organizational Meeting**

Sec. 12. The committee shall meet in an organizational meeting at a time and place designated by the chairman of the Senate Committee on Natural Resources.

[Acts 1981, 67th Leg., p. 1853, ch. 436, §§ 1 to 12, eff. Sept. 1, 1981.]

**Art. 5429m. Governor for a Day and Speaker's Day Ceremonies****Definitions**

Sec. 1. In this Act:

(1) "Governor for a day ceremony" means a ceremony held during a state senator's tenure as president pro tempore to honor the senator for his service to the state.

(2) "Speaker's day ceremony" means a ceremony held during the tenure of the speaker of the house of representatives to honor the speaker for his service to the state.

**Chairman**

Sec. 2. Before any contributions are accepted or any expenditures are made, the president pro tempore or the speaker shall designate a chairman to be responsible for conducting the governor for a day or speaker's day ceremony. The chairman is responsible for filing each report required by this Act.

**Contributions**

Sec. 3. (a) An individual, association, corporation, or other legal entity may contribute funds, services, or other things of value to defray the expenses of the governor for a day or speaker's day ceremony. A contribution under this subsection is not a political contribution for purposes of state law regulating political contributions or prohibiting political contributions by corporations or labor organizations.

(b) The chairman shall keep a record of each contribution received to defray the expenses of the governor for a day or speaker's day ceremony.

#### Expenditures

Sec. 4. (a) The chairman may authorize the expenditure of funds for any of the following purposes:

- (1) printing;
- (2) employment of staff;
- (3) professional and consultant fees;
- (4) postage, telephone, and telegraph expenses; and
- (5) any other purpose reasonably related to conducting the governor for a day or speaker's day ceremony, including fund raising.

(b) The chairman shall keep a record of each expenditure related to the governor for a day or speaker's day ceremony.

#### Final Report

Sec. 5. (a) Not later than the 60th day after the date of the governor for a day or speaker's day ceremony, the chairman shall file with the secretary of state a final report indicating:

- (1) the name and address of each contributor of more than \$50;
- (2) the amount of each contribution of more than \$50;
- (3) whether the contribution was in cash or in kind if more than \$50;
- (4) the total of all contributions of \$50 or less;
- (5) the total of all contributions received;
- (6) the name and address of each entity to which an expenditure of more than \$50 was made;
- (7) the amount of each expenditure if more than \$50;
- (8) the purpose of each expenditure in excess of \$50;
- (9) the total of all expenditures of \$50 or less; and
- (10) the total of all expenditures.

(b) If there is an outstanding debt at the time of the final report, the chairman shall file a supplemental report not later than the 30th day after the date the debt is retired indicating the information required by Subsection (a) of this section from the time of the final report to the filing of the supplemental report.

(c) If each obligation has been paid at the end of the 60-day period and there is an outstanding balance, the chairman shall distribute the balance to a charity or charities designated by the president pro tempore or speaker.

(d) The reports required by this Act are public information.

[Acts 1983, 68th Leg., p. 1527, ch. 289, eff. Aug. 29, 1983.]

### Art. 5429n. Adjustment of State Fees in General Appropriations Act

#### Legislative Finding and Intent

Sec. 1. (a) The legislature finds that, to ensure the efficient operation of state agencies and institutions of higher education and to allow for the assessment of fees adequate to reimburse the state for the costs of state services and regulatory functions, it will be in the public interest to provide for the adjustment of state fees by the legislature within the General Appropriations Act. It is the intent of the legislature that fees be adjusted biennially within the General Appropriations Act in a manner which provides for the recovery of any increased costs to the state resulting from the performance of services and functions for which a fee is levied. It is the intent of the legislature that, to the extent that senate and house rules allow, each substantive committee shall retain jurisdiction over any adjustment in fees as part of the appropriations process.

(b) Any increase in the amount of a fee made pursuant to this Act shall be for the purpose of recovering, on an annual basis, the costs to the state agency or institution of higher education increasing the fee. Where fee amounts are increased on a percentage basis, fee amounts may be rounded to the nearest whole dollar.

#### Application of Act

Sec. 2. This Act applies to all fees not set by the Constitution of the State of Texas, but shall not apply to fees that are dedicated to pay bonded indebtedness. The General Appropriations Act may not specify the amount of a fee unless imposition of that fee is authorized by general law. This Act does not apply to tuition charged by institutions of higher education.<sup>1</sup>

#### Amount of Fee

Sec. 3. (a) The amount of a fee, as covered in this Act, is the amount specified for that fee in the General Appropriations Act, however, for the fiscal years beginning September 1, 1983, and September 1, 1984, the amount of a fee specified in the General Appropriations Act shall not exceed by more than 100 percent the maximum amount of the fee set in general law. Subsequent to August 31, 1985, fee adjustments authorized through the General Appropriations Act shall be for the purpose of offsetting inflationary impacts. If a board of regents has the authority to establish a fee that falls within a statutory range, the amounts set under this Act shall constitute only the maximum amount for those fees.

(b) A law that specifies the amount of a fee subject to this Act is suspended to the extent that it



conflicts with the amount of the fee specified in the General Appropriations Act.

(c) If the General Appropriations Act does not specify the amount of the fee, the fee is the amount specified by law.

**Institutions of Higher Education; Fee  
Increases; Hearings**

Sec. 4. There will be no increase in fees at institutions of higher education unless a public hearing is held on the increase.

[Acts 1983, 68th Leg., p. 4676, ch. 815, eff. Aug. 29, 1983.]

<sup>1</sup> Underscoring so in enrolled bill.

**Art. 5429o. Emergency Interim Legislative Succession Act**

**Short Title**

Sec. 1. This Act may be cited as the Emergency Interim Legislative Succession Act.

**Definitions**

Sec. 2. In this Act:

(1) "Attack" means any action or series of actions taken by an enemy of the United States resulting in substantial damage or injury to persons or property in this state whether through sabotage, bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or methods.

(2) "Unavailable" means dead or unable for physical, mental, or legal reasons, to exercise the powers and discharge the duties of a legislator, whether or not the absence or inability would give rise to a vacancy under existing constitutional or statutory provisions.

**Designation of Emergency Interim Successors by  
Employees Retirement System of Texas**

Sec. 3. (a) For the purpose of designating emergency interim successors to legislators, the executive director of the Employees Retirement System of Texas shall submit to the lieutenant governor, if possible, the names of not less than three nor more than seven persons residing in each state senatorial district who:

(1) are members or retirees of the Employees Retirement System of Texas; and

(2) previously served as senators in the Texas Senate.

(b) The executive director of the Employees Retirement System of Texas shall submit to the speaker of the house of representatives, if possible, the names of not less than three nor more than seven persons residing in each state representative district who:

(1) are members or retirees of the Employees Retirement System of Texas; and

(2) previously served as representatives in the Texas House of Representatives.

(c) If the executive director of the Employees Retirement System of Texas submits less than seven names for a senatorial or representative district, the secretary of the senate or the chief clerk of the house shall submit to the lieutenant governor or the speaker, as appropriate, the names of former members living in the district. The lieutenant governor or the speaker shall rank the persons for each district according to years of service in the legislature, and shall add the names of persons with the most service to the list so that seven persons are designated, if possible.

(d) The list prepared for each senatorial and representative district shall rank the designees in descending order according to the number of years served in one house.

(e) The lieutenant governor and the speaker of the house shall contact each designee on their respective lists to determine if that person is willing to serve as an emergency interim successor if the legislator representing the district in which that person resides becomes unavailable to serve as provided by this Act. If a person is eligible to be included on both a senate and house of representatives list, the person must choose one list on which his name will remain.

(f) Each person contacted under Subsection (e) of this section who agrees to serve shall submit a written acceptance to the lieutenant governor or speaker of the house, as appropriate.

(g) The lieutenant governor and the speaker of the house shall submit to the secretary of state a list for each district in the order provided by Subsection (d) of this section of persons who have agreed to serve as emergency interim successors.

(h) Annually, the executive director of the Employees Retirement System of Texas, in cooperation with the secretary of the senate and the chief clerk of the house of representatives, shall review the lists submitted to the secretary of state to ensure that there are at least seven qualified emergency interim successors for each legislator, if possible. If revisions are necessary because of the death of a member or retiree of the system, because the member or retiree no longer resides in the district he was designated to represent, or because of the addition of more names, the executive director shall submit the revisions to the lieutenant governor or speaker of the house, as appropriate. The lieutenant governor and speaker of the house shall contact the new designees and, after receiving their written acceptance, shall submit the revisions to the secretary of state.

**Designation of Emergency Interim Successors  
by Legislator**

Sec. 4. (a) For the purpose of designating emergency interim successors, each legislator shall designate not less than three nor more than seven

persons to serve as emergency interim successors if the legislator becomes unavailable to serve as provided by this Act. Each person designated must be from the same political party as that legislator, must meet age and residence requirements for a senator or representative, as applicable, and must submit a written acceptance to the legislator.

(b) Each legislator shall submit a list of designees who have accepted, ranked in order of succession, to the secretary of state.

(c) Annually, each legislator shall review the lists submitted by him to the secretary of state to ensure that there are at least three qualified emergency interim successors. Each legislator shall make revisions to the list as necessary.

(d) If a legislator fails to designate emergency interim successors as required by this section, the lieutenant governor or speaker of the house, as appropriate, shall designate in order of succession not less than three nor more than seven persons to serve as emergency interim successors if that legislator becomes unavailable, and shall submit the list to the secretary of state.

(e) A list prepared for a district under this section is an alternate list to be used only if there are no designees on the list prepared under Section 3 of this Act or if those designees are unavailable.

#### Recording

Sec. 5. (a) Each designation of emergency interim successors becomes effective when the person making the designation files the successor's name, address, and written acceptance with the secretary of state.

(b) The removal of an emergency interim successor or a change in the order of succession becomes effective when a person authorized to make the change files that information with the secretary of state.

(c) Information filed under this section is public information.

#### Status and Qualifications of Emergency Interim Successors

Sec. 6. (a) An emergency interim successor is a person who is designated for possible temporary succession to the powers and duties, but not the office, of a legislator.

(b) A person may not be designated or serve as an emergency interim successor unless that person is legally qualified to hold the office of the legislator to whose powers and duties the person is designated to succeed.

#### Oath

Sec. 7. When the designation of an emergency interim successor becomes effective, the successor shall take the oath required for the legislator to whose powers and duties the successor is designated to succeed, and no other oath is required.

#### Assumption of Powers and Duties

Sec. 8. (a) If in the event of attack a legislator is unavailable, the secretary of state shall notify the legislator's emergency interim successor highest in order of succession who is not unavailable. The secretary of state shall inform each emergency interim successor of the place at which the legislature will meet, as soon as that is known, and shall also inform each of them of the date and time at which each must appear.

(b) The emergency interim successor shall exercise the powers and assume the duties of the legislator whom he succeeds, except that the successor may not designate emergency interim successors for himself.

(c) The emergency interim successor exercises those powers and assumes those duties until notified by the secretary of state that the incumbent legislator, an emergency interim successor higher in order of succession, or a legislator elected and legally qualified can act.

#### Privileges, Immunities, and Compensation

Sec. 9. (a) An emergency interim successor who exercises the powers and assumes the duties of an unavailable legislator is entitled to the privileges, immunities, compensation, and other allowances to which a legislator is entitled.

(b) This section does not affect the privileges, immunities, compensation, or other allowances to which an incumbent legislator is entitled.

(c) An emergency interim successor's performance of the powers and duties of an unavailable legislator does not affect the successor's entitlement to other compensation or benefits to which the successor might otherwise be entitled. Section 22-203(d), Title 110B, Revised Statutes, does not apply to a person serving as an emergency interim successor under this Act.

#### Duty to Remain Informed

Sec. 10. Each emergency interim successor shall keep himself generally informed as to the duties, procedures, practices, and current business of the legislature, and each legislator shall assist his emergency interim successors to keep themselves informed.

#### Quorum; Votes

Sec. 11. In the event of an attack, the quorum requirements imposed on the legislature are suspended. If the affirmative vote of a specified proportion of members is required to approve a bill or resolution, the same proportion of those present and voting on the bill or resolution is sufficient for its passage.

**Effective Date**

Sec. 12. This Act takes effect January 1, 1984, except that if the constitutional amendment proposed by H.J.R. No. 30, 68th Legislature, 1983, is not adopted by the voters, this Act has no effect. [Acts 1983, 68th Leg., p. 4841, ch. 854, eff. Jan. 1, 1984.]

Acts 1983, 68th Leg., p. 6715, H.J.R. No. 30, was adopted by vote of the people at an election held November 8, 1983.

# TITLE 88

## LIBEL

- Art.**  
5430. Definitions.  
5431. Mitigation of Damages.  
5432. Privileged Matters.  
5433. Construction.  
5433a. Radio or Television Broadcasting Station or Network; Limitation of Liability.

### Art. 5430. Definitions

A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury.

[Acts 1925, S.B. 84.]

### Art. 5431. Mitigation of Damages

In any action for libel, in determining the extent and source of actual damage and in mitigation of exemplary or punitive damage, the defendant may give in evidence, if specially pleaded, all material facts and circumstances surrounding such claim of damage and the defense thereto, and also all facts and circumstances under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of, and may also give in evidence, if specially pleaded in mitigation of exemplary or punitive damage, the intention with which the libelous publication was made. The truth of the statement, or statements, in such publication shall be a defense to such action.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 121, ch. 80, § 1.]

### Art. 5432. Privileged Matters

The publication of the following matters by any newspaper or periodical shall be deemed privileged and shall not be made the basis of any action for libel.

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of same when in the judgment of the court the ends of justice demand that the same should not be published and the court so orders, or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings, including all reports of and proceedings in or before legislative committees and before each and all such committees heretofore appointed by the Legislature or either branch of the Legislature or hereafter to be appointed by such bodies or either of them and of any debate or statement in or before the Legislature or either branch thereof or any of its committees, and including also all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions supported from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district, city or county, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of the proceedings of public meetings, dealing with public purposes, including a fair, true and impartial account of statements and discussion in such meetings, and of other matters of public concern, transpiring and uttered at such public meetings.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information.

5. The privilege provided under Sections 1, 2, 3, and 4, of this article shall extend to any first publication of such privileged matter by any newspaper or periodical, and to subsequent publications thereof by it when published as a matter of public concern for general information; but any re-publication of such privileged matter, after the same has ceased to be a matter of such public concern, shall not be deemed privileged, and may be made the basis of an action for libel upon proof that such matter had ceased to be of such public concern and that same was published with actual malice.

[Acts 1925, S.B. 84. Amended by Acts 1927, 40th Leg., p. 121, ch. 80, § 2.]

### Art. 5433. Construction

Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved.

[Acts 1925, S.B. 84.]

**Art. 5433a. Radio or Television Broadcasting Station or Network; Limitation of Liability**

The owners, licensees or operators of a radio or television broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio or television

broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

[Acts 1953, 53rd Leg., p. 506, ch. 184, § 1.]

†